

(1992) 01 MAD CK 0050
In the Madras High Court
Case No : Criminal Appeal No. 945 of 1987

State	Vs	APPELLANT
Jegannathan		RESPONDENT

Date of Decision : 23-01-1992

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2(ix)(d)

Citation : (1992) 01 MAD CK 0050

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : G. Kumaravel, Government Advocate Criminal Side, for the Appellant; S. Kannan, for the Respondent

Final Decision : Dismissed

Judgement

Padmini Jesudurai, J.—This appeal by the State is directed against the acquittal of the respondent, arrayed as A-1 in S.T.C. No. 422 of 1986, on the file of the Judicial First Class Magistrate No. 2, Tiruchirappalli, tried for an offence under Ss.7 (ii) and 16(1) (a)(i) read with S.2(ix) (d) of the Prevention of Food Adulteration Act, 1954.

2. The respondent was tried along with his co-accused, (A-2) on the allegation that, the sample of black gram dhal (), taken from the shop of the respondent, purchased by him from A-2, was found to be coated with Magnesium Silicate (Talc), so as to make it appear better or of greater value than it really Was. The respondent had claimed warranty under S.19 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") by producing Ex.P-13 cash bill, and the learned Magistrate had denied warranty to the respondent on the ground that the sack, in which the 2nd accused had sold the sample to the respondent had been opened and changed. He had, therefore, acquitted A2. The respondent was in turn acquitted on the ground that there could be no misbranding, since the respondent had sold the sample, only as black gram and there was no evidence that coating the sample with Magnesium

Silicate was harmful to the health. Challenging the acquittal of the respondent, the State has filed this appeal.

3. During trial, on behalf of the prosecution, the Food Inspector was examined as P.W.1 and Exx.P1 to P13 were marked. The respondent, claiming warranty, stating that he had kept the sample in the same condition in which he had purchased it from A2. While A2 admitted having sold black gram to the respondent under Ex.P13, he denied that the sample taken by P.W.1, was what he had sold under, Ex.P13. The accused had no evidence to offer.

4. Challenging the acquittal of the respondent, the learned Public Prosecutor, would contend that the act of coating Magnesium Silicate on the black gram, to make it appear as of a superior variety, would come within the definition of "misbranding" as found in S.2(ix) (d) of the Act, and the view of the learned Magistrate, that such coating had not been proved to be harmful is wrong, and his further observation that the coating extends only to 450 P.P.M. and as such is negligible, is equally erroneous and contrary to the provisions of the Act. The acquittal, therefore, had to be set aside.

5. Per contra, Thiru S. Kannan, the learned counsel for the respondent, would urge that the respondent by producing Ex.P13 bill and also by his categorical statement when questioned under S.313 Cr.P.C., had brought his case under S.19 of the Act, and as such, the trial court ought to have given the respondent, the benefit of the above provision.

6. The question that arises for consideration is, whether the acquittal of the respondent can be upheld.

7. That the sample was coated with Magnesium Silicate and the coating was estimated to be 450 P.P.M. is proved by Ex.P10, the report of the Public Analyst. P.W.1 has spoken to the taking of the sample from the shop of the respondent, and the same is not disputed. According to the respondent, he purchased black gram from A-2 under Ex.P13 cash bill, and preserved it in the same state in which he had purchased. A2 had admitted that he had sold black gram to the respondent under Ex.P13 but had contended the sample taken from the respondent by P.W.1, was not the black gram that he had sold, since the gunny bag in which he had sold the black gram had been opened and the gunny bag changed. The learned Magistrate had denied warranty to the respondent on the ground that the gunny bag containing black gram had been opened. This is legally untenable. The Supreme Court, in Andhra Pradesh Grain and Seed Merchants Association Vs. Union of India (UOI) and Another, had made it clear that even if the container has been opened, warranty would be available, if the other conditions are satisfied. A reading of S.19 of the Act would also show that, such a requirement is not stipulated in that provision. All that the vendor need to prove in the case of an article of food for which a licence is prescribed for the sale, is that, he purchased it from a duly licensed manufacturer, distributor, or dealer, and the articles of food, while in his possession, was properly stored and

that he sold it in the same state as he purchased. S.19 does not require that the articles of food should have been kept closed or even kept in the same container. The respondent has stated that he purchased the sample under Ex.P13 and kept it in the same state in which he had purchased it. The requirements of S.19 of the Act are fulfilled and the respondent is entitled to the benefit of S.19 of the Act. The trial court was in error in holding that the respondent was not entitled to warranty.

8. The learned Magistrate has held that coating of black gram with Magnesium Silicate, will not fall within the definition of "misbranding" as given under S.2(ix) of the Act. According to the learned Magistrate, since the respondent had sold the blackgram as blackgram and since no extraneous matter was found, there was neither misbranding nor adulteration. The learned Magistrate has failed to see that Clause (d) of Sub-S.(ix) of S.2 of the Act includes, making an article appear better or of greater value than it really is. The report of the Public Analyst, Ex.P10, shows that Magnesium Silicate had been coated, to make the sample appear better or of greater value than it really was. The report of the Public Analyst, Ex.P10, shows that Magnesium Silicate had been coated, to make the sample appear better or of greater value than it really was. This would fall within the definition of "misbranding".

9. The next ground for acquittal, is that the prosecution had not shown that the coating of Magnesium Silicate to the blackgram is harmful for human consumption, is equally erroneous. The Supreme Court has made that position clear, through several of its pronouncements. Mention need be made only of the decision Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, . The further observation of the learned Magistrate that the quantity of the Magnesium Silicate coating is negligible, since it is only 450 P.P.M. is again unsustainable in law. When the charge is "misbranding" by making an article appear better or of greater value than it really is, the question of the extent and strength of the coating does not arise. The learned Magistrate ought to have found that this was a case of misbranding and ought to have acquitted the respondent on the ground of warranty, and ought to have convicted A2. Unfortunately, the State has not filed an appeal against the acquittal of A2. The acquittal of the respondent is upheld, though for reasons different from those given by the learned Magistrate.

10. In the result, the appeal fails and the same is dismissed.