
(2016) 02 KL CK 0048
In the High Court Of Kerala
Case No : Crl. Rev. Pet. No. 1 of 2012

K.N. Sadanandan

APPELLANT

Vs

Food Inspector and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16 (1)(a)(i), Section 16(1)(a) (i), Section 2(ia)(a)(m), Section 23 (1-A) (ee), Section 23 (1-A)(ee), Section 7(i)

Citation : (2016) 02 KL CK 0048

Hon'ble Judges : Bhaskaran Pillai Sudheendra Kumar, J.

Bench : Single Bench

Advocate : Santhosh Subramanian, E.A. Thankappan, Sherry J. Thomas and S. Sreekumar, Advocates, for the Appellant; V.S. Sreejith, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran Pillai Sudheendra Kumar, J.—1. The third accused in S.T. No. 984 of 2003 on the files of the Court of the Judicial Magistrate of First Class, Kothamangalam filed this Revision Petition challenging the concurrent finding of conviction and sentence passed by the courts below under Sections 2(ia)(a)(m), 7(i) and 16 (1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and Rule 5 Appendix B Item No. A.17.11 of the Prevention of Food Adulteration Rules, 1955.

2. Heard.

3. The prosecution allegation can be briefly stated thus:-

"On 23.3.2001 at about 12 noon, PW1, the Food Inspector, purchased 900 ml of gingelly oil from the shop of the second accused. The first accused was the salesman, the fourth accused was the manufacturer and the third accused was the nominee of the fourth accused under the P.F.A. Act. After sampling as per rules, one of the samples was sent for analysis to the Public Analyst. The Public Analyst filed Ext. P12 report stating that the sample did not conform to the

standard prescribed for gingelly oil under the Prevention of Food Adulteration Rules, 1955 and therefore, the same was adulterated."

4. Before the trial Court, PW1 to PW4 were examined and Exts.P1 to P25 were marked for the prosecution. DW1 and DW2 were examined for the revision petitioner.

5. The learned counsel for the revision petitioner has submitted that since no laboratory for the analysis of the food item was defined and no validated method of analysis was prescribed as per the mandate of Section 23 (1-A)(ee) and (hh) of the PFA Act, Ext. P12 cannot be acted upon to hold that the food item purchased by the Food Inspector was adulterated. The learned counsel for the revision petitioner relied on the decision of the Apex Court in *Pepsico India Holdings (P) Ltd. v. Food Inspector* [, (2011) 1 SCC 176] to buttress his argument.

6. In this case, admittedly, the laboratory for the analysis of food item was not defined and no validated method of analysis of the food item was prescribed as mandated under Section 23 (1-A) (ee) and (hh) of the P.F.A. Act. Therefore, Ext. P12 report of analysis cannot be acted upon to hold that the food item purchased in this case was adulterated in view of the decision of the Apex court in *Pepsico India Holdings* (supra). It was held by the Supreme Court in *Pepsico India Holdings* (supra) that since the Laboratories were not notified and the tests conducted by such laboratories were not admissible in evidence, no prosecution could be based on such report and the accused was entitled to get acquittal. In the decision of this Court in *Gopalakrishnan v. Food Inspector* [, 2013 (3) KLT 455], the court relied on the decision of the Supreme Court in *Pepsico India Holdings* (supra) and found that the Public Analyst's report was not admissible in evidence and accordingly, the Court acquitted the accused. The matter was referred to a Division Bench and the Division Bench also affirmed the said decision, submitted by the learned counsel for the petitioner and the learned Public Prosecutor. Even otherwise, in view of the decision in *Pepsico India Holdings* (supra), the conviction in this case cannot be sustained as no laboratory was notified and no validated method of analysis was specified as mandated under Section 23 (1-A) (ee) and (hh) of the Prevention of Food Adulteration Act, 1954.

In the result, this Revision Petition stands allowed setting aside the conviction and sentence passed by the courts below under Sections 2(ia)(a)(m), 7(i) and 16(1)(a) (i) of the Prevention of Food Adulteration Act, 1954 and Rule 5 Appendix B Item No. A.17.11 of the Prevention of Food Adulteration Rules, 1955 and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.