
(1989) 09 KL CK 0024

In the High Court Of Kerala

Case No : Criminal R.P. No. 628 of 1987

Varghese

APPELLANT

Vs

Food Inspector and Another

RESPONDENT

Date of Decision : 08-09-1989

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 19(2), 2, 20A
Prevention of Food Adulteration Rules, 1955 — Rule 22A, 5

Citation : (1990) CriLJ 2354 : (1989) 2 KLJ 452 : (1991) 1 RCR(Criminal) 64

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P.S. Santhosh, for the Appellant; T.N. Surendran, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Petitioner is the second accused. He is manufacturer of coffee chicory mixture which was purchased by the Food Inspector from the first accused for analysis. First accused, the vendor of the article of food to the Food Inspector, was acquitted u/s 19(2) of the Prevention of Food Adulteration Act (for short "the Act"). After appreciating the evidence in this case learned Magistrate convicted the petitioner for offence u/s 16(1)(a)(i) read with Section 7(1) and Section 2(ia)(a) of the Act and A.08.03 of Appendix-B of Rule 5 of the Prevention of Food Adulteration Rules. He was thereupon sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-. In default of payment of fine he was directed to suffer simple imprisonment for three months. He challenged the conviction and sentence in appeal without success. Hence this revision petition.

2. The short facts of the case can be stated as follows: Food Inspector, Kodungallor Municipality visited the grocery shop of first accused. After introducing himself, he gave Form VI notice and demanded 500 gms of coffee chicory mixture from the stock kept for sale. First accused gave ten packets of

coffee chicory mixture containing 50 gms each. Food Inspector opened the packets and mixed the contents. Then divided the quantity into three equal parts and filled it in three clean dry bottles and sampled the same in accordance with the rules. A mahazar was also prepared narrating the various steps taken by the Food Inspector. One of the samples was sent to the Public Analyst for analysis, by registered parcel. Form VII memorandum and specimen impression of the seal used to seal the sample were separately sent to the Public Analyst by registered post. The remaining two samples were sent to the Local (Health) Authority together with Form VII memorandum and specimen impression of the seal used to seal the sample. Public Analyst found the sample to be adulterated. He sent Form III report dt. 28-4-1983. On getting the report prosecution was launched. Notice u/s 13(2) together with copy of Form III report was sent to the accused. Accused applied to court to send one sample to the Central Food Laboratory for analysis. Director of Central Food Laboratory issued certificate in Form II. It also showed the sample to be adulterated.

3. The packets purchased from the first accused contained identical label declaration. First accused also produced the bill under which he purchased the coffee chicory mixture from the manufacturer. The bill and the identical label declaration gave the name of the second accused as the manufacturer of the coffee chicory mixture. Therefore the Food Inspector could send all notices as required by the Act and Rules to the second accused. During the trial second accused was impleaded as per Section 20A of the Act.

4. Form II certificate issued by the Director of Central Food Laboratory contains the following details:

Opinion: The sample does not conform to the standards laid down for coffee-chicory mixture under the provisions of PFA Act 1954 and Rules thereof in that:--

a: Aqueous extract exceeds the maximum specified limit of 50% on dry weight basis."

This shows that the sample of coffee chicory mixture purchased by the Food Inspector is not conforming to the standards laid down under the Rules on account of aqueous extract exceeding the maximum specified limit of 50% on dry weight basis. The excess in aqueous extracts is 0.6%. According to the learned counsel representing the petitioner this slight excess in aqueous extracts was the result of the unhygienic manner adopted by the Food Inspector in sampling the article. Second accused as DW-1 has categorically stated that the coffee chicory mixture purchased by the Food Inspector was manufactured by him and that it was packed in polythene covers which were sealed by melting the opening part. These packets, closed tightly, prevented its content from having contact with the atmosphere. Such packets had identical label declaration. Each packet contained 50 gms of coffee chicory mixture. While sampling the said article of food, the Food Inspector ought to have taken steps contemplated by Rule 22A of the Rules. In other words, the argument is that Food Inspector

should not have opened the packets to allow the contents to absorb moisture from the atmosphere. In the instant case, Food Inspector as PW-1 has stated that he opened all the packets purchased by him, put the contents on brown paper and mixed the same with his hand. PW-1 did not state that his hand was clean or dry. When the Food Inspector used his hand to mix the coffee chicory mixture, the moisture excreted from the hand must have got mixed with the sample. The article of food sampled must have absorbed moisture content from the atmosphere as well. This must have gone to increase the aqueous extract in the coffee chicory mixture. As per the standard prescribed by the Rules, aqueous extracts should not be more than 50%. The certificate issued by the Director of Central Food Laboratory shows that the aqueous extract in the sample exceeded the limit fixed by the Rules by 0.6%. This excess, according to counsel, should be attributed to the unhygienic method adopted by the Food Inspector in sampling the quantity. I find much force in this submission. PW-1, the Food Inspector, has stated that the coffee chicory mixture was put on a brown paper. He used his own hand to mix the entire quantity. He did not state that his hand was dry and clean. While sampling the coffee chicory mixture the Food Inspector should not have used his hand to mix the same. The Food Inspector ought to have used a clean spoon or other similar contrivance. As far as possible the Food Inspector should sample the article in hygienic conditions. He should not be resorted to any method which may go to affect the result of the analysis. In sampling the various types of articles of food, the Food Inspector should make use of clean and dry appliances. If unhygienic methods are adopted, it will affect the result of analysis. A method which may not affect the result of analysis of a particular article of food may prove to be disastrous to another article. In sampling cereals the use of hand may not affect the result as in the case of those which are easily susceptible to contamination. But it must be the endeavour of the Food Inspector to use clean and dry implements in sampling the articles of food. In the instant case the method adopted by the Food Inspector in sampling the coffee chicory powder cannot be taken as a hygienic one. He used his hand to mix the sample. That method must have gone to increase the aqueous extract in the coffee chicory mixture. Viewed in this manner I hold that the variation in the standard regarding aqueous extract was the result of the unhygienic method adopted by the Food Inspector in sampling the article of food. In this state of affairs, I do not find any justification to convict the petitioner for the offence charged against him.

In view of what has been stated above, I allow this revision petition and acquit him. His bail bonds are cancelled.