
(1974) 09 AP CK 0011
In the Andhra Pradesh High Court

The Public Prosecutor

APPELLANT

Vs

Kalavala Satyanarayana

RESPONDENT

Date of Decision : 30-09-1974

Acts Referred:

Penal Code, 1860 (IPC) — Section 95

Prevention of Food Adulteration Act, 1954 — Section 16, 2, 6, 7

Citation : (1975) 1 AnWR 127 : (1975) CriLJ 1127

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Judgement

Muktadar, J.—The State has preferred this appeal against the acquittal of the accused who was charged u/s 16(1) and Section 7 read with Section 2(ix)(d) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) for having sold at his shop at Piler 750 grams of "Uddi Pappu" containing 1.76% of "talc" on 9-2-1971 at 1.00 P. M.

2. The case of the prosecution is that P. W. 1 who is the Food Inspector, and another person named Venkataramana Reddy (P. W. 2) visited the shop of the accused on 9-2-1971 at 1 P. M. This shop is situated in Nehru Bazar, Piler. The accused had exposed "Uddi Pappu" for sale. After the issue of Form 6 notice upon the accused, and after obtaining his acknowledgment under Ex P. 1, P. W. 1 purchased 750 Gms. of "Uddi Pappu" for Rs. 1.35 p. and obtained the cash Receipt, Ex-P. 2 from the accused. He. divided the "Uddi Pappu" into three equal parts, and poured it into the empty clean dry bottles, and sealed them giving a label No. 135. P. W. 2 another person was present throughout. P. W. 1 gave the sample of the bottle to the accused. He drafted a Panchanama Ex, P-3. He sent one bottle with the memorandum containing specimen of the seal to the Public Analyst who sent his report Ex. P-4 with his opinion that the sample contained, 1.76% of "Talc" and therefore misbranded. The other bottle M. O. 1 was sent to the court, and P. W. 1 laid the complaint.

3. The accused admitted the sale to P. W. 1 but contended that the "Uddi Pappu"

was meant for his personal use. The trial Court disbelieved the evidence of the accused, and found that the "Uddi pappu" was misbranded. Nevertheless, the learned Magistrate applied Section 95 of the Indian Penal Code, and came to the conclusion that the adulteration was "very negligible, and was purely an offence, technical in nature", and, therefore, acquitted the accused.

4. Mr. Ramaswamy, the learned Additional Public Prosecutor contends that the learned Magistrate was incorrect in acquitting the accused after having found that "Uddi Pappu" which was sold to P. W. 1, and which the accused had kept in his shop for sale, was misbranded. He submits that having regard to the provisions of Section 16 read with Section 7, and also Section 2(ix)(d) of the Act, the accused ought to have been convicted and sentenced as provided in Section 16 of the Act. I am of the opinion that the contention advanced by the learned Additional Public Prosecutor has some force.

5. Section 2(ix) of the Act defines misbranding of an article of food:

(d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;

6. Section 16 of the Act provides for the punishment, which is as follows:

16 (1) If any person:

(a) Whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interests of Public health--

(f) he shall, in addition to the penalty to which he may be liable under the provisions of Section 6 be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with a fine which shall not be less than one thousand rupees:

7. The learned Magistrate in coming to the conclusion that the offence committed by the accused was "negligible", and "purely of a technical nature" relied upon standards of quality for the foodgrains as given in Appendix B, A-18,06 of the Act which is as follows:

A. 18.06. Food grains meant for human consumption shall fulfil the following standards of quality namely:

(ii) Foreign matter : Which includes sand, gravel, dirt, stones, pebbles, straw, steams, chaff, cockles, oilseeds and other non-poisonous seeds, but excludes other food grains, shall not exceed 4% by weight.

The learned Magistrate was of the opinion that the "Talc" that was added to the food grain "Uddi Pappu" was a "foreign matter", and since the report of the Chemical Analyst disclose that there was 1.76% of the "Talc" that was added in

the "Uddi Pappu" it was therefore, less than 4% as provided in the above Appendix, and hence, it should be considered that the offence was trivial in nature.

8. I am of the opinion that the learned Magistrate had erred in basing his decision on Appendix B, A-18.06, because Rule 23 of the Rules framed under the Act prohibits the unauthorised addition of colouring matter by providing that the addition of a colouring matter to any article of food except as specifically permitted by these rules. The adding of "talc" was a colouring matter, and therefore, it was Rule 23 which was applicable to the facts of the instant case, and not Appendix B. A-18.06 of the Act.

9. Moreover, having regard to the circumstances of the case, the learned Magistrate also erred in applying Section 95 of the Indian Penal Code. The offence of misbranding is a serious offence. This is not a case of addition of foreign matter to compare the percentage of the addition of the foreign matter and hold that 1.76% of addition of "Talc" was negligible and trivial. This is a case of misbranding and comes squarely within the ambit of Rule 23, as it is the addition of colouring matter which was not at all permitted by the Rule. Hence, it could not be said that the accused should be given the benefit of Section 95, Indian Penal Code for an offence which he has committed u/s 16, and Section 7 read with Section 2(ix)(d) of the Act. Therefore, I am of the opinion that this appeal should be allowed.

10. Since the accused has committed an offence of misbranding, and the punishment is prescribed u/s 16 of the Act, the accused is convicted u/s 16 read with Section 7 and Section 2(ix)(d) of the Act, and sentenced to undergo rigorous imprisonment for six months, and to pay a fine of Rs. 1,000/- (rupees one thousand) as that is the minimum sentence prescribed u/s 16 of the Act. In default of payment of fine, the accused shall further undergo rigorous imprisonment for six months.

11. Hence, the appeal of the State is allowed as indicated above.