

(1984) 12 MAD CK 0051
In the Madras High Court
Case No : Criminal Appeal 128 of 1981

State by Public Prosecutor

APPELLANT

Vs

V. Essakki

RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 2(1)(a), 7(1)

Citation : (1985) LW(Cri) 147

Hon'ble Judges : Singaravelu, J

Bench : Single Bench

Advocate : S. Mahimai Raj for Public Prosecutor, for the Appellant; I. Subramanian, for the Respondent

Judgement

Singaravelu, J.—This is an appeal by the State of Tamil nadu against the order of acquittal passed by the learned Sessions Judge in C.A. No. 171 of 1979, acquitting the Respondent of an offence under Ss.7(I) and 16(1) read with Section 2(I)(a) and R.41 (b) of the Prevention of Food Adulteration Act.

2. The prosecution case is that on 20th June, 1978 at about 4:30 P.M. the Respondent-accused was found carrying in the carrier of his cycle milk can containing ten litres for sale. P.W.1, the Food Inspector, purchased the milk and took samples of the same according to the procedure and sent them to the Public Analyst. On examination it was found that it was adulterated with 19% of water.

3. The defence was that the milk was not intended for sale, but it was taken for a function from his own dairy to his house.

4. The learned Sub Divisional Judicial Magistrate, Shencottah, accepted the evidence of P.W.1 and the report Ex.P3 and found the accused guilty and sentenced him to undergo rigorous imprisonment for a period of three months and also imposed a fine of Rs. 500, in default to undergo rigorous imprisonment for a period of two months.

5. The accused went on appeal and the learned Sessions Judge, Tirunelveli

Division following two decisions of Rajasthan and Allahabad High Courts, allowed the appeal, set aside the conviction and sentence and acquitted the accused-Respondent. It was held by those High Courts that if the fat content was more than the prescribed standard it is not possible to hold that the milk was adulterated simply because there is a shortage of solids-not-fat in the milk. Applying these decisions, the lower appellate court acquitted him. Hence, the appeal by the State.

6. There is no dispute regarding the sale of the milk or about the Public Analyst's report. The only point on which the lower Appellate Court acquitted the accused was that the fat content of the milk was more than the prescribed standard and, therefore, the deficiency in solids-not-fat can be condoned. The Standards prescribe the minimum for both milk-fat and solids-not-fat separately. Deficiency in any one of them cannot be offset by any excess in the other. In other words, the standard is prescribed for each of the ingredients and has, therefore, to be observed. This Court has held in *The State by Public Prosecutor v. Padmavathi* C.A. No. 922 of 1979 and *The State by Public Prosecutor v. Venkatachala Gounder* C.A. No. 924 of 1979 and also in *State by Public Prosecutor v. Muthiah* C.A. No. 767 of 1976 (not reported) that the standards are separate and both must be observed separately. Separate standards have been prescribed for each under the Rules, viz., Solids-fat and solids-not-fat and the deficiency in any one of the standards would attract the provisions of Ss.7(I) and 16(1) read with Section 2(la) (a) and Rule 41(b) of the Prevention of Food Adulteration Act.

7. The result is the order of the lower appellate Court, acquitting the accused-Respondent is unsustainable and consequently this appeal is allowed and the Respondent-accused is convicted under Ss.7(I) and 16(1) read with Section 2(la) (a) and R. 41(b) of the Prevention of Food Adulteration Act.

8. This occurrence had taken place in June, 1978, that is, more than 6 years ago and it is not necessary to send him to jail or to take a serious view of the offence. Consequently, the Respondent-accused is convicted and sentenced to pay a fine of Rs. 100/-, in default of payment of fine to undergo rigorous imprisonment for a period of eight weeks. Time for payment of fine amount, one month from the date of the receipt of this order.