

(1998) 01 MAD CK 0017

In the Madras High Court

Case No : Criminal R.C. No. 829 of 1996

State

APPELLANT

Vs

Ramamurthy and Yashpalmeera

RESPONDENT

Date of Decision : 27-01-1998

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 16(1)(a), 2(ix)(j)(k), 7(1)

Citation : (1999) 2 LW(Cri) 466

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : C.M. Gunasekaran, Government Advocate on behalf of the State, for the Appellant; K.A. Panchapagesan, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above revision is directed against the order dated 26.9.1995 in C.C. No. 1 of 1993 on the file of the learned

Judicial Magistrate No. 1, Ramanathapuram discharging the petitioner from the offence punishable u/s 7(1), 16(1)(a) read with 2(ix)(j)(k) of

Prevention of Food Adulteration Act.

2. The respondents were facing the trial for the offence punishable u/s 7(1), 16(1)(a) read with 2(ix)(j)(k) of the Prevention of Food Adulteration

Act, with regard to an alleged occurrence said to have taken place on 11.8.1992 at about 10.30 a.m. while the petitioner was alleged to have sold

1500 grams of Cherry fruit syrup for a sum of Rs. 40/- and the same was found to have extraneous coloring matter and also it was said to be sold

without prescribed declaratory label, as contemplated under Rule 24 framed under the Prevention of Food Adulteration Act.

3. One witness was examined as P.W. 1, namely the Food Inspector who

purchased 1500 grams of the alleged cherry fruit syrup and forwarded the same for chemical analysis and 39 documents were marked as exhibits PI to P39, through P.W. 1. It is suffice to state that exhibit P39 is the Chemical Analysis Report.

4. The learned Judicial Magistrate, by his order dated 26.9.1995 in C.C. No. 1 of 1993, accepted the case of the respondents that in the absence of forwarding the very container, it is not proper to prosecute the respondents for the charge of selling misbranded articles. Aggrieved by the said order the State preferred the above revision.

5. The learned Government Advocate contends that it is sufficient for P.W. 1 to forward Exhibit P3 and P5, namely Form VI and Form VI containing the signatures of the accused themselves. According to the learned Government Advocate, the said exhibits P3 and P5 contains the contents of the declaratory label, there is no necessity to forward the container, as such.

6. Per contra, learned counsel for the respondents placing reliance on the decision Chief Executive, Parrys Confectionary Limited v. Food

Inspector of Udhagamandalam Municipality reported in 1990 L.W. (CrI.) 464 , contends that the law requires the very container should be

forwarded to the chemical analyst, as required under Rule 22-A. As there cannot be any exception to the procedure prescribed under the statute,

and the very sending of sample is erroneous and therefore the respondents are entitled for order of discharge, as rightly ordered by the learned

Judicial Magistrate No. 1, Ramanathapuram, by his order dated 26.9.1995 in C.C. No. 1 of 1993.

7. I have given careful consideration to the submissions of both sides.

8. This Hon'ble Court, in Chief Executive, Parrys Confectionery Limited v. Food Inspector of Udhagamandalam Municipality, reported in 1990

L.W.(CrI.) 464 , has held as follows:

even at the outset it is better to state that the Analyst had received the sample in a ""Brown Paper Cover"". Inside it were pieces of confectionery

wrapped in its original small wrapper bearing the words ""Parry's Made by Parrys Confectionery Ltd., Madras"". All that the analyst had received

was brown wrapper in which certain confectionery had been packed and forwarded. Certainly, one kilo gram sealed packages alone were offered

for sale as packets and not as loose pieces. The Statement of facts unfurled by the prosecution itself, categorically points out, that what the food

inspector found was one kilo gram packets of food stuff kept for sale and it was he who had purchased a part, taking the Food stuff, from out of

the sealed packet. It is not the prosecution case that the 1 Kg packing did not contain the prescribed label. I am satisfied that the breach of

provision of Rule 22-A in the procedure of sampling adopted by the food inspector, goes to the root of the matter, sufficient to hold the

prosecution has been fatally affected. This non-compliance certainly prohibits the defence available to the manufacturer and the vendor under the

Act. Still more curious is the fact that the petitioners are being prosecuted for the misbranding even without the package having been sent to the

analyst for finding out if at all there was a label on the containers package

9. Admittedly, in the instant case, it is not in dispute that the container was not forwarded to the chemical analyst to show that the respondent was

selling the articles with a declaratory label that the article contains permissible colours. In the absence of such material proof, no conclusion could

be arrived at by the statutory authorities to the effect that the respondent is liable to be charged for selling misbranded articles.

10. Therefore, the learned Judicial Magistrate No. 1, Ramanathapuram, by his order dated 26.9.1995 in C.C. No. 1 of 1993, rightly discharged

the petitioner. I do not find any good and sufficient reason to interfere with the order of the learned Judicial Magistrate No. 1, Ramanathapuram

dated 26.9.1995 in C.C. No. 1 of 1993. Hence, revision is dismissed. No costs.