

(1990) 12 MAD CK 0061

In the Madras High Court

Case No : Criminal Appeal No. 645 of 1986

State by Food Inspector, Edapadi Municipality by Public
Prosecutor

APPELLANT

Vs

R. Perumal (A-1)

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a1)
Prevention of Food Adulteration Rules, 1955 — Rule 44(e)

Citation : (1991) LW(Cri) 184

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : A.S. Chakravarthy, for the Appellant; S.R.A. Danasekaran, for the Respondent

Judgement

Arunachalam, J.—The State represented by the learned Public Prosecutor has chosen to challenge the acquittal of the Respondent herein

and A.1 before the trial Magistrate, of an offence punishable under Sections 7(1) and 16(1)(a1) read with Section 2(1a)(a) and (m) of the

Prevention of Food Adulteration Act and Rule 44(e) of the Prevention of Food Adulteration Rules, recorded by the Sub Divisional Judicial

Magistrate, Sankari in C.C. No. 198 of 1985. The Respondent was prosecuted in the same calender case along with R. Muthu, arrayed as A.2

against whose acquittal, the State has not chosen to prefer an appeal.

2. The prosecution case will have to be narrated, for the disposal of this appeal. P.W.1 the Food Inspector, Edapadi Municipality visited the

grocery shop of the Respondent and A.2 situated at Door No. 108, Angalamman Koil Street, Edapadi at or about 10.30 a.m. on 18.12.1984.

P.W.1 found the Respondent transacting business in the grocery shop. P.W.1 revealed his identity to the Respondent and expressed his intention of obtaining sample of coconut oil for the purpose of analysis. P.W.1 learnt from the Respondent that the second accused was the owner of the shop. P.W.1 served Form VI on the Respondent and later purchased 750 m.l. of coconut oil from the Respondent after paying the sale consideration of Rs. 22.50. One of the parts of the sample sent for analysis to the Public Analyst, Guindy, revealed that the sample did not conform to the standard for coconut oil, in respect of Butyro-refractometer reading, Iodine value, saponification value and Polenske value. The Analyst also opined that the sample was found to be a mixture of about 10% of coconut oil and 90% groundnut oil. Therefore the sample was adulterated. Ex.P.4 is the report of the Analyst. After initiating prosecution intimation under, Section 13(2) of the Act was served on the Respondent and second accused.

3. The case of the Respondent and A.2 before the trial Court was one of denial. Ex.D.1, the letter addressed to A.2 and returned to P.W.1 was marked, on behalf of the defence.

4. The trial Magistrate chose to acquit the Respondent and A.2 on two grounds: 1) The prosecution had not established connection between A.2

and the grocery shop from which sample of coconut oil had been taken. 2) The mandate of Section 13(2) of the Act had been violated for the

complaint filed by P.W.1 before the trial Magistrate on 13.2.1985 was returned and represented only on 19.2.1985, But in between, on

14.2.1985 itself, intimation u/s 13(2) of the Act had been served. Therefore it must be deemed that the intimation had been served before

institution of this prosecution.

5. Mr. A.S. Chakravarthy, learned Government Advocate appearing on behalf of the Appellant contended, that both the grounds or acquittal

cannot be sustained. As far as the first ground is concerned, the learned Government Advocate contended, that the Respondent had admitted that

he was the owner of the grocery shop and that would put an end to the controversy of the connection of the Respondent with the shop, from which

sample had been seized. On the second ground, he submitted that presentation of complaint before the trial Magistrate would amount to institution

of prosecution and therefore service of intimation on the Respondent and A.2 on 14.2.1985 after presentation of the complaint on 13.2.1985 was well within the mandate of Section 13(2) of the Act.

6. Mr. R. Danasekaran, learned Counsel appearing on behalf of the Respondent contended, that between 13.2.1985 and 19.2.1985 no complaint was available before the trial Magistrate and therefore the Respondent must be deemed to have been prejudiced since he could not have exercised

his right u/s 13(2) of the Act. He also submitted that the complaint was vague in that P.W.1 had chosen to allege that sample was taken from one

person who was available in the shop especially when two names have been given in the complaint as accused. He also pointed out that Ex.P.1

and Ex.P.2, the address of P.W.2 had not been given and P.W.2 himself had not supported the prosecution and had chosen to categorically state

in Court, that his signatures were obtained in Ex.P.1 and P.2 when he was in the house. He also affirmed, that he did not have any knowledge of

the sampling operation. He also pointed out that P.W.1 had admitted in his cross-examination that he had not stated in the complaint regarding the

persons available at the shop during sampling operation. Further he had deposed that he had not stated about the person who had signed in Form

VI. His further admission was, that in Ex.P.2 he had not indicated who the witness was, for the purchase of coconut oil from the seller. On these

admissions, of P.W.1 taken along with the baldness of the complaint, the learned Counsel for the Respondent would submit, that the object of

Section 10(7) of the Act had been violated.

7. I have carefully considered the rival contentions of the opposing counsel. The first ground of acquittal need not have to detain us for long since

the acquittal of A.2 has not been challenged. The documentary evidence shows, that the Respondent was the person who had sold the coconut oil

to P.W.1 and irrespective of ownership of the grocery shop, the Respondent would be liable, if the prosecution case were to be accepted. On the

second ground, it can be stated at-once, that the verdict of the trial Magistrate cannot be upheld. The meaning that should be given for "institute"

has been the subject matter of decisions by this Court, atleast in three cases, which have been placed before me. Ratnavel Pandian, J (as he then

was) in Abdul Majeed v. State, Food Inspector 1981 LW (Cri.) 305 and David

Annoussamy, J. (as he then was) in Abdul Azeez v. Food

Inspector, Ulundurpet 1987 LW (Cri.) 342, have held that institution of a prosecution under this Act took place the moment the person authorised

to launch the prosecution filed the complaint before the Court. It was also held by both the learned Judges that institution of a prosecution was

different from taking cognizance of the case by Court. In other words, the mere filing of the complaint before the competent Court after complying

with the pre-requisites of Section 20(1) either by the person authorised or by the person referred to in Section 12 would satisfy the meaning of the

expression "institution of the prosecution". David Annoussamy, J. further observed that it would be making violence to the text of the statute to say

that only when the Magistrate takes cognizance of the complaint, the prosecution could be said to have been instituted. It was further observed by

the learned Judge that the authority is not informed of the date of the Magistrate taking on file the complaint and therefore construing the date of

institution to be the date on which the Magistrate takes on file the complaint, would put the Local Health Authority in an impossible situation of

being unaware of the institution of the prosecution and still bound to forward a copy of the report to the person concerned immediately after the

institution of the prosecution. A contrary view was taken by Singaravelu J., in R. Veerappan v. State 1984 LW (Cri.) 244. The learned Judge held

as hereunder:

The term "institution" was not been defined anywhere in the prevention of Food Adulteration Act or anywhere else. The only analogous provision

is found in Section 190 of the Code of Criminal Procedure, under which the Magistrate takes cognizance of the offence. Thus, the institution of a

case may be one of the three categories mentioned in Section 190 of the Code of Criminal Procedure and the term "institution" would mean only

the date on which the Court takes cognizance of the alleged offence.

The view of Singaravelu, J. had been taken note of by David Annoussamy, J. in the case of Abdul Azeezd was distinguished on the basis of the

law laid down by the Supreme Court as well as the meaning that should be given to the word "instituted" on the various provisions found in the Act

itself. The view of Singaravelu, J. had not been brought to the notice of Ratnavel Pandian, J. (as he then was). The various provisions of the Act

which have been referred to by Ratnavel Pandian, J. and David Annoussamy, J., which had not been taken note of by Singaravelu, J. would

certainly permit my expressing agreement with the law laid down by Ratnavel Pandian, J and David Annoussamy. J. without referring this matter to

a Division Bench.

8. The argument of Mr. Danasekaran that there was no complaint available in Court on 14.2.1985, when intimation was served on the Respondent

and therefore it must be deemed, that the Respondent had been prejudiced cannot be acceded to. It is fairly conceded that no steps were taken by

the Respondent to exercise his right u/s 13(2) of the Act to have another portion of the sample forwarded to the Central Food Laboratory for

analysis. Therefore the question of prejudice does not at all arise.

9. However, the acquittal of the Respondent has to be confirmed in view of the carelessness of the food inspector, P.W.1. The sanctity of the

sampling operation has to be safeguarded as mandated u/s 10(7) of the Act. The documents prepared at the time of sampling must contain the

addresses of the witnesses called during the operation so that in the event of a challenge of the whole process, it would be open to the Court to test

the acceptability or otherwise of the process of sampling. Sufficient challenge had been made in this case about the sampling operation and this

taken along with the carelessness of P.W.1 in having stated in the complaint, that sample was obtained from one of the accused though prosecution

was against two, would certainly justify non-interference in an appeal against acquittal. The further admission of P.W.1 extracted in the earlier part

of this judgment, would show, that his version cannot be accepted without corroboration either by documentary or other oral evidence. The

documents prepared during sampling do not even contain the address of P.W.2 who is stated to have been present during such, operation. P.W.2

himself has not supported the, prosecution and had chosen to depose, that his signatures were taken at his residence. Due to the unsatisfactory oral

and documentary evidence, I do not think that any ground has been made out to interfere with the acquittal of the Respondent recorded by the trial

Magistrate. This appeal shall stand dismissed.