

(1987) 03 MAD CK 0032

In the Madras High Court

Case No : Criminal R.C. 867 of 1983/Crl. R.P. 847 of 1983

Ramasamy Chettiar

APPELLANT

Vs

State by Food Inspector, Tirunelveli Municipality

RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 7(i)

Citation : (1988) LW(Cri) 9

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : I. Subramaniam, for the Appellant; Thamarai Selvi, Govt. Advocate for the Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

David Annoussamy, J.—This is a revision petition by the second accused in C.C.143 of 1982 on the file of the Chief Judicial Magistrate of Tirunelveli.

2. On 14.8.1982, at about 7:30 a.m. the Food Inspector of Tirunelveli Municipality purchased 900ML of the mixture of cow and buffalo milk from the first accused Durai in West Car St, Tirunelveli. He prepared the sample for analysis as provided by law and sent the same for analysis to the Public Analyst, Guindy, on the same day. The report of the Public Analyst was to the effect that the milk contained 3.6% of fat and 5.2% of solids-not-fat against the respective minimum of 4.5% adulterated and 8.5%. The Food Inspector coming therefore to conclusion that the milk was adulterated in as much as it was deficient in solids-not-fat to the extent of at least 38% and fat to the extent of at least 20% preferred the complaint in the Court of the Chief Judicial Magistrate of Tirunelveli, against the salesman Durai (first accused) and the owner of the milk depot from which the milk subjected to test was being sold to the first accused, viz., Ramaswami Chettiar (second accused) for offences under S. 7(i) and 16(1)(a)(i) read with S. 2(ia)(a) and (m) of the Prevention of Food Adulteration Act 1956 (hereinafter referred to as the Act). The trial Court upon perusing the

evidence produced by the complainant, held both the accused guilty of the offence with which they were charged convicted them thereunder and sentenced both the accused to undergo rigorous imprisonment for a period of six months and in addition the first accused Durai to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for a period of three months and the second accused to pay a fine of Rs. 2000 in default to undergo rigorous imprisonment for three months. On appeal, the first accused Durai the salesman was acquitted and the conviction and the sentence as against the second accused the owner of the milk depot, were confirmed by the learned Sessions Judge, Tirunelveli on 7.12.1983. This revision is directed against that judgment by the second accused.

3. The first ground urged in this revision is that the notice under S. 13(2) of the Act regarding the finding of adulteration by the Public Analyst was served on the accused on 6.9.1982, and the complaint to the Chief Judicial Magistrate, Tirunelveli was filed on 7.9.1982, that as per law, the complaint to the Magistrate should be anterior to the notice to the accused and on account of the fact of the complaint in this case being posterior to the notice to the accused, the whole proceeding is vitiated. I shall first deal with the question of law on this aspect.

4. It is an accepted principle of criminal jurisprudence that an irregularity in the Criminal Proceedings would affect the conviction only if prejudice has been caused to the accused by that irregularity. There are certain prescriptions which are of such a nature that non-compliance of the same would automatically entail prejudice. Others are not of such a nature and therefore prejudice should be shown to have been caused to the accused. As far as the present case is concerned, as per S. 13 of the Act, upon the receipt of the report of the Analyst of the food article sent, the local Health Authority if it has decided to institute prosecution, shall after the institution of such prosecution, forward a copy of the result of the Analyst to the person concerned informing such person that if it is so desired, he can make an application to the Court within ten days from the date of receipt of copy of the report to get the sample of the food article, kept apart by the Local Health Authority analysed by the Central Food Laboratory. As per the proviso to R.9A of the Rules framed under the Act, the concerned person is also to be informed if no action is intended to be taken against him.

5. Therefore, the very purpose of sending a copy of the report to the person concerned is to allow him to make up his mind whether he wants to apply to the Court for another analysis by the Central Food Laboratory. There is no point in sending a copy of the report prior to the institution of the prosecution, because if the person concerned applies to the Court within a period of ten days from the date of receipt of the copy of the analyst report, the court which is not yet seized of the matter, cannot comply with the application of the person concerned for the purpose of sending the article for second analysis. If the concerned person approaches the court within the period of ten days allowed and the prosecution has not been instituted, when he approaches that persons would certainly be prejudiced, since the sequence of events as prescribed by law cannot take place.

If on; he contrary, the Court has already seized of the matter, when the concerned person applies to the court for another analysis there will be no prejudice to the person concerned even though the proceeding has been instituted after the report has been sent to the person concerned. It is also to be noted that the Local Health authority will not send a copy of the report of the Public Analyst to the person concerned under S. 13(2) of the Act unless it has already instituted the prosecution, because only after deciding upon that point it will know whether to send a copy of the report under S. 138(2) of the Act under the proviso to R.9A. Therefore, normally the report of the Public Analyst would reach the concerned person only after the institution of the proceeding.

6. In the instant case, it is to be noted that the Local Health Authority has preferred the complaint on 3.9.1982, the receipt of which has been acknowledged, by the Chief Judicial Magistrate, Tirunelveli only on 8.9.1982. A copy of the report was sent to the accused on 4.9.1982, and the same was received by them on 6.9.1982. In the report sent to the concerned persons, the accused in this case, it has been clearly indicated that the complaint has been filed before the Chief Judicial Magistrate, Tirunelveli on 4.9.1982, and that the ten days period for analysis by the Central Food Analyst would start from the date of receipt of the memo sending the report, which has been received by the accused on 6.9.1982, as per the postal acknowledgement. It has not been shown by the accused that between 6.9.1982, and 8.9.1982 they have approached the Court and that they were told that no prosecution was launched against them and by that reason they were not in a position to avail of the facility afforded in law for sending the article of food for test by the Central Food Analyst. It is clear that no prejudice has been caused to the accused" on account of the report reaching them before the complaint reached the Court. of course, it is not known why the complaint sent on the same date reached the Magistrate only on 8.9.1982, but that is immaterial in this case. The first ground urged on behalf of the revision petitioner is not acceptable.

7. The second ground urged is that the second accused is not responsible for the adulteration, if any, since he was in the practice of issuing milk for sale to the first accused only in sealed can and that it has not been shown that when the milk sample was taken, the seal was in tact. In fact, the evidence on record shows that the second accused used to give milk for sale in sealed cans, that in that particular date also he delivered tie milk to the first accused only in a sealed can and that the seal was not in tact when the Food Inspector took the sample, which fact was clearly accepted by the Food Inspector in the course of cross-examination. Such being the case, the second accused cannot be held liable for the adulteration of the milk, which cannot be said to be of the same quality as the one which he has delivered for the sale to the first accused. This ground of revision is found to be justified and the conviction imposed on the second accused is not sustainable.

8. In the result, the revision petition is allowed, the conviction and sentence

imposed on the second accused-revision petitioner are set aside and he is acquitted. The fine amount if paid, will be refunded to the second accused-revision petitioner.