
(1966) 11 KL CK 0033
In the High Court Of Kerala
Case No : Criminal R.P. No. 10 of 1966

Joseph and Another

APPELLANT

Vs

Gopinathan Nair and Another

RESPONDENT

Date of Decision : 22-11-1966

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 13(2), 16(1)(a)(i), 7

Citation : (1967) KLJ 428

Hon'ble Judges : K. Sadasivan, J

Bench : Single Bench

Advocate : Joseph Augustine, for the Appellant; M.U. Isaac, For 1st respondent and State Prosecutor, For 2nd respondent, for the Respondent

Final Decision : Allowed

Judgement

K. Sadasivan, J.—The petitioners were the accused in C.C. 28/65 on the file of the Addl. First Class Magistrate of Meenachil. They were charged by the Health Inspector of Palai Municipality under S, 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act - Act 37 of 1954 (shortly stated the Act) in that they were found to possess adulterated cow's milk intended for sale. First accused is the clerk and the second accused the Secretary of the Palai Milk Supplies Co-operative Society. At about 10.30 a.m. on 16.1.64 the Health Inspector of the Palai Municipality visited the depot of the society and purchased therefrom 24 oz., of cow's milk for analysis on payment of a price. The milk purchased was then bottled and sealed in three bottles as required by the rules and on analysis by the Public Analyst it was found to be deficient in fat to the extent of not less than 20% and therefore adulterated. After that the accused in exercise of the powers u/s 13 of the Act sent through court the sample which was entrusted to him, to the Central Food Laboratory for analysis. They wrote back saying that the sample was infested with fungus and hence unfit for analysis. Thereupon the sample left in the custody of the court was sent to the same laboratory at the instance of the complainant and the report was that it

was adulterated. Thus on the basis of the report of the Central Food Laboratory the accused was convicted. On appeal to the Sessions Judge of Kottayam the conviction and sentence were confirmed.

2. Before this court on scanning the records carefully it was discovered that the prosecution suffers from a very serious infirmity and the conviction itself is allowed to rest on a mistake which has escaped the notice of both the courts below. The report of the Central Food Laboratory, which is essentially the basis of the lower courts' finding, it appears, is in respect of a different sample altogether. Ex. P. 6 is that report. The sample number is shown as No. 1 and the case number as C.C. 18/65. Ex. P4 is the report of the public analyst, i.e. the report in respect of the sample that was first sent. Therein the sample number is shown as No. 58. There cannot be any doubt, therefore, that the sample that was subjected to analysis by the public analyst under Ex. P.4 report and that by the Central Food Laboratory under Ex. P. 6 report are different. The complainant has sought to explain away this divergence by means of a statement filed in this court. The explanation put forward is that the discrepancy has crept in due to a typing error. I do not find my way to accept the explanation. Ex. P. 6 is the report prepared by the Central Food Laboratory at Calcutta and signed by the Director. It would be too much to think that both in respect of the sample number and the case number the mistake was committed in the course of typing the report. Ex. P. 6, therefore, must relate to a different sample sent for analysis. The benefit of this doubt must in any circumstance go to the accused.

3. We are confronted with also the further fact that the sample was sent to the Central Food Laboratory after a lapse of about 7 months and it is common knowledge that the sample taken even though the necessary preservative was added would disintegrate in the course of 7 months. The sample was taken on 16.1.1964, but the analysis was carried out in the Central Food Laboratory on 6.7.1965 only. Under similar circumstances it was observed by the Madhya Pradesh High Court in *Municipal Corporation Vs. Kishan Swaroop*, as follows:

The Public Analyst's report also lost weight where the analysis of milk was carried out some days after the sample was taken. It could not be disputed that the composition of milk underwent a rapid change unless the milk was either pasteurized or unless it was sent under refrigeration. To obviate the possibilities of these changes it was absolutely necessary to get the sample examined at the earliest possible time and if there was some delay, it was necessary for the prosecution to establish that the milk was preserved in the interval under ice or under refrigeration.

The prosecution has no case that the milk in question was preserved under ice or under refrigeration. In cases like this where there is a delay in launching the prosecution there is also the further disadvantage for the accused that he is deprived of his valuable right to challenge the report of the analyst in the manner prescribed by Section 13 (2) of the Act. This court in *State of Kerala v. Revathi Amma* (1963 K.L. T. 474) has also condemned the practice of not carrying out

the analysis promptly and has taken the view that beyond three months the delay would be unreasonably and the composition of milk under such circumstances is likely to undergo changes. This court observed on the authority of a Text Book on the subject that.-

In the opinion cited above, the word "months" is used as opposed to the word "days".. What is stated there is that a certain amount of formaldehyde will preserve milk for three or four days and a larger amount will preserve milk for months. Quite probably the term "months" will cover a period of three months.

This aspect of the case viewed in the light of the glaring draw-back already pointed out is sufficient to entitle the accused to an acquittal. I would, therefore, allow the revision, set aside the conviction and sentence and acquit the accused. Fine, if paid, would be refunded.