
(1998) 06 MAD CK 0095

In the Madras High Court

Case No : Criminal R.C. No. 320 of 1995

State by Food Inspector

APPELLANT

Vs

Subbarayan

RESPONDENT

Date of Decision : 10-06-1998

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 2, 2(1), 7(1)
Prevention of Food Adulteration Rules, 1955 — Rule 28, 29

Citation : (1999) 1 ALT(Cri) 299 : (1998) CriLJ 4759 : (1999) 1 LW(Cri) 388 :
(1999) 1 RCR(Criminal) 391

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : P. Kumaresan, for the Appellant;

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—The Food Inspector, Thiruchengodu Municipality is the petitioner herein. The State on his behalf has filed this revision seeking to set aside the order of discharge passed by the learned Judicial Magistrate, Thiruchengodu in C.C. No. 24/1994 dated 29-8-1994. So also the Government Advocate would contend that the learned Magistrate ought not to have discharged the accused on the ground that the article seized in this case being rose-milk was not mentioned in Appendix and no standards have been prescribed. He also would submit that the sample contains non-permitted coal tar colour which is not permitted to be used in any food.

2. I have gone through the judgment. I do not find any ground to interfere with the finding given by the lower Court. The reasons are these : (1) According to the prosecution, the respondent-accused was prosecuted under Sections 7(1), 16(1)(a)(i) and 2(1a)(a) and (m) read with Rule 28 of the Prevention of Food Adulteration Act. In the complaint, filed by the petitioner before the trial Court, it is stated that the rose-milk which was taken as a sample, was found to be substandard as the Public Analyst Report obtained in this case would show that

the sample is adulterated as the milk fat and milk solids not fat contents are less than the minimum prescribed standard for flavoured toned milk. Even during the course of his examination, P.W. 1 would state that he filed the complaint since the accused sold the rose-milk which found to be not in consonance with the standard prescribed. Admittedly, there is no standard prescribed for the rose-milk.

3. In a case reported in *Food Inspector v. Aboo Backer*, 1986 (3) FAC 76, the Kerala High Court held that the article of rose-milk cannot be treated as a milk or flavoured milk for the purpose of determining whether the report of the Public Analyst could be accepted to find out that the articles are adulterated. It is a special preparation for which the standard prescribed for flavoured milk or milk cannot attract. The prosecution is launched only on the basis that the appellants have sold adulterated article in that the prescribed standard has not been maintained.

4. It is seen from the records that the Public Analyst report would not only show that the milk fat and milk solids not fat are less than the minimum prescribed standard for flavoured toned milk and also the sample contains Rhodamine B, a non-permitted coal tar colour which is not permitted to be used in any food. Therefore, if the complaint has been filed for the violation of Rule 29, which prohibits the use of coal tar food colours, in my view the complaint would have been certainly sustained. But, both in the complaint and the deposition, there is no averment with reference to the presence of coal tar colour. In my view, the prosecution could be launched for adulteration of the rose-milk under some other clauses of definition of adulteration in Section 2 of the Prevention of Food Adulteration Act. In the present case, the prosecution was only for not maintaining the standard for rose-milk though standard is not prescribed for the same and as such, I am of the view that the finding of the trial Court is in accordance with law and it does not suffer with any infirmity. Therefore, the Revision is dismissed.