
(1987) 09 KL CK 0031
In the High Court Of Kerala
Case No : Criminal R.P. No. 12 of 1984

K. Raghavan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-09-1987

Acts Referred:

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

Citation : (1987) KLJ 1199

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : K.A. Nayar, for the Appellant;

Final Decision : Dismissed

Judgement

Chettur Sankaran Nair, J.—Petitioner was found guilty of offences u/s 2 (IX). (C) and section 7(2) read with section 16(1)(a) (i) of the Prevention of Food Adulteration Act. On 19-2-81, at or about 1.15 p.m. P.W. 4 visited the shop of the petitioner, and after disposing his identity, demanded 375 grams of groundnut oil and purchased it. It was duly sampled and analysed Ext. P2 report of the Analyst shows that the sample analysed was of palmolein oil, and not groundnut oil. Acting on this evidence, the Magistrate below found that the article sold was misbranded and the offence proved. Appeal was unsuccessful. Learned counsel for petitioner submitted that the Food Inspector pointed out at a tin and asked for the sample, presuming it to be groundnut oil and that the petitioner did not sell palmolein for groundnut oil. There is difficulty in accepting the submission because, the evidence of P.W. 4 is that he asked for groundnut oil, though he says he pointed at a tin This is made clear in answer to a question in cross-examination. It cannot be said that the concurrent finding made by the courts below on this aspect is (sic) by any illegality or impropriety.

2. Learned counsel contended that this is not a case of misbranding because, what was sold was also a wholesome article of food. Notwithstanding the fact

that an article of food is wholesome misbranding can arise having regard to the language of section 2(TX) (C) Section 2 (IX) (a) requires intention to deceive and section 2 (IX) (b) requires a false statement regarding the product if the section is to be attracted. But, section 2 (IX) (C), under which the petitioner is found guilty is attracted if the article is sold by a name, which belongs to another article of food. No particular intention is required, to invite the offence u/s 2 (IX) (C). It is not possible to read the element of intention into the section.

3. The legislation is under Entry 18 in List III of Schedule VII. That Entry enables the legislature to legislate touching upon matters relating to "Adulteration of food stuffs and other goods". Intention of the legislature is to ensure purity of articles sold to the public for consumption and to prevent offences against public health. But, the scheme of the Act and the definitions reveal that even what is wholesome can invite penal provisions, under certain circumstances. The definition u/s 2 (IX) and 2 (1a) bear this out. This is a matter of legislative policy and a deeming device is not unknown. Since legislative competence is not challenged, I am not called upon to decide the question with reference to wholesomeness or unwholesomeness of the article involved.

4. Learned counsel for petitioner referred to the decision in *Ganeshmal Jashraj Vs. Government of Gujarat and Another*, to contend that the department should not remain content to enforce the laws against small tradesman and that a lenient view should therefore be taken in the case of small tradesman like the petitioner. Reference was then made to *Ishar Das Vs. The State of Punjab*, . That was a case where applicability of Probation of Offenders Act was considered. This too cannot help the petitioner having regard to the subsequent amendment to the Act excluding the operation of the Probation of Offenders Act in case of persons above the age of 18. *Municipal Corporation of Delhi Vs. Kacheroo Mal*, was also cited. The decision turned on the meaning of section 2 (1) (f) of the Act referring to articles for which standards were not prescribed. This cannot advance the case of the petitioner for exoneration. *Kisan Trimbak Kothula and Others Vs. State of Maharashtra*, was also relied on. That was a case where there was no proof regarding commission of the offence. The accused was in possession of milk and this was brought from the bazaar by a servant in the shop. On the facts of the case, while confirming the conviction the court left it to the State Government to consider whether power of clemency should be exercised having regard to the fact that the trade is petty and that adulteration was not by an extraneous substance.

5. Counsel also referred Halsbury's Laws of England, IVth Edition Paragraph 1071 to contend that it is no offence to give a purchaser an article superior to that for which he asks provided he is not prejudiced. I do not think that English law will bear analogy because, the provisions of the English Act, English Food and Drugs Act, 1955, are different in ambit and less harsh on the sentencing scene.

6. On the facts, there is no escape from the conclusion that the sample was sold as groundnut oil. Analysis shows that what was sold was not in fact groundnut

oil, but palmolein. Section 2 (IX) (C) does not require any criminal intent or knowledge and would without anything more be attracted if the article sold is different from what is demanded. In this view, the inevitable conclusion is that the offence is made out. Then remains, the question of sentence. Court has no discretions however hard the facts of the case be, or however mitigating the extenuations pleaded are. A discretion proof sentencing policy is envisioned by the Act. Whether discretion should not be a component of the sentencing process is a matter for the legislature to reflect or ruminate over. Cases that come before the court often reveal the picture of a person without any positive criminal intent or knowledge. It also reveals the situation commented upon by the Supreme Court in *Ganeshmal Jashraj Vs. Government of Gujarat* and Another, of small traders eking out a precarious hand to mouth existence, being jailed, when more often than not adulteration is made by large scale traders or manufacturers, from whom the evil stems, and to whom the enforcement of law does not turn. The lowly milk carrier, the petty village trader and those of the like are the accused. The soft rustle of the winds of sensitive sentencing have swept the landscape else where whether such should not pervade the sentencing area in cases under the Prevention of Food Adulteration Act where those with neither intent nor knowledge are penalised, is a matter for the legislature to consider. True the law must be strict, for the offences involved are grave offences against public health, which is of grave concern-But an imaginative sentencing process, that can be modulated to the situations that come before courts, will work out greater justice than draconian scales when has yet, a computerised sentencing system cannot be thought of.

Conviction and sentence are to be confirmed. Revision petition is accordingly dismissed.