

(1966) 08 KL CK 0032

In the High Court Of Kerala

Case No : Criminal R.P. No. 453 of 1965

Subramaniam Chettiar

APPELLANT

Vs

Food Inspector, Palghat Municipality and another

RESPONDENT

Date of Decision : 08-08-1966

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10, 10(1)(a)(ii)

Citation : (1966) KLJ 1060

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : P. Subramoniam Potti and S.A. Nagendran, for the Appellant; S. Narayanan Potti, N.K. Varkey and N. Dharmadan for Respondent No. 1 and Public Prosecutor, for the Respondent

Judgement

M. Madhavan Nair, J.—This motion is by the 2nd accused against his conviction under the Prevention of Food Adulteration Act, 1954. On September 22, 1964, he took to T. N. V. Coffee Club, Palghat, Buffalo's milk that belonged to the 1st accused, a licensed milk-vendor. The Food Inspector has sworn that he was awaiting the 2nd accused, 20 ft. away from the Coffee Club from 5.30 a.m. that day, that the 2nd accused "passed in front of him rather close by" at about 6.15 a.m., that when the accused entered the Coffee Club, the Food Inspector followed him to the interior of the Coffee Club and then purchased milk from him for sampling though the accused refused to take the price offered by him on the ground that the milk taken is not his and that the accused 1 and 2 have once before been convicted under the Act. On analysis the mistaken was found to contain not less than 28 % of added water. PW. 1 is the Food Inspector, PWs. 2 and 3 employees of the Coffee Club, who have attested the mahazar prepared by the Food Inspector, and PW. 4 the peon of the Food Inspector who accompanied him. The 2nd accused, in his statement u/s 342, said that the milk was not taken from his pot but from the vessel of the Coffee Club into which he emptied the pot when there was other milk in it. He refused to take the price offered by the Food Inspector because the milk taken by the latter did not belong to him. PW. 3, has

sworn categorically that the milk sampled by the Food Inspector was taken from a vessel kept in the Coffee Club, to collect milk from several vendors, that before the 2nd accused other vendors had come and poured their milk into it, and that the practice of the Coffee Club was to wash into that vessel that last drop of milk in the vendor's pot with water to dilute the milk for boiling. The District Magistrate found the 2nd accused guilty and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs. 2000/-, and, on appeal, the same have been confirmed by the Sessions Judge, Palghat. Hence this motion for revision.

2. Where the offence is highly anti-social and revolting and therefore likely to rouse an emotional prejudice in the mind of the Court, a greater care in the scrutiny of the evidence is called for. The offence here is a grave one punishable with a drastic sentence in which imprisonment for a year or more and fine not less than Rs. 2000/- are mandatory. Prudence requires that the action of the Food Inspector on which the charge rests should be such as to inspire confidence in court. The seizure and sampling by the Food Inspector should have been made in the presence of persons above susceptibility of his influence. Section 10 of the Prevention of Food Adulteration Act, 1954, before its amendment by Act XLIX of 1964, read thus :

10. (1) A food inspector shall have power (a) to take samples of any article of food from--(1) any person selling such article; (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

.....

(7) Where the food inspector takes any action under clause (a) of sub-section (1).... he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signature.

By the Act XLIX of 1964 the words "as far as possible, call not less than two persons to be present at the time when such action is taken and take their signature" in sub-section (7) have been substituted by the words "call one or more persons to be present at the time when such action is taken and take his or her signature." If the requirement of calling persons to witness the action of the Food Inspector is to assure fairness in the action--I have no doubt that it is designed to that end--the persons called must be independent and disinterested, and not susceptible to influence of the Food Inspector. It is essential then that the witnesses concerned must be persons unconnected with trade in articles of food. In *State v. Sadhu Singh* (A. I. R. 1962 Punj 548) it is observed:--

The evidence of Raunaq Ram Pw.2, and Hans Raj Pw.3, regarding the taking of sample does not inspire confidence. Raunaq Ram is a milk seller who was also apprehended at the crossing but no sample of milk was taken from him, and instead he was made a witness against the respondent. Hans Raj Pw. is admittedly a subordinate of the Food Inspector. When the law enjoins that the

sample be taken in the presence of two persons, it clearly contemplates that the evidence relating to the taking of sample must be above board, and the witnesses in whose presence the sample is taken should be independent and disinterested so as to inspire confidence. In the present case, we however, find that both the witnesses associated with the taking of the sample were under the influence of the Food Inspector.

The words "shall as far as possible" do not leave the direction that follows them to the discretion of the Food Inspector. The direction is mandatory in tone and spirit unless in the circumstances of the case at hand it is impossible of performance. Admittedly the locality concerned is a street in Palghat town. The sampling was done at 6.30 a.m. Persons residing in the vicinity could have been called to witness the act of the Food Inspector, which he has not attempted to do. The Food Inspector, who was awaiting the 2nd accused, allowed him to pass by and to go far into the interior of the Coffee Club before the article was taken and the witnesses called are employees of the Coffee Club, who cannot be said to be "independent" of the Food Inspector. Why he followed the accused to the Coffee Club is ununderstandable. The plea that he wanted to make sure that the milk was for sale to the Coffee Club does not seem convincing - particularly in the light of Section 10(1)(a) (ii) quoted above. If the attempt was to secure the employees of the Coffee Club as witnesses to his action, he was trying to defeat the spirit of the provision in sub-section (7) of Section 10 of the Act. The only other witness, who has been cited to corroborate the Food Inspector is his own peon. PW. 3, one of the witnesses in the mahazar, has sworn that the milk that the Food Inspector sampled was taken from vessel in which milk brought by the accused and by other vendors had been collected together. That statement of PW. 3 has not been challenged by the prosecution. It fully supports the statement given by the accused. In the circumstances, the guilt of the accused cannot be said to have been proved beyond reasonable doubt in this case. Where the standard of proof of a crime has not been kept in view by the Courts below,-- particularly when the offence entails a prison-term--a case for revision of the conviction is indicated. However laudable be the object of the prosecution it cannot override the safeguards provided by law to assure liberty of the citizen and his immunity from arbitrariness in legal confinements. I set aside the conviction and acquit the petitioner, 2nd accused. The bail bonds are cancelled; and the fine, if any, realised from him, will be refunded to him.