

(1991) 05 KL CK 0013
In the High Court Of Kerala
Case No : Criminal R.P. 275 of 1990

S. Ramanan

APPELLANT

Vs

Food Inspector and Another

RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 13(2), 13(2A), 13(3)

Citation : (1991) 2 KLJ 19

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nayar, for the Appellant; Teresa Rani, Public Prosecutor, for the Respondent

Judgement

K.G. Balakrishnan, J.—The first accused is the Secretary of a milk society and the 2nd accused is the society itself. On 13th February 1985 at about 7 a.m. P.W. 1, the Food Inspector attached to Karunagappally Circle, purchased 700 ml. of cow milk from the 2nd accused society. After completing the legal formalities three samples were prepared and one such sample was sent to the public Analyst and it was reported that the sample did not conform to the standard prescribed for, cow milk. Prosecution was launched against the accused. The accused were served with notice u/s 13(2) of the Act informing them that they may make application to the court within the prescribed period to get the sample of the article kept by the Local (Health) Authority analysed by the Central Food Laboratory. The first accused u/s 13(2-A) of the Act filed an application on 10th April 1986. That application was allowed by the trial Magistrate and directed the Local (Health) Authority to produce the sample. On 18th April 1986 the Court directed to send the sample produced by Local (Health) Authority to the Central Food Laboratory, Mysore. Meanwhile, the first accused deposited Rs. 40 towards the fee for chemical examination. The case was adjourned to 28th April 1986. From the records it is seen that the sample was not sent to the Central Food Laboratory, as directed by the Magistrate. It seems that the office made a note to the effect that the party has not produced any packing materials for sending

the sample to the Central Food Laboratory. The learned Magistrate took note of the endorsement made by the office and passed an order to the following effect:

The samples need be sent only on receipt of packing materials.

Thereafter, further steps for trial were taken and PWs. 1 to 5 were examined and on the defence side 2 witnesses were examined. Exts. P-1 to P-17 were also marked. The accused set up several defences. Negating all those contentions, the accused were found guilty. The accused filed criminal appeal No. 118 of 1989 on the file of Sessions Court, Quilon challenging the conviction and sentence. The accused specifically raised a contention that they could not avail the benefit of a second examination of the sample by Central Food Laboratory for no fault of theirs and pleaded for acquittal. The appellate court rejected this contention.

2. The facts stated above would show that the accused on receipt of the information u/s 13(2), filed an application u/s 13(2-A) for sending the sample to the Central Food Laboratory. Even though the accused were not legally bound to deposit the fee towards chemical analysis, they have done so. Even then the court did not send the sample to the Central Food Laboratory. The administrative objection raised by the office and the resultant order of the Magistrate that the accused should produce the packing materials is clearly illegal and it denied the valuable opportunity of the accused from getting a report of the Central Food Laboratory. If there was a report of the Central Food Laboratory u/s 13(3) of the Act, the certificate issued by the Director of the Central Food Laboratory will supersede the report given by the public analyst under Sub-section (1) of Section 13. This Court in *Georgekutty v. State of Kerala* 1991 (1) KLT 237 held that the accused cannot be asked to bear the expenses for sending the sample for analysis by the Central Food laboratory. It is the duty of the Court to send the sample to the Central Food Laboratory when a valid application is made to that effect. The Court was not justified in directing the party to produce packing materials to enable the court to sent the sample to the Central Food Laboratory.

3. The accused are prejudiced by not sending the sample to the Central Food Laboratory. That by itself is sufficient to set aside the conviction and sentence entered against the accused. The mistake committed by the trial court cannot be rectified at this stage. So, the only possible way is to acquit the accused. I set aside the conviction and sentence entered against the Petitioners accused. Criminal Revision Petition is allowed. The trial court shall return the fine, if any, paid by the accused.