

(1981) 04 MAD CK 0032

In the Madras High Court

Case No : Criminal App. No. 778 of 1977

State

APPELLANT

Vs

Venkateswaran

RESPONDENT

Date of Decision : 10-04-1981

Acts Referred:

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

Citation : (1982) LW(Cri) 39

Hon'ble Judges : Saryamurthy, J

Bench : Single Bench

Advocate : Dhthnagar, Govt. Advocate No. II Criminal Side, for the Appellant;
A.S. Renkatachalamurthi, for the Respondent

Judgement

Saryamurthy, J.—This is an appeal by the State against the judgment of the learned Sub-Divisional Judicial Magistrate, Erode, acquitting the respondent on finding him not guilty of the offence punishable under S. 16(i)(a)(i) read with S. 7(i)(a) and (1) of the Prevention of Food Adulteration Act 1954 (to be hereafter referred to as the Act).

2. The Food Inspector of Gobichettipalayam Municipality, who has been examined as P.W. I, went to the hotel situate in door No. 72 Police Station Road, Gobibhettipalyam, on 15th September, 1976 at about 11-30 a.m. and found the proprietor of the hotel, who is the accused in this case, and purchased from him 700 ml-of rosemilk for Rs. 2.50 under a cash receipt Ex. P2, after serving Ex. PI, from No. VI notice, on him. Then he divided the rose milk into three equal parts and poured each part into a separate bottle, clean, dry and empty, and added 16 drops of formalin to each bottle. He then corked the bottles, tied them with twines and sealed them with seal No. 872. He gave one bottle to the accused under acknowledgment. He sent another bottle to the Public Analyst with form No. VII, the office copy of which is Ex. P3. He retained M.O.I, the third bottle and produced it into court. After the receipt of Ex. P4, the report of the Public Analyst, certifying that the sample was deficient in solids not fit to the extent of

43% and that it was deficient in fat to the extent of 64% he furnished a copy of Ex. P4 to the accused and thereafter filed this complaint. These facts were spoken to by the Food Inspector, who examined himself as P.W. 1.

3. The accused pleaded not guilty and contend that the rose milk was prepared by using sugar, skimmed milk, water and colour. The learned Magistrate acquitted the accused, because, in his opinion, no standard has been prescribed by the rules framed under the Prevention of Food Adulteration Act for rose-milk. This view of the learned Magistrate is erroneous. CI.A. 11.01.05 in Appendix B to the Prevention of Food Adulteration Rules, 1955, (to be hereinafter referred to as the Rules) refers to-

Flavored milk, by whatever name called, may contain nuts (whole, fragmented or ground) chocolate, coffee of any other edible flavor, edible food colours and cane sugar. Flavor milk shall be pasteurized, sterilized or boiled. The type of milk shall be mentioned on the label.

But, it is seen from note (i) to CI. A. 11.01.11 in Appendix B to the Rules that-

When milk is offered for sale without any indication of the class, the standards prescribed for buffalo milk shall apply.

The Public Analyst has reported that the fat content of the sample was 1.0% nitroven 0.27% milk solids-not-fat 5.1% sugar 17.4% and colouring matter Amarnath. He has further reported that when milk is offered for sale without any indication of the class, the standard prescribed for buffalo milk will apply, that as per Cl. A. 11 01 11 in Appendix B to the Prevention of Food Adulteration Rules, 1955 (as amended by the Prevention of Food Adulteration Rules, 1968), flavored buffalo milk shall contain not less than 5.0% milk fat and 9.0% solids-not-fat, and that the sample in question was deficient in solids-not-fat to the extent of at least 43% and deficient in fat to the extent of at least 64%. Therefore, the ground given by the learned Magistrate for acquitting the accused is incorrect.

4. However, the prosecution has to fail on a different point. S. 13(2) of the Act lays down that-

On receipt of the report of the result of the analysis under Sub-s.(I) to the effect that the article of food is adulterated, the Local (Health) Authority shall after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under S. 14-At forward, in such manner as may be prescribed, a copy of the report of the analysis to such person or persons as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) authority analysed by the Central Food Laboratory.

5. By reason of the Amended Act, the Fo0d Inspector has to send one sample to

the Public Analyst and send the other two samples to the Local (Health) Authority. S. 11(l)(c)(i) of the Act lays down that when a Food Inspector takes a sample of food for analysis, he shall send one of the parts for analysis to the Public Analyst under intimation to the Local (Health) Authority and S. 11(1)(c)(ii) of the Act lays down that he shall send the remaining two parts to the Local (Health) Authority for the purposes of Sub-s.(2) of this section and Sub-s.(2-A) and (2E) of S. 13. The Food Inspector has sent one bottle to the Public Analyst, but he has not sent the other two bottles to the Local (Health) Authority. Instead, he has retained one bottle and handed over another bottle to the accused and has thereby violated the provisions of S. 11(l)(c)(i) and (ii) of the Act.

6. No notice has been issued by the Local (Health) Authority after the institution of the prosecution informing the accused that he may make an application to the court within ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. In fact no notice at all has been given by the Local (Health) Authority and no notice could have been given by the Local (Health) authority, because, P.W. 2 did not send the two bottles containing the sample to the Local (Health) Authority. P.W. I himself has not sent any notice and report as required by Sub-s. (2)(2); of S. 13, He has merely forwarded a copy of the report Ex. P4, to the accused, and, thereby P.W. I has violated the mandatory provisions of S. 13(2) and S. 11(l)(c)(i) and (ii) of the Act.

7. Hence, the prosecution of the accused is not maintainable and, therefore, the appeal is dismissed.