

(1967) 12 MAD CK 0014
In the Madras High Court

Public Prosecutor

APPELLANT

Vs

Meenakshi Achi and Another

RESPONDENT

Date of Decision : 15-12-1967

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2(1)(a)(j), 7(1)

Citation : (1970) CriLJ 926 : (1968) 2 MLJ 520

Hon'ble Judges : R. Sadasivam, J

Bench : Division Bench

Judgement

R. Sadasivam, J.—State has preferred this appeal against the acquittal of the accused in C.C. No. 172 of 1964 on the file of the Additional

First-Class Magistrate II, Madurai. The Food Inspector, Madurai Municipality, filed a complaint against the respondents u/s 16 (1) (a) (i) read

with 2 (1) (a) (j) (h); 2 (ix) (j), 7 (1) of the Prevention of Food Adulteration Act, hereinafter called the " Act" and Rule 28, clause A II. 11 in

Appendix " B " to Rule 5 of the Rules framed under the Act, for having sold ice cream which on analysis was deficient in fat to the extent of 50 per

cent. and also contained coal-tar dye which is not of the permitted variety. P.W. 1 Narayanan, Food Inspector, Madurai Municipality went to the

said ice cream company at about 9-50 A.M, On 22nd July, 1964, and purchased 600 grains from the second accused on payment of Rs. 3 and

he adopted the usual procedure of dividing the ice cream into three equal parts, retaining one part with himself, giving one part to the second

accused and sending the third to the Public Analyst for analysis. The report of the Public Analyst Exhibit P-7 shows that the sample sent to him is

deficient in fat to the extent of 50 per cent. and it contains coal tar dye which is not in the list of dyes permitted to be used upon food. During the

Course of the trial, the sample given by the accused was sent to the Director of Central Food Laboratory and his report Exhibit C-2 also is to the

effect that the ice cream is adulterated as the total fat content was only 2.9 per cent. and the coal tar dye (rose in shade), which is not permitted,

was present. The learned Additional First Class Magistrate acquitted both the accused on the ground that the first accused is the " technical owner

and that the business was really managed by her husband and that the case against the second accused has not been satisfactorily proved as

according to him he is only a clerk in the ice cream company and it is not definitely known who exactly sold the ice cream to P.W. 1. I may at

once state that the reasons given by the learned Additional First Class Magistrate are wrong and this evidently has led the State to file this appeal.

The learned. Additional First Class Magistrate could have given valid reasons for acquitting the accused.

2. The fact that the first accused does not actually manage the business is irrelevant, so long as she is the owner of the company. The fact that she

left the management of the company in the hands of her husband could be taken into consideration in awarding the sentence. So far as the second

accused is concerned, it is true that he has adduced the evidence of D.W. 1, the husband of the first accused, and D.W. 2, an employee in the

company, in support of his case that he has nothing to do with the sale of the ice cream and that he is only an employee in the company. But having

regard to the receipt Exhibit P-1 signed by the second accused., notice Exhibit P-2 served on the second accused, the acknowledgment Exhibit P-

3 signed by the second accused for receipt of the sample and the statement Exhibit P-4 given by the second accused admitting the fact that he sold

the ice cream the evidence of P.W. 1 ought to have been accepted by the learned Additional First Class Magistrate. In fact the learned Magistrate

has not referred to any of these documents. His finding that the second accused did not sell the ice cream is opposed to the oral and documentary

evidence in this case. It is not possible to accept the interested testimony given by D.W. 1, the husband and D.W. 2, the employee of the first

accused in support of the belated defence of the second accused that he did not sell the ice cream. I find that the second accused did sell the ice

cream to P.W. 1.

3. The accused have let in the evidence of D.W. 3 to prove that the skimmed milk had been purchased from him to make the ice cream. Skimmed

milk cannot be expected to contain milk fat, though it would contain milk solids. In Public Prosecutor Vs. M. Sethuvel Chettiar and Others, ,

preferred by the State against the acquittal of the accused in those cases, Krishnaswamy Reddy, J., has found that the ice cream made of skimmed

milk need not contain milk fat, but it should contain not less, than 8.5 per cent. of milk solids and dismissed the State appeals. It is unnecessary to

repeat the reasons given in that judgment, as I entirely concur with the same. The prosecution has not let in any evidence to show that the accused

purported to sell ice cream made of pure and not skimmed milk. Hence, the accused could not be convicted for having sold ice cream which did

not contain milk fat, as it is the case of the accused that ice cream was made of skimmed milk.

4. The only other ground on which the accused could be found guilty of having sold adulterated food stuff is that the coal tar dye used in the

preparation of ice cream is not one of the permitted varieties. The report of the Public Analyst is only to the effect that the sample of ice cream

contained coal tar dye which is not in the list of dyes permitted to be used upon food. It has been repeatedly held in several decisions that the

report of the Public Analyst should contain factual data of the analysis to enable the Court to decide that the article of food is adulterated. A vague

opinion as to the content of coal tar dye found in Exhibit P-7, can hardly be of any assistance to a Court in deciding whether the coal tar dye used

is really not one of the permitted varieties. In (The New Bharat Confectionary, Sirkali, Petitioner 2nd accused) C.R.C. No. 167 of 1965, I have

pointed out that it is the duty of the prosecution, in cases like the present one, where the report does not give details, to examine the Public Analyst

to satisfactorily prove to the Court that the coal tar dye used by the accused is not of the permitted variety. That case related to a confectionary in

which Public Analyst gave the opinion that the coal tar dye was not of the permitted variety. The coal tar dye used in that case was of red colour

which is one of the colours permitted to be used under the Rules. The Public Analyst report does not even state the colour of the coal tar dye used

in this case. It is only in the report of the Director of Central Food Laboratory it is mentioned that the ice cream contained coal tar dye, which was

rose in shade.

5. The learned Advocate for the accused urged that the report of the Director of Central Food Laboratory does not show that the analysis was

done by him and contended that the certificate Exhibit C-2 cannot be used against the accused. I gave more than one adjournment to the Public

Prosecutor to ascertain whether every one of the samples sent to the Director of Food Laboratory is personally analysed by him. But the learned

Public Prosecutor could not get the information in spite of sending letters and reminders. It is highly unlikely that the Director of Central Food

Laboratory would have personally analysed every one of the samples sent to him. u/s 13 (1) of the Act, the Public Analyst shall deliver, in such

form as may be prescribed, a report to the Food Inspector of the result of the analysis of any articles of food submitted to him for analysis. Under

Form III as it originally stood, the Public Analyst had to sign the following certificate : "" I further certify that I have analysed the aforementioned

sample, and declare the result of my analysis to be as follows "". In a number of cases, argument was advanced, that the Public Analyst should

himself analyse the sample as would appear to be necessary from the form of the certificate which he had to sign. The certificate in Form III has

subsequently been amended by stating that the sample "" was caused to be analysed "". But Sub-section (2) of Section 13 refers to the certificate of

the Director of the Central Food Laboratory. At the end of the clause it is stated that the Director of Central Food Laboratory shall send a

certificate to the Court in the prescribed form within one month from the date of the receipt of the sample specifying the result of" his "analysis. In

some editions of the Act, the word " the", is found instead of the word " his ". But in the authorised version of the Act, the word "" his "" is found.

The form prescribed under the Rules is not in conformity with this section, as it is only to the effect that the sample has been analysed and the result

of the analysis alone is required to be stated. Thus, in this case, it has not been shown by the prosecution that the analysis was done personally by

the Director of Central Food Laboratory as will appear to be necessary from a reading of the Clause (2V of Section 13 of the Act.

6. In *Municipal Corporation, Delhi v. Jai Dayal* A.I.R 1964 P&H 520, it has been held that it is only when a certificate from the Director of Food

Laboratory is treated by Court as final and conclusive evidence of the facts stated therein, the report of the Public Analyst may be considered to

have been superseded. It was held in the decision that if the Director's certificate is not considered as final and conclusive evidence of the facts

stated therein and is considered to be defective for the purpose of determining the issue of adulteration of the food stuff, then the report of the

Public Analyst cannot be considered as superseded. The learned Advocate for the accused referred to the decision in *Municipal Corporation of*

Delhi Vs. Ghisa Ram, , in support of his contention that a valuable right is conferred on the accused by Section 13 (2) of the Act to have the

sample given to him analysed by the Director of the Central Food Laboratory that such a valuable right has been given for the proper defence of

the case and that where there is a denial of that right on account of the deliberate conduct of the prosecution, it leads to serious prejudice and it

would not be proper to uphold the conviction. But it is clear from the decision that the principle would be applied only to cases where the conduct

of the prosecution has resulted in the denial to the accused of an opportunity to exercise his right. Even in that decision it was held that the

provisions of Sections 13 (3) and 5 of the Act are attracted, when in fact, the analysis of the sample sent to the Director of Central Food

Laboratory is made by him on the basis of which he issues a certificate and that if for any reason no such certificate is issued, the report given by

the Public Analyst does not cease to be evidence of the facts contained in it and does not become ineffective merely because it could have been

superseded by the certificate issued by the Director of the Central Food Laboratory. But in this case, the certificate has to be rejected as defective.

Even if one falls back upon the report of the Public Analyst, that report cannot assist the prosecution on account of its being vague as already

pointed out by me.

7. For the foregoing reasons, I see no ground to interfere with the acquittal of the accused though the reasons given by the learned First Class

Magistrate for the acquittal are totally irrelevant.

8. The appeal is dismissed.