

(1987) 07 KL CK 0063

In the High Court Of Kerala

Case No : Criminal A. No. 37 of 1983

The Food Inspector, Alwaye Municipality

APPELLANT

Vs

Jose and Others

RESPONDENT

Date of Decision : 15-07-1987

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 11, 11(1), 13(2)
Prevention of Food Adulteration Rules, 1955 — Rule 15, 22, 22A, 32, 9A

Citation : (1987) 07 KL CK 0063

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : V.M. Kurien, for the Appellant; V. Rama Shenoi, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—The Food Inspector of Alwaye Municipality (P.W. 1) visited "Pulpattu Stores" at Alwaye on 22nd January 1981 and took a sample of 600 gms. of "coffee chicory mixture" from the salesman of the store (A-2). The food article purchased was contained in 51 packets. P.W. 1 divided the packets into three parts, each part comprising of 17 packets. He wrapped them and sealed them in accordance with the Rules. When one of the parts of the sample was analysed by the Public Analyst, it was found that the sample did not conform to the standards prescribed for coffee chicory mixture. A complaint was filed against the proprietor of the shop (A-1) and salesman of the shop (A-2). The dealer who is alleged to have sold the aforesaid food article to the vendor was shown as A-3 in the complaint. The case was tried as against all the three accused, but the Magistrate on conclusion of the trial acquitted them. Hence this appeal by the Food Inspector with leave granted by this Court.

2. The Report of the Public Analyst shows that the sample was adulterated as it did not conform to the standards prescribed in respect of two constituents, caffeine and aqueous extract. There was only 0.2 per cent caffeine as against the minimum requirement of 0.6 per cent. But aqueous extract was found to be 52.6

per cent as against the maximum of 50 per cent permitted by the prescribed standards. (Vide item A. 08"03 of Appendix B of the Rules). In the light of the aforesaid report of the Public Analyst no contention was raised that the sample was not adulterated.

3. The acquittal of the accused was on two grounds. The first is that the sample was not divided by the Food Inspector in accordance with Section 11(1)(b) of the Prevention of Food Adulteration Act, 1954 (for short "the Act") inasmuch as he did not mix the contents of the 51 packets before dividing the sample into three parts. The second is that the Local (Health) Authority did not forward a copy of the report of the public analyst immediately after the institution of the prosecution as required under Rule 9A of the Prevention of Food Adulteration Rules (for short "the Rules").

4. The prosecution was instituted on 14th May 1981, but the Local (Health) Authority had forwarded the documents contemplated in Section 13(2) of the Act only on 16th May 1981. The delay of two days was found to be in contravention of Rule 9A. On this aspect, the learned Counsel for all the accused conceded that there is no contravention of Rule 9A in the light of the interpretation of the said Rule made by this Court in *Food Inspector v. Prabhakaran* 1982 KLT 809.

5. The arguments were mainly focused on the other ground that division of the sample was not in accordance with Section 11(1)(b) of the Act. P.W. 1 admitted that he did not mix up the food articles purchased by him before dividing it into three parts, nor did he even open any one of those packets. For appreciating the arguments of Sri Rama Shenoy, counsel for the third accused, mention is to be made of one more fact. When the Food Inspector purchased the article none of the packets was found sealed, nor did any one of them contain any label declaration. What P.W. 1 did was, he divided 51 packets into three parts, each part consisting of 17 packets and wrapped and sealed each part in accordance with the Rules.

6. Section 11 of the Act is entitled "procedure to be followed by Food Inspectors". Section 11(1)(b) of the Act reads as follows:

When a food inspector takes a sample of food for analysis, he shall-

(b) except in special cases provided by rules under this Act, divide the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed.

It is clear from a reading of the said provision that a Food Inspector who takes a sample of food for analysis cannot but "divide the sample" into three parts, unless it is a special case provided by rules. It is true that it is not stated either in the Act or in the rules that the Food Inspector shall mix up the sample before dividing it into three parts. The statutory direction to be observed while dividing

the sample is that the division shall be "in such manner as its nature permits", Rule 15 governs the manner of sending samples for analysis. It enjoins on the Food Inspector to take the sample in clean dry bottles or jars or in other suitable containers. Thus a Food Inspector cannot avoid or obviate the task of dividing the sample, since it is a statutory mandate, except in certain special cases provided by rules. Division of the sample, therefore, must have a purpose. The postulation is not that the Food Inspector shall pack the sample in three parts, but that he shall "divide" the sample into three parts. Before the sample of food goes into three parts, it shall pass through a process of division. In this connection, a reference to Rule 22A will indicate that the delegated legislature authority was very circumspect in providing a special exception to the statutory requirement. That rule reads thus:

Where food is sold or stocked for sale or for distribution in sealed containers having identical label declaration, the contents of one or more of such containers as may be required to satisfy the quantity prescribed in Rule 22 shall be treated to be a part of the sample.

The said rule undoubtedly is a special case exempted from the requirements mentioned in Section 11(1)(b) of the Act. What could be the legislative idea in exempting food articles kept in sealed containers having identical label declaration from the necessity of division? The answer can be separately gathered from Rule 32. The rule mentions about various specifications for labels. The name, trade name or description of the food, name and business address of the manufacturer, the net weight or number, batch number or Code number, and the month and year in which the commodity is manufactured are some of those specifications which Rule 32 insists for being inscribed on the labels, though the said specifications are also subject to some exceptions. The reasonable assumption is that packets or containers having identical label declarations proclaim that the contents in each of such packets or containers is identical with the other. When food packed in such containers is purchased by a Food Inspector, no additional purpose is served by mixing the contents of such containers together. Even without mixing them up the contents in each such container can be presumed to be homogeneous of the other.

7. Rule 22A has a history behind it which accounts for its introduction. That rule was first inserted in the rules on 17th November 1962. When there was no such rule, the Punjab High Court had to decide a case in which a Food Inspector purchased three labeled bottles of aerated water from a vendor, which on analysis was found to be adulterated. The decision of the Punjab High Court was reported in *Bhagwandass v. State* AIR 1962 P&H 429. Falshaw, C.J., who delivered the judgment in the case held that the sampling was illegal and improper since contents of three separate and distinct bottles may not be uniform. The learned Chief Justice observed further that:

It is of the utmost importance to ensure that the three samples are of uniform quality; otherwise the whole value of the check and countercheck is completely

lost. It is not in dispute that the rules framed under the Act do not provide for any special cases as mentioned in Section 11(b), but this is clearly an omission which requires to be rectified without delay. Obviously it is necessary to make some provisions for dealing with articles of food which are packaged in quantities too small to be divided into three parts so that each part will provide the minimum required for Analysis in accordance with the provision of Rule 22.

The aforesaid observations of the learned Chief Justice gained legislative notice and introduction of Rule 22A was its off shoot. The said rule is intended to be an exception to the insistence envisaged in Section 11(1)(b) that the sample taken shall be divided into three parts. The commencing words in the said clause "except in special cases provided by rules" indicate that the Food Inspector has no alternative except to divide the sample into three parts. No other rule has been brought to my notice, other than Rule 22A, which permits the Food Inspector to obviate the duty to divide the sample. Thus the purpose behind such division is discernible, apart from providing opportunity for check and countercheck it is intended to make each part of the sample homogeneous and representative of the other. It is so emphasised by the Supreme Court in *Food Inspector, Municipal Corporation, Baroda Vs. Madanlal Ramlal Sharma and Another*, . In that case the milk purchased by the Food Inspector, while taking the sample, was required to be churned for the purpose of making the sample homogeneous and representative.

8. The learned Counsel for the Appellant made a reference to the decision in *Food Inspector v. Karunakaran* 1973 KLT 595. One of the head notes in the said decision reads that "there are no provisions in the Act which in terms require that where articles are taken for analysis they should be mixed up before bottling". But a reading of the decision shows that the contention raised on behalf of the Respondents therein that there was likelihood of prejudice being caused to the accused inasmuch as it had not been proved that the sample was taken after mixing up the contents of ice cream in nine cups, was rejected on the ground that the said contention was not even thought of at the trial stage. The decision in *Bhagwandass*" case (cited supra) was cited in that case, but Bhaskaran, J. (as His Lordship then was) felt that it was not necessary to examine the correctness of the Punjab High Court's decision because the defence did not take up that point during trial stage. Therefore the decision in *Food Inspector v. Karunakaran* 1973 KLT 595 is of no advantage to the Appellant.

9. The counsel for the Appellant also cited *Chandmane v. Tamizuddin* 1979 F.A.J. 392 and *N.S. Adhikari v. Sri Nath* 1985 F.A.J. 334. Milk purchased in three bottles from a can was not again mixed up and that was held to be not in violation of the provisions in Section 11(1)(b). On the same point a different view is seen adopted in certain other decisions, two of which were cited by Sri Rama Shenoy *Shaikh Hamid v. Dagu and Anr.* 1979 (1) F.A.C. 334, *Daulat Singh v. State of M.P.* 1979 (11) F.A.C. 269. When milk is taken from one jar or can or other receptacle, it may not be necessary to mix it up again and divide. If milk can be

taken in three bottles directly from the same can, there is reason to assume that milk in each bottle will represent the other. So the decisions based on such facts may not help in deciding the question involved here. The learned Counsel made reference to *Municipal Corporation of Delhi v. Sunder Lal* 1977 F.A.J. 1. In that case the Food Inspector took 300 grams of asafetida and divided it into three and filled it in three bottles. The trial Court acquitted the vendor as the Food Inspector did not grind the asafoetida before dividing them into three parts. But the Division Bench of the Delhi High Court, in appeal, found on facts that the entire sample purchased was broken into tiny pieces such as would go inside the narrow mouth of the bottles and hence it was held that it would not be possible to contend that any one sample was not fairly representative of the other. The said decision supports the proposition that each part of the sample must retain homogeneity and representative character.

10. In this case the Food Inspector, by putting 17 packets in each of the parts without opening those packets for mixing up the contents had not complied with the direction contained in Section 11(1)(b) of the Act. The non compliance with the said direction has caused prejudice to the accused in this case, since the part of the sample sent for analysis need not have been homogeneous and representative of the whole lot of sample taken by the Food Inspector.

For the aforesaid reason, I am not inclined to interfere with the order of acquittal.