

(2003) 07 MAD CK 0098

In the Madras High Court

Case No : Criminal Appeal No. 236 of 1997

State by Food Inspector, Ammapettai Panchayat Union

APPELLANT

Vs

Subramaniam

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Citation : (2003) 07 MAD CK 0098

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : V. Jaya Prakash Narayan, for the Appellant; B. Kumarasamy, for N. Manoharan, for the Respondent

Final Decision : Dismissed

Judgement

1. The appeal is filed by the State challenging the judgment of the learned Judicial Magistrate, Bhavani made in C.C.No.59/94 dated 19.7.1995

acquitting the respondent herein from the charges u/s 7(1) and 16(1)(a)(i) r/w Section 2(1a)(a)(b) and (m) and Rule 23 of the Prevention of Food

Adulteration Act.

2. The case as put forth before the lower court can be stated as follows:

On 25.12.1993 at about 11.00 a.m., P.W.1, Gopalarathinam, who was the Food Inspector attached to Ammapettai Panchayat Union, proceeded

along with his assistant P.W.2, Sengodan to ""Sani Sandai"" for taking food sample. They found that the respondent/accused was selling Redgram

Dal in a public place and P.W.1 introduced himself. After filling up Form 6 under Ex.P.1 and after due notice to the accused, he purchased 750

grams of ""Redgram Dal"" by paying the consideration therefore under Ex.P.2 receipt and the samples were properly sealed, part of which were sent

to local health centre, while the rest of the samples were sent for analysis at Chennai under due acknowledgement. On analysis, a report was

received, which was marked as Ex.P.14, where the Analyst gave his opinion that he found artificial colouring matter and the same was prohibited

and it contains coal tar food colour : Tartrazine. On receipt of the report, the Food Inspector lodged a complaint as one he has committed an

offence punishable u/s 7(i) and 16(1)(a)(i) r/w 2(ia)(a)(b) and (m) and Rule 23 of the Prevention of Food Adulteration Act.

3. In order to prove its case, the prosecution examined three witnesses and marked 16 exhibits. The accused was questioned u/s 313 Cr.P.C. as

to the incriminating circumstances found in the evidence of prosecution witnesses. The accused/respondent flatly denied the same as false. No

defence witness was examined. After considering the rival submissions and scrutiny of the materials available, the court below has found that he

was not guilty of any one of the charges levelled against him and acquitted him. Hence, aggrieved by the said Judgment, the State has preferred this

appeal.

4. The learned Government Advocate inter-alia raised only one point which the lower court failed to consider and has acquitted the accused.

According to him, after following procedural formalities, the samples were taken and were sent for analysis. After proper analysis, Ex.P.14 report

has been filed. The Analyst in his report under Ex.P.14 in the remarks column has stated as follows:

As per clause A.18.06 in Appendix B to the P.F.A. Rules 1955, Food grains meant for human consumption shall be free from artificial colouring

matter. As per Rule 23 of the PFA Rules 1955 the addition of a colouring matter to any article of food except as specially permitted by these

Rules, is prohibited.

Thus, from the opinion of the Analyst, it would be quite evident that the sample was adulterated, and hence, in view of the same, the lower court

should have found him guilty and convicted him. Hence, the appeal has got to be allowed.

5. Countering to the above contentions of the appellant, the learned counsel for the respondent/accused would urge that the lower court due to

lack of evidence to show that the food contained colouring matter, which was

prohibited or adulterated or injurious to health, was perfectly correct

in finding that the prosecution has not proved the case and that the accused is entitled to for an acquittal.

6. After considering the rival submissions and scrutiny of the materials available, this Court is of the considered view that there is no substance in this appeal.

7. P.W.1, Food Inspector has taken samples of Redgram Dal as found in the evidence and has sent the same for analysis. The Analyst has given

Ex.P.14 report. What are all stated by him in Ex.P.14 Report was that the sample was adulterated, since it contains a coal tar food colour

Tartrazine"". He further added in his report that the same was prohibited. The learned counsel for the appellant would urge that a reading of Rules

23 and 28 of the Prevention of Food Adulteration Rules, 1955 would clearly indicate that this colouring matter of Tartrazine was one permitted but

not prohibited, and hence, the opinion given by the Analyst has got to be rejected. Under the stated circumstances, the lower court has pointed out

that the Analyst should have been examined by the prosecution to prove that how he found the same as prohibited one and adulterated also.

Hence, the Court is unable to notice anything to interfere in the judgment of the court below and the same has got to be sustained.

8. In the result, this criminal appeal is dismissed, confirming the judgment of the lower court.