

(1972) 10 KL CK 0006
In the High Court Of Kerala

K.R. Gopinathan Nair

APPELLANT

Vs

T.N. Ittyavirah and Another

RESPONDENT

Date of Decision : 05-10-1972

Acts Referred:

Citation : (1973) CriLJ 842

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Judgement

V. Khalid, J.—The Food Inspector. Kottayam Municipality, is the appellant, the complainant before the District Magistrate's Court, Kottayam. The offence against the accused was that he sold adulterated cow's milk, being below the prescribed standard. The Food Inspector added 18 drops of "formalin" as preservative to the milk purchased by him and sent it for analysis. On analysis it was found to be adulterated in as much as it fell short of the prescribed specification.

2. The learned District Magistrate found that the evidence of P.W. 1 was not corroborated by P.W. 2, that P.W. 2 is not an independent witness and is susceptible to the influence of P.W. 1, and hence there is a violation of Section 10 of the Act. It was also held that the report of the public analyst. Ext. P-8, cannot be relied upon, as the quantity of Preservative used was more than the prescribed maximum. On these findings, the learned Magistrate acquitted the accused. It is against this acquittal that this appeal is filed.

3. The only question which needs consideration in this case is whether the adding of an excess quantity of preservative has made Ext. P-5 report of the Public Analyst inadmissible or unreliable.

4. The learned Counsel for the appellant brought to my notice the following decisions in support of his contention that the quantity of preservative used does not affect the report of the Public Analyst.

5. In Public Prosecutor Vs. Ediga Venkata Swami, it was held:

The rules do not contain any direction to the Public Analyst to analyze a sample within a particular period, but the presumption is that in view of the fact that the samples that are sent to him are of a perishable nature, the analysis would be normally conducted as expeditiously as Possible. The idea of adding preservatives is not to prolong the life of the samples indefinitely but to keep it in its original state, for a limited period. It would, therefore, be Presumed that the analysis had been conducted soon after the sample was received. The delay in compiling the report does not necessarily mean that the analysis was also delayed. If the Magistrate has any doubt in regard to this aspect of the matter he can examine the Public Analyst or get a clarification from him.

The Court further held:

The Question is that if only four drops of preservatives were added to the sample as against the direction of Putting one drop for each ounce (subsequently amended to two drops) it had adversely affected the opinion of the Public Analvst. The fact of adding insufficient quantity of preservative has not been considered in the case cited above nor there is any data on record to hold that merely because an insufficient quantity of preservative was added, the opinion of the Public Analvst on that account was liable to be ignored. Here again. I am inclined to hold that the complaint should have emanated from the Public Analvst viz., that as insufficient quantity of the preservative had been added the sample had deteriorated or that decomposition had set in with the result that the analysis could not proceed on a safe footing. There is no such complaint by the Public Analyst nor the respondent has chosen to examine the Public Analvst from this point of view. I, therefore, think that even conceding that smaller quantity of preservative was added to the sample sent it could not be concluded that the opinion of the Public Analvst could be discarded on that account.

It is on record and not controverted that the sample of the milk taken from the respondent was supplied to him. If it was his case that on account of insufficiency of preservative the sample had deteriorated, he could have availed of the provisions u/s 13 of the Act and sent the sample to the Central Food Laboratory for an opinion. Admittedly, he has not followed this course. In the absence of it. there is no justifiable reason to arrive at the finding that merely because of the insufficiency of the Preservative the sample had undergone a further decomposition. The learned Magistrate, therefore, in my opinion, was not justified in acquitting the accused on this technical ground.

In that case, the preservative used was less than the prescribed Quantity and it was therefore contended that there was possibility of the sample setting decomposed thus affecting the report of the Public Analvst. This was met by the learned Judge with the observation that if the article of food had deteriorated because of the insufficiency of the quantity of preservative used, it was for the Public Analyst to complain. In that case, there was no such complaint by the Public Analvst and the respondent did not choose to examine the Public Analvst either. It was also stated that in case the accused felt that insufficient quantity of

preservative used has caused decomposition of the food, the accused could have availed of the provisions in Section 13 of the Act and sent the sample to the Central Food Laboratory. This not having been done, the learned Judge observed, the insufficient quantify, of preservative used did not make the report of the Public Analvst unacceptable.

6. In Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, . Their Lordships of the Supreme Court observed that if the accused felt that the sample sent was capable of decomposition for insufficiency of the Preservative used, it was for him either to examine the Public Analvst or send the sample with him for analysis to the Central Food Laboratory. Their Lordships also observed that there was no evidence before the Magistrate that for the reason that the prescribed aquatint of formalin was not added t0 each part, the part of the sample delivered to the vendor was incapable of being analyzed by the Director.

7. These decisions lay down that merely because insufficient quantity of preservative was used is no ground to reject the Public Analyst's report. If the article of food was decomposed, the Public Analvst would have noted it. If the accused felt that there was decomposition he could either send his sample to the Central Food Laboratory or set the Public Analvst examined in Court.

8. In the case on hand, we have the contrary position. Instead of adding 16 drops of formalin, in this case 18 drops were added. The question is whether the use of two more drops of formalin would result in any chemical process in the milk to expose the analyst's report to criticism. Ext. P-5 report of the Public Analvst shows that the milk was not decomposed and therefore the principles laid down in the cases cited above would apply.

9. But the learned Counsel for the 1st respondent would contend that in the absence of details regarding the tests applied by the Public Analvst it cannot be conclusively stated whether the excess quantity of formalin had caused any change in the milk. Ext. P-5 report of the Public Analvst only shows that the milk sample does not conform to the standards Prescribed for cow's milk in that it is deficient in milk fat to the extent of not less than 25% as calculated from the milk fat content stated to be 2.6%. The percentage of milk solids-not fat is stated to be 8.4% as against the specification, which is 3.5 Per cent. All that Ext. P-5 shows is that the Analvst caused the food to be analyzed and declared the result of the analysis as given above.

10. In the Book entitled "Food Analysis" by A.G. Woodman, at Page 156 under the heading "Methods of Analysis" "fat" is discussed thus:

The fat may be determined by the Babcock method as described on Page 129, but on account of the thickness of the cream and its high fat content, modifications of the method are advisable." At Page 129 of the same book under the sub-heading "fat", the following discussion appears:

The time-honored method for determining the fat is the Adams process, in which

the milk is dried on Porous paper and the fat extracted with ethyl ether or petroleum ether in a continuous extraction apparatus. Since the method is tedious and is not well suited for milk products other than liquid milk, it is not described in detail.

Then the Babcock method is explained. At page 130 we have the following discussion:

Milk that has been preserved with formaldehyde usually requires longer time and more vigorous shaking to dissolve the curd, on account of the hardening action of this preservative on the coagulated case in.

From this it is clear that the preservative has a hardening action on the milk. From the report, Ext. p-5, it is not clear which method was adopted by the Analyst and no opportunity has been afforded to him by examining him to find out whether the aquatint of Preservative used would in any way affect the fat content in the milk.

11. The learned Counsel for the respondent brought to my notice another book entitled "Analysis of Foods" by "A.L. Winton and K.B. Winton". At page 709 of this book under the sub-heading "Range in Composition", the following discussion appears:

In addition to the species and breed, various factors influence the composition of milk. The fat generally increases as the period of lactation advances, and as the Use between milking decreases: also toward the end of each milking, following the same rule that causes fat to rise as cream in a container." At page 710 it is said:

Formaldehyde (1 ml. of 40% solution per Quart) is a good preservative, but it hardens the case in and interferes somewhat with fat determination by the Babcock test.

In view of this observation, a possible error in determining the fat content in the milk by the addition of excess quantity of preservative cannot be ruled out. II am constrained to go into the details of the tests in this case only because the accused had the advantage of acquittal. In my view, the prosecution should have in the circumstances of the case made available to the Court more acceptable evidence either by examining the Public Analyst or otherwise to show that in spite of excess preservative having been used, there was no possibility of an error in determining the fat content in the milk. In the absence of such evidence. I hold that the prosecution has not proved its case beyond reasonable doubt and the benefit of doubt should go to the accused.