
(1948) 11 MAD CK 0023
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

Sannidhi Sriranganayakulu

RESPONDENT

Date of Decision : 26-11-1948

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 5(1)(b)

Citation : (1949) CriLJ 893

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—The charge against the accused was that he contravened the provisions of Section 5(1)(b) of the Prevention of

Adulteration Act, Act III of 1918, and thereby rendered himself liable to be punished u/s 5(1)(d) of that Act

2. P.W. 1 was the Sanitary Inspector of Akkiveedu. When he called at the shop of the accused, P.W. 1, found the accused selling honey to P.W.

2. After the honey had been handed over to P.W. 2, P.W. 1 in his turn asked for some honey to be sold to him as a sample. The accused refused

to sell any honey to P.W. 1. P.W. 2 had not in the meanwhile, paid for the honey that had been sold to him. P.W. 1 obtained that honey and when

it was analysed it was found to contain 36 per cent. of cane sugar.

3. The learned Subordinate Judge convicted the accused u/s 5(1)(d) of the Act and sentenced him to pay a fine of Rs. 25. On appeal, the learned

Sub-Divisional Magistrate, set aside the conviction and acquitted the accused. The learned Magistrate held that the transfer of honey to P.W. 2 did

not constitute a sale. Of course, unless there was a sale to P.W. 2, the accused would not come within the scope of Section 5(1)(b) or 5 (1)(d) as

the case was laid against him. The learned Sub-Divisional Magistrate, however, appears, to have taken an erroneous view of what constituted a

sale. It was not the specific case of the accused at any stage that it was as a gift that he handed over the honey to P.W. 2. The accused denied that

there had been any transfer of honey from him to P.W. 2. The evidence on record could leave one in no doubt on the question, that the accused

did deliver honey to P.W. 2 who had come to the shop to buy that honey. That the purchase price was not paid before P.W. 2 left the shop did

not make it any the less a sale, though the liability of P.W. 2 to pay the purchase price remained. P.W. 2 admitted that he had not paid the money,

but that in no way affected the nature of the transaction which was a sale. Besides even the offer for sale is punishable u/s 5(1)(b), Certainly when

the accused handed over the honey P.W. 2 it was in the least an offer for sale.

4. The learned advocate for the accused contended that no rules had been prescribed u/s 20(1)(e) by the Government . If no such rules were

framed, the only reasonable inference could be that honey of an absolute purity had to be sold, unless what was sold or offered to be sold was

represented to the purchaser to be not honey, but honey with an admixture of cane sugar. P.W. 2 asked for honey and it was honey as such that

the accused was bound to supply. The absence of rules in no, way affects the liability of the accused for punishment u/s 5(1)(d).

5. The proviso to Section 5(1) cannot apply either. Cane sugar might be innocuous material but 36 per cent, of it did certainly increase the bulk,

weight, or measure of the honey within the meaning of the proviso to Section 5(1), and from the circumstances of this case the fraudulent intention

of the accused should be obvious.

6. The order of the acquittal is set aside. The accused will be convicted u/s 5(1) (d) read with Section 5(1)(b) of Madras Act III of 1918 and he

will be sentenced to pay a fine of Rs. 25, the fine originally imposed by the learned Sub-Magistrate. The accused is a first offender. All the same

the fine was by no means excessive. In default of payment of fine, the accused will undergo simple imprisonment for ten days. Time for payment of

fine-15 days from the date of the receipt of records in the lower Court.