

(1985) 10 KL CK 0001

In the High Court Of Kerala

Case No : Criminal M.C. No's. 821 and 829 of 1985

P. Sathyaseelan

APPELLANT

Vs

Food Inspector, Alleppey Municipality and Another

RESPONDENT

Date of Decision : 11-10-1985

Acts Referred:

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

Citation : (1985) KLJ 839

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : P.N. Ramakrishnan Nair and K.V. Sadananda Prabhu, for the Appellant;

Judgement

S. Padmanabhan, J.—Petitioner is the owner of a bakery and cool drinks shop by name "Crown Bakery and Cool Drinks", Alleppey. Food Inspector, Alleppey Municipality (first respondent) filed two complaints (C.C. 94 and 95 of 1983) against him before the Chief Judicial Magistrate, Alleppey. C.C. No. 94 of 1983 is for having exposed for sale and sold adulterated "yellow water milk" and the offence alleged is punishable under S. 16 (1) (a) (i) and (ii) of the Prevention of Food Adulteration Act for having violated rule 44(b) read with S. 2 (1a) (b) and (c) and 7 (1) (v). In C.C. 95 of 1983 the allegation is that he stored and sold adulterated "Ice milk" and thereby committed an offence punishable under S. 16 (1) (a) (i) for having contravened S. 2 (1a) (m) read with S. 7 (1). In both the cases the complainant and witnesses were examined and the Magistrate framed charge. Against the framing of charge in C.C. 94 of 1983 the petitioner filed Crl.R.P. No. 46 of 1984 and the legality of the charge framed in C.C. No. 95 of 1983 was challenged in Crl.R.P. No. 45 of 1984, both before the Sessions Judge, Alleppey. Both the criminal revision petitions were dismissed. The two petitions filed under S. 482 of the Criminal Procedure Code are for quashing the respective charges and all the proceedings in the two cases. Petitioner says that even if all

the allegations in the two complaints and the evidence of the witnesses are taken as correct they will not disclose the offences alleged and hence not only the charges framed by the Magistrate but also cognizance taken by him are illegal and hence the charges and the entire proceedings in both the cases will have to be quashed. If the argument is correct the charges and the entire proceedings will amount to abuse of process of court and this court will have to quash them under the inherent power.

2. The complaint in C.C. 94 of 1983 and the charge framed in the case are evidently liable to be quashed and the Public Prosecutor who appeared on behalf of the Food Inspector was not able to support the charge or the order passed by the Sessions Judge in revision refusing to set aside the charge. The allegation in the complaint and the evidence of witnesses including the Food Inspector is only that the petitioner exposed for sale and sold "yellow water milk". That is the name given by the petitioner for some cool drinks prepared by him with milk, water, sugar and some other components. It was analysed by the Public Analyst as if it is milk and found to be adulterated only because it contained added water to the extent of 73 per cent. The Food Inspector had no case that it was exposed for sale or sold as milk. His definite case is that it was exposed for sale only as "yellow water milk" and what he demanded and purchased was only "yellow water milk".

3. "Yellow water milk" will not come under any class or designation of milk or milk products for which standards are fixed in Appendix B of the Rules. Even then if it contains any prohibited or injurious material it could be treated as adulterated. There is no such allegation or evidence. In Cool drinks added water is not a prohibited material and it is a necessary ingredient. The sample was sent to the Public Analyst not as milk and he was not justified in analyzing it as milk and reporting that it is adulterated solely on the ground that it contains added water.

4. In C.C. 95 of 1983 what was stored and sold to the Food Inspector as demanded by him was "ice milk". That was analyzed by the Public Analyst as if it was "milk ice" or "milk Lollies" for which standards are fixed as item No. A. 11.02.09 of Appendix B to the Rules which reads:-

MILK ICES or MILK LOLLIES means the frozen product obtained from milk, skimmed milk, or milk product with or without the addition of cane sugar, eggs, fruits, juices, nuts, chocolate, edible flavours, and permitted food colours. It may contain permitted stabilizers not exceeding 0.5 per cent of the product. The mixture shall be suitably heat-treated before freezing. The product shall contain not more than 2.0 per cent milk fat, not less than 3.5 per cent proteins and not less than 20.0 per cent total solids.

5. Ext P9 report is that the samples does not conform to the above standards and hence it is adulterated. There is no finding that the sample contained any prohibited or injurious material. In the complaint, mahazar or any other record

there was no allegation that the sample was sold as if it was "milk ice" or "milk lollies" and in the box the Food Inspector and witnesses had no such case also. Without any such evidence the Magistrate framed charge as if it was "milk ice" sold in the name "ice milk". Charge could be framed only on the basis of some material on record. Ice milk" is the name given by the petitioner for a preparation made of milk, sugar, custard powder, egg and ice cream essence for being used for adding in fruit salad or ice cream soda etc. This fact is also not disputed.

6. There is no case that the sample is a misbranded item of food. There is also no case that it is a substitute for "milk ice" for which standard is fixed. When the sample sold was one for which no standard has been fixed and when the sample does not contain any prohibited or injurious material it is impossible to say that it is adulterated. The Magistrate went wrong in framing charges in both the cases and the Sessions Judge equally went wrong in dismissing the revision petitions. When the complaint and the evidence do not disclose the offences alleged, further proceedings will only result in unnecessary harassment and as such abuse of the process of court causing miscarriage of justice.

Both the Crl.M.Cs. are allowed and the entire proceedings in C.C. Nos. 94 and 95 of 1983 on the file of the Chief Judicial Magistrate, Alleppey are quashed.