

(1991) 10 MAD CK 0003

In the Madras High Court

Case No : Criminal A. No. 408 of 1987

State by Food Inspector, Madurai Corporation

APPELLANT

Vs

Selvarajan

RESPONDENT

Date of Decision : 31-10-1991

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1A), 2(ia)(a)(h)(i)

Citation : (1991) 10 MAD CK 0003

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : P. Govindarajan, Government Advocate Criminal Side, for Public Prosecutors, for the Appellant; K. Mohan Ram, for the Respondent

Final Decision : Dismissed

Judgement

Padmini Jesudurai, J.—This appeal against the acquittal has been filed by the State, represented by the Food Inspector, Madurai

Corporation, challenging the acquittal of the respondent by the Chief Judicial Magistrate, Madurai in S.T.C.No.249 of 1986, tried for an offence

under Ss.2(ia)(a)(h)(i), 7(1) and 16(1A) read with Rules 5, 44 A (f) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as

the Act) on the allegation that the sample Kadalai Mavu (Bengal gram flour), taken from his shop was found to contain a mixture about 80% of

Bengal gram flour and 20% of Kesari dal and that kesari dal contains a poisonous ingredients and is injurious to health. The ground for acquittal is

that the respondent had established that he had bought the sample from Abirami Traders and that the Prosecution had not made the said Abirami

traders an accused in this case.

2. P.W.1, the Food Inspector visited the grocery shop of the respondent in Palace

Road, Madurai on 26-5-1986 at 10.30 A.M. and found a

gunny bag of 80 kilos capacity, containing 75 kilos of Bengal gram flour and from out of the gunny bag, purchased the sample. On analysis, the

same was found to be adulterated as stated earlier and the prosecution was launched.

3. During trial, the Food Inspector was examined as P.W.1 and Exs.P.1 to P.13 were marked. The respondent, when questioned, stated that he

had purchased the bengal gram flour from Abirami Traders about ten days prior to the taking of the sample and that the flour was kept in the same

gunny bag M.O.1 and in the same condition, in which it was purchased and as such, the respondent was entitled to the benefit of S.19(2) of the

Act. In support of his defence, he examined as D.W.1 Anburaj, his brother-in-law, who was looking after the business in the shop. The credit bill

from Abirami Traders was marked as Ex.D.1 and the payment voucher as Ex.D.2. The learned Magistrate held that the sample was adulterated,

that the respondent had purchased it from Abirami Traders, but that a doubt was raised as to whether the adulteration had been made by Abirami

Traders or by the respondent and as such the respondent was entitled to the benefit of doubt. He, therefore, acquitted the respondent, against

which this appeal is filed.

4. The learned Public Prosecutor referred to the relevant provisions of the Act to contend that in the situation before the trial court, the court had to

decide who had adulterated the sample by resorting to S.20-A of the Act and making Abirami Traders also as accused and it was not open to the

Court to evade this responsibility in a benevolent legislation, particularly when the adulteration was in an article of common use and was of a

poisonous substance. The learned Public Prosecutor submitted that since M.O.1 gunny bag was found opened when P.W.1 inspected the shop,

the respondent would not have the benefit of warranty as found in S.19 of the Act.

5. Per contra, Thiru K. Mohan Ram, learned Counsel for the respondent would submit that the prosecution ought to have made Abirami Traders a

co-accused even in the complaint since the respondent in Ex.P.3 statement made to P.W.1 had mentioned the fact that the sample had been

purchased from Abirami Traders and since the respondent had satisfactorily

proved that the sample had been kept in the same condition, in which it had been purchased, the respondent had been rightly acquitted.

6. The question that arises for consideration is whether the acquittal of the respondent can be legally sustained.

7. The admitted facts of the case are that the sample was taken from M.O.1 gunny bag, which had been opened and the sample was found to be

adulterated with poisonous substance. The respondent, as vendor, would be liable for the adulteration, unless he is able to establish that he is

entitled to the benefit of S.19 of the Act. The contention of the learned Public Prosecutor that since M.O.1 gunny bag had already been opened

and some quantity of Bengal gram flour had already been sold, the respondent would not be entitled for warranty, cannot be accepted in view of

the direct decision of the Supreme Court in Andhra Pradesh Grain and Seed Merchants Association and others v. Union of India and another

In paragraph 8 of the said judgment, the Supreme Court observed that if the vendor had obtained the article from a licenced manufacturer,

distributor or dealer or from a manufacturer, distributor or dealer with the warranty, he is protected, provided he has properly stored the article

and sells in the same state as he purchased the article, and S.19(2)(b) does not provide and does not imply that if the container of a branded

articles is opened, the article of food ceases to be in the same state in which the vendor purchased it. The vendor will not lose the protection of

S.19(2) of the Act merely because he had opened the container. It is, therefore, clear that if the respondent proves that he had sold the sample in

the same condition in which he had purchased from Abirami Traders, he is entitled to protection under S.19 even though he had already opened

M.O.1 and had sold 5 kilograms of Bengal gram flour.

8. The evidence in the case establishes that the respondent had purchased the sample from Abirami Traders. Even in Ex.P.3, which is the

statement made to P.W.1 at the time when the sample was taken, it is stated that the sample was purchased from Abirami Traders. D.W.1 has

spoken to it and Exs.D.1 and D.2 prove the purchase. Even the learned Magistrate has not rejected the claim of the respondent for warranty. All

that he has stated is that, it is not clear whether Abirami Traders or the respondent had adulterated the sample.

9. The Act punishes not only the manufacturer, but also the retailer, the vendor and every person through whom the sample passes. At the same time, the protection under S.19 is given, if the ingredients mentioned therein are established. When the ingredients are established, the matter is not left at that and instead the Act contemplates that the person who has ultimately made the adulteration should be traced and punished. It is for this purpose that S.14 requires the manufacturers, the distributors and dealers to give warranty in writing about the nature and quality of the article sold to the vendor. S.14-A requires the vendor to disclose to the Food Inspector, the name, address and other particulars of the person, from whom he had purchased the article of food. S.19 deals with warranty as such, besides enabling the person who gives warranty, to appear in court and give evidence. S.20-A permits the court to proceed against the manufacturer, distributor or dealer, while it is trying the vendor, if it is satisfied that it appears to the court, that the offence had been committed by the manufacturer, distributor or dealer.

10. In cases of this type, where the adulteration could be traced to some one, other than the vendor, three courses are open. The Food Inspector, even when filing the complaint, could make the manufacturer, distributor or dealer an accused along with the vendor. This position is explained by the Supreme Court in *State of Punjab Vs. Devinder Kumar and Others*, . In paragraph 7 of the said judgment, the Supreme Court had made it clear that the dealer, manufacturer or distributor can be prosecuted along with the vendor by making them all accused even initially.

11. Another course open in such a situation is to invoke S.20-A of the Act and it is for the court to make the manufacturer, distributor or dealer a co-accused in the trial against the vendor. This has been explained by the Supreme Court in *Municipal Corporation of Delhi Vs. R. Sahai and Others*, and *Bhagwan Das Jagdish Chander Vs. Delhi Administration*, .

The scope of the Act and the liability of the manufacturer, distributor, dealer and vendor have been elaborately discussed. Both the judgments indicate the circumstances under which the trial court ought to invoke S.20-A of the Act.

12. The last alternative would be to conclude the trial of the vendor and then for the prosecution to file a fresh complaint against the manufacturer,

distributor or dealer as the case may be. This situation has been explained in V.N. Kamdar and Another Vs. Municipal Corporation of Delhi, and

Municipal Corporation v. Daurala Sugar Mills. A separate trial is contemplated since under S.20-A of the Act, a discretion is vested with the trial

Court to implead the manufacturer, distributor and dealer in the trial against the vendor and in the event of the learned Magistrate not exercising the

discretion, it is open to the authorities to file a fresh complaint against the manufacturer, distributor and dealer.

13. When the scope of the Act is so broad to provide for every contingency to see that the guilty do not escape on technicalities, it is unfortunate

that the learned Magistrate has acquitted the respondent, observing that the prosecution ought to have made Abirami Traders as an accused even

at the initial stage. The decisions referred to above clearly show that, there is no obligation to implead the manufacturer, dealer or distributor as a

co-accused with the vendor even at the initial stage. It would all depend upon the facts of each case. However, when during the trial of the vendor,

the latter establishes to the satisfaction of the Court, that he has purchased the sample from either a manufacturer, distributor or dealer and had

kept it in the same state in which he had purchased, the learned Magistrate ought to have exercised his discretion by resorting to S.20-A of the

Act, to implead Abirami Traders as accused in the same case. By not doing so and by acquitting the respondent stating that, the appellant had

failed to implead Abirami Traders in the complaint, the trial Court had made it possible for the real culprit to escape from the penal law. The

sample has been taken in the year 1986 and a fresh prosecution is out of question at this length of time since Abirami Traders itself might claim

warranty and evidence relating to it might have been lost. Therefore, the acquittal of the respondent has to be confirmed and the appeal has

necessarily to be dismissed with an observation that the trial court in the light of the evidence let in by the respondent for warranty, ought to have

resorted to S.20-A of the Act and made Abirami Traders also an accused.

14. In the result, this appeal is dismissed.