
(2002) 03 KL CK 0013
In the High Court Of Kerala
Case No : Criminal M.C. No. 1801 of 1999

Mohammed Ajmal

APPELLANT

Vs

Antony and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 2(ia)(m), 2(ix), 7(i), 7(ii)

Citation : (2002) 1 KLJ 457

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : Joseph Markose and A. Kumar, for the Appellant; K.L. Joseph (Public Prosecutor), for the Respondent

Final Decision : Allowed

Judgement

K. Padmanabhan Nair

1. This is a petition filed under Sec. 482 of the Code of Criminal Procedure by the second accused in S.T. No. 10199/98 pending on the file of the Judicial First Class Magistrate, Irinjalakuda for quashing Annexure-A complaint filed by the Food Inspector who is the first respondent herein. In the complaint it is averred that on 4-8-1997 the first respondent inspected the shop conducted by the first accused in the case and purchased samples of Ice Cream Mix manufactured by the petitioner and the sample so purchased was found to be adulterated as it does not conform to the standards prescribed for the dried Ice Cream Mix under the Prevention of Food Adulteration Act, hereinafter referred to as "the Act". It is averred that the petitioner and first accused have committed the offences punishable under Secs. 2(ia)(m) and 7(i) read with Sec. 16(1)(a)(i) of the Act and Rule 5 - Appendix B Item No. A. 11.02.08.01 of the Prevention of Food Adulteration Rules. According to the petitioner, under the Act and the Rules the standard is fixed only for Dried Ice Cream Mix and what is manufactured by him

is not Dried Ice Cream Mix; but it is only a proprietary food, for which no standard has been fixed under the Act and Rules and hence the complaint itself is not maintainable. In O.P. No. 5365 of 1998 (Corn Products Co. (India) Ltd. v. Director General of Health Services and others), which was decided on 8-6-2001, this court considered whether Rex Ice Cream Mix marketed by the petitioner in that case is Dried Ice Cream Mix and found that Rex Ice Cream Mix is different from Dried Ice Cream Mix and the same is a proprietary food, for which no standard has been prescribed under the Act and Rules. Based on the decision in the said Original Petition, this court allowed Cri.M.C.5412 of 1998 filed by the petitioner in the Original petition and quashed the complaint filed by the Food Inspector in that case. In Cri.M.C.5452 of 1998 also this court found that Ice Cream Mix manufactured by the petitioner in that case was a proprietary food, for which no standard has been prescribed under the Act and Rules. The decision rendered by this court in O.P.5365 of 1998 (Corn Products Co. (India) Ltd. v. Director General of Health Services and others), which was decided on 8-6-2001, this court considered whether Rex Ice Cream Mix marketed by the petitioner in that case is Dried Ice Cream Mix and found that Rex Ice Cream Mix is different from Dried Ice Cream Mix and the same is a proprietary food, for which no standard has been prescribed under the Act and Rules. Based on the decision in the said Original Petition, this court allowed Cri.M.C. 5412 of 1998 filed by the petitioner in the original petition and quashed the complaint filed by the Food Inspector in that case. In Cri.M.C. 5452 of 1998 also this court found that Ice Cream Mix manufactured by the petitioner in that case was a proprietary food, for which no standard has been prescribed under the Act and Rules. The decision rendered by this court in O.P.5365 of 1998, which has already become final. I have gone through the reasonings contained in O.P.5365 of 1998, Cri.M.C. Nos. 5412 of 1998 and 5452 of 1998 and I agree with the same. Appendix B Item All.02.08.01 prescribes the standard for Dried Ice Cream Mix. Since the sample in this case is a proprietary food, for which no standard is prescribed under the Act and Rules, the complaint filed by the first respondent alleging that the petitioner has committed an offence punishable under Secs. 2(ia)(m) and 7(i) of the Act read with Rule 5, Appendix BA.11.02.08.01 of the Rules is not maintainable and liable to be quashed.

2. The learned Government Pleader appearing for the contesting respondents has argued that the article sold by the petitioner is really Dried Ice Cream Mix and it is a clear case of misbranding. It is argued that even though the petitioner claims that the article sold by him is not Dried Ice Cream Mix, he is selling the same to an ordinary common man as Dried Ice Cream Mix. It is also submitted that after the amendment to Rule 37A(2), which was incorporated with effect from 29-4-1989, a person manufacturing or selling a proprietary food should comply with the conditions imposed under sub-rule (2) of Rule 37A. It is also submitted that even in Ice Cream Mix Powder use of permitted synthetic food colours is restricted and rule 29 permits use of synthetic food colours in certain food articles alone and if the article of food sold by the petitioner is a proprietary food,

not falling in any of the articles of food mentioned therein, he is not entitled to add any synthetic food colour. It is also argued that even in cases in which the Rule 29 permits adding of synthetic food colour the same should be within limits prescribed under rule 30 of the Rules. It is argued that even if the sample taken is a proprietary food, that is a matter to be proved by accused by adducing evidence and hence the complaint cannot be quashed.

3. The word "misbranded" is defined in Sec. 2(ix) of the Act. Of course if the article of food is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and if it is not plainly or conspicuously labelled so as to indicate its true character, it is misbranded. Under Sec. 7(ii) of the Act, sale of misbranded food is prohibited and the same is punishable under Sec. 16(1)(a)(i) of the Act. Rule 37A(2) enjoins that in the case of a proprietary food name of the food or category under which it fall shall be mentioned in the label. Rule 37A reads as follows;-

37A. Manufacture of proprietary foods and infant milk Substitute/infant foods:-

(1) An article of infant milk substitutes/ infant foods whose standards are not prescribed in Appendix "B", shall be manufactured for sale, exhibited for sale or stored for sale only after obtaining the approval of such article of food and its label from Government of India.

(2) In case of prorietary foods, the name of the food or category under which it falls in these rules shall be mentioned on the label.

Likewise Rule 29 permits adding of permitted synthetic food colours only to certain food articles. Use of the same in or upon any food other than those mentioned in Rule 29 is prohibited. Rule 30 prescribes the maximum limit also. The violation of the provisions of the Rule 29, 30 or 37A is an offence punishable. There is no allegation in the complaint that the petitioner is manufacturing or marketing any misbranded food article. There is no allegation that the petitioner has violated the provisions contained in Rule 37A. The complainant has also no case that the sample contains any excess quantity of permitted synthetic colours or the sample is a food article to which no synthetic food colour can be added. In the absence of such an averments, it is not necessary to consider whether the petitioner has committed any offence falling under those Sections or Rules. But, it is made clear that the dismissal of this criminal miscellaneous case will not be a bar for the 1st respondent to file a fresh complaint alleging violation of any other Section/Sections or Rule/ Rules. Since the only allegation in the complaint is that the article sold does not conform to the standard prescribed under the Rule 5 Appendix B, A.11.02.08.01 of the Rules, this complaint, in so far as the petitioner herein is concerned, is only to be quashed.

In the result, the Criminal Miscellaneous Case is allowed. Annexure A complaint in S.T.10199/98 pending before the Judicial First Class Magistrate, Irinjalakuda in so far as the same relates to petitioner is quashed.