(1991) 11 MAD CK 0003

In the Madras High Court

Case No : Criminal Appeal No. 531 of 1985

State by Food Inspector, Tiruchirappalli Municipality — APPELLANT

Vs

Habib and Another — RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 2(i)(a)(m)

Citation : (1991) 11 MAD CK 0003

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : P. Govindarajan, Government for the Public Prosecutor on behalf of the State, for the Appellant; K.A. Ravindran for the 1st Respondent and Mr. K.N. Basha and K. Jagannathan for the 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—This is an appeal by the State, directed against the acquittal of the respondents by the Judicial First Class Magistrate

No.1 Thiruchirappalli in C.C. No. 291 of 1982 of offences under Sections 7(1) and 16(1) (a)(i) read with 2(i)(a)(m) of the Prevention of Food

Adulteration Act, 1954 and Clause A.25.01 of Appendix B to the Prevention of Food Adulteration Rules, 1955.

2. The case against the respondents was that, the Sample confectionery round lollipop, manufactured by the first respondent and sold by the

second respondent, was found on analysis to contain ash insoluble in dilute hydrochloric acid 130% in excess of the maximum limit permitted for

hard boiled sugar confectionery under Clause A.25.01 of Appendix B to the Prevention of Food Adulteration Rules. The acquittal was on the

ground that the prosecution had failed to prove that the sample confectionery round lollipop was ""hard boiled sugar confectionery"" within the

meaning of clause A.25.01 of Appendix ''B''.

3. The case of the prosecution was briefly as follows: P.W.1 the Food Inspector, visited Kavitha General Stores in Big Street, Tiruchirappalli,

wherein the second respondent was looking after the business as salesman. P.W.1 found polythene bags containing confectionery round lollipops

and purchased 8 packets, each weighing 450 grams. The formalities were complied with and the report of the public analyst showed, that the

sample contained ash insoluble in dilute hydrochloric acid, in excess of the permitted limit of 0.2%. The second respondent disclosed the name of

the first respondent as the manufacturer, from whom he had purchased the sample. Since the sample was thus adulterated, the prosecution was

launched against both the respondents.

4. During trial, on behalf of the prosecution P.Ws.1 to 3 were examined and Exs.P.1 to P.16 marked. The second respondent maintained his stand

that he had purchased the sample from the first respondent and claimed warranty under Sec.19(2) of the Act. The first respondent filed a written

statement to the effect that the sample taken was not hard boiled sugar confectionery, but was a dairy toffee for which neither the Prevention of

Food Adulteration Act nor the Rules framed thereunder (the Act and Rules for short) specified any standard.

5. The Learned Magistrate acquitted the second respondent giving him the benefit of warranty under sec. 19(2) of the Act and acquitted the first

respondent on the ground, that the prosecution had failed to prove that the sample taken, was hard boiled sugar confectionery'' covered by the

Standard prescribed in Clause A 25.01 of Appendix B to the Rules. Challenging the acquittal, the State has preferred this appeal.

6. The Learned Public Prosecutor by referring to the evidence and the provisions of the Act and Rules submitted that Ex.P.9 the report of the

Public Analyst clearly showed that, the sample was hard boiled sugar confectionery and as such, the finding of the learned Magistrate to the

contrary was legally untenable and the acquittal had to be set aside.

7. Per contra, Mr. K.A. Ravindran, learned counsel for the first respondent contended that there was nothing in Ex.P.9 to indicate that any analysis

had been done to fix the sample as hard boiled sugar confectionery and that the reasons given by the learned Magistrate for holding that the

prosecution had not proved that aspect of the case, was correct and no interference by this Court was called for, particularly when in an appeal

against acquittal, if two views are possible, the view in favour of the accused had to be taken. Learned Counsel referred to the decision in Gopi

Nath and Sons Vs. State of Himachal Pradesh and Another, .

8. The Learned counsel for the second respondent submitted that the learned Magistrate had rightly extended the benefit of warranty to the second

respondent based on the bill Ex.P.13 issued by the first respondent in favour of the second respondent and which was not denied by the first

respondent. The appeal had to be dismissed, atleast in so far as it relates to the second respondent.

9. The question that arises for consideration is, whether the acquittal of the respondents could be legally sustained.

10. Taking up first the case of the second respondent, we find that even when P.W.1 visited the shop to take sample, the second respondent had

claimed warranty and had disclosed the name of the first respondent as the manufacturer of the sample and had also produced Ex.P.13 bill. The

fact that the first respondent had supplied the sample to the second respondent is proved by Ex.P.13. It is also not denied by the first respondent,

that the lollipop sweets sold by him were in closed polythene packets. The requirement of section 19(2) of the Act being satisfied, the learned

Magistrate had rightly acquitted the second respondent giving him the benefit of section 19(2). The acquittal of the second respondent has to be

confirmed.

11. The case of the first respondent stands on an entirely different footing. The contention of the learned counsel for the first respondent is that the

sample is not hard boiled sugar confectionery'' but is dairy toffee, for which no standard is prescribed under the Act or the Rules and hence the

sample would not come under the purview of the Act and at any rate, the application of the specifications given in Clause A.25.01 is erroneous.

The question to be decided is whether the prosecution has established that the sample taken was hard boiled sugar confectionery, required to

conform to the specifications mentioned in clause A. 25.01 for which it had been tested.

12. Reference to certain provisions of the Act would enable us to understand the legal issue involved. Section 3 of the Act enables the Central

Government to constitute a committee called the Central Committee for Food Standards to advise it on matters arising out of the Act. Sec. 23(1)

(b) enables the Central Government, after consultation with the Committee to make Rules defining the standards of quality and fixing limits of

variability. Part III of the Rules have thus been framed and it bears the caption ""Definitions and Standards of Quality"". Rule 5 refers to Appendix B

for the standard of quality for the food articles defined and described therein. Appendix B bears the title ""Definitions and Standards of Quality"".

The first part of each clause, contains the definition of the article of food with reference to its contents, constituents, nature, preparation and other

relevant factors. The second part of the Clause fixes the quality, specifications and limits of variability.

13. Cause A.25 of B defines and deals with the standards for sweets and Confectionery"". In 1982 when the analysis in the present case was done,

there were three classifications of sweets and confectionery in clause A.25. They are hard boiled sugar confectionery, toffees and lozenges. The

definition and standard of quality of each are mentioned in each clause, namely, A.25.01 for hard boiled sugar confectionery. A.25.02 for toffee

and A.25.03 for lozenges. The relevant portion of clause A.25.01 giving the definition of hard boiled sugar confectionery is as follows:

A.25.01 Hard boiled Sugar Confectionery:- Hard boiled sugar confectionery shall mean a confectionery product which is super cooled solution of

combination of sucrose and liquid glucose (or cane sugar alone) treated with a catering agent, such as cream of tartar (Potassium acid tartarate)

with or without the addition of one or more of the following:

(a) Permitted flavouring agents:

(b) Permitted colours:

(c) Acidulant

(d) billing.

(e) Any other wholesome ingredient such as fruit products or cocoa products or mil products or other wholesome ingredients.

14. In Ex.P.9 the report of the Public Analyst, in the preliminary portion of the report, the sample has been described as ""Confectionery Round

Lollipop"". The sample has been described thus by P.W.1 in forms VI and VII and has thus been carried over to the preliminary part of Ex.P.9. In

the later portion of Ex.P.9, wherein the result of the analysis done is given, we find the description of the sample, as determined by the Public

Analyst after analysis. The relevant portion of Ex.P.9 is as follows:

1 further certify that I have caused to be analysed the aforementioned sample and declare the result of the analysis to be as follows:

Analysis done Results

Value prescribed under clause A.25.01 in Appendix B to the P.F.A. Rules 1955 for Hard boiled Sugar Confectionery.

Appearance

Yellow and white colour striped and yellow, white and green colour striped Hard boiled Sugar Confectionery.

The remaining portion of the report deals with the testing of the sample with reference to the specifications prescribed in clause A.25.01. It is thus

clear from Ex.P.9 that the sample has first been tested to determine its identity. This is done with reference to the definition mentioned in the three

clauses under A.25, namely, A.25.01, A.25.02 and A.25.03. Having first determined the nature of the food, the food is tested with reference to

the quality prescribed for it. Ex.P.9 shows that after analysis, the sample was found to answer to the definition of hard boiled sugar confectionery

and has been identified as such. The report of the public analyst is not required to indicate the tests performed during analysis.

15. Further, Ex.P.13 bill covering the sale of the sample to the second respondent, admitted by the first respondent, is in the letter head of the first

respondent and it describes the first respondent as manufacturers of lollipops, umbrella milk lollipops and other delicious sweets. Under Ex.P.13

two items of food articles are supplied to the second respondent. First item is 100 packets of special umbrella milk lollipop and the second item is

150 packets of special round lollipops. It is now futile for the first respondent to contend, that what was sold under Ex.P.13 was a third variety of

dairy toffee. Ex.P.13 does not relate to sale of any dairy toffee to the second respondent.

16. Thus the contention of the learned counsel for the first respondent that the sample is a dairy toffee cannot be accepted. The learned Magistrate

was wrong in stating that Ex.P.9 does not describe the sample as hard boiled Sugar Confectionery. This being the only ground for acquittal of the

first respondent, the acquittal has to be set aside.

17. The learned counsel for the first respondent relied upon certain decisions of the Supreme Court and of this Court that if two views are possible,

and the trial court has taken one view and had acquitted the accused, the appellate Court, in an appeal against acquittal, would not be justified in

convicting the accused on the basis of the other view. This position of law is a well settled one. However, in the instant case, the facts stated above

would clearly show, that only one view on the evidence is possible, namely that the sample on analysis, has been found to be hard boiled sugar

confectionery. No other view is possible. There is no basis either in Ex.P.13 or in Ex.P.9 to show that the sample could possibly be dairy toffee.

18. In the result the acquittal of the second respondent is confirmed, while the acquittal of the first respondent is set aside. The first respondent is

convicted for the offence under Sec.7(1) and 16(1)(a)(i) read with 2(i)(a)(m) of the Food Adulteration Act read with clause A.25.01 of Appendix

B to the Food Adulteration Rules. Since for the above offence, the Act contemplates a minimum sentence and since I propose to give only the

minimum sentence, the first respondent is not questioned on the sentence. The first respondent, therefore, is sentenced to undergo rigorous

imprisonment for a period of six months and to pay fine of Rs.1000/- (Rupees one thousand only) in default to undergo rigorous imprisonment for

a further period of one month.

19. It has been brought to my notice both by the learned counsel for the first respondent and the learned Public Prosecutor that the Government of

Tamil Nadu has passed G.O.Ms.No.180, Home (Prison IV) Department, dated 28.1.1989 and G.O.Ms.No.781, Home (P R & C) Department,

dated 11.4.1990 both under Sec. 432 Cr.P.C. each giving remission of imprisonment for a period of six months to persons convicted before the

dates when the G.Os. came into force. It is true that the respondents were acquitted on 20.7.1984 and the first respondent is being convicted only

in this appeal. The conviction, therefore, was not in force at the time when the Government Orders were passed. However, by virtue of the law

laid down by the Constitution Bench of the Supreme Court in Maru Ram and

Others Vs. Union of India (UOI) and Others, that when an accused

acquitted by the trial Court, is later convicted by the appellate court in an appeal against acquittal, the conviction dates back to the date of the

judgment of the trial Court and the judgment of the trial court gets substituted by the judgment of the appellate court and all the benefits which the

accused would have had at the time of the judgment of the trial court, have to be extended to him. Thus the first respondent would be entitled to

the benefit of the above mentioned two Government Orders. Since the sentence of imprisonment is only six months, the same gets remitted even

under any one of the above Government orders. The first respondent need not surrender to custody, since the entire sentence of imprisonment gets

remitted. The fine amount shall be paid within one month of the receipt of the copy of this judgment by the trial court or on production of a steno

copy of this judgment before the trial court, whichever is earlier.

20. In the result, this appeal is allowed in respect of the first respondent and dismissed in respect of the second respondent.