

Murlidhar Shyamlal and Another

Vs

State of Assam

Criminal Appeal No. 127 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

18.01.1996

JUDGMENT

1. Leave granted.

2. Though notice was served on the State, none appeared and pursuant to another notice given to the State counsel, she has circulated a letter stating that she did not get any instructions from the State and that, therefore, she cannot proceed with the matter. We have heard the counsel for the appellants.

3. The appellant was charged for an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act') for adulteration of mustard oil. The offence had taken place on 1-2-1984. Consequently, if the offence is proved, the sentence would be of mandatory character. He was acquitted by the trial Court but on appeal, the High Court set aside the acquittal and the appellants were convicted and sentenced to undergo imprisonment for a term of six months and also to pay a fine of Rs. 1,000/- and in default, he was to undergo further imprisonment for a period of one month. Both sentences were directed to run concurrently.

4. The learned Magistrate considering Section 19 (2) read with Rule 12 A of the Food adulteration Rules, 1956 (for short, 'Rules') found that since the appellant was armed with a warranty as envisaged thereunder, he had not committed the offence of adulteration of food. Accordingly, he acquitted the appellant. On a composite appeal filed in the High Court, the learned single Judge in Government Criminal Appeal No. 62 of 1985 set aside the acquittal and convicted the appellants for the aforesaid offence. Thus this appeal by special leave.

5. Learned counsel for the appellants relying upon Section 19 (2) and Rule 12-A of the Rules contended that on the appellant proving that he purchased article of food from a manufacturer or a dealer with a warranty as envisaged in Rule 12-A, he is absolved of the offence and the only remedy for the prosecution is to proceed against the manufacturer or dealer or distributor etc.

6. Section 19 (2) of the Act reads thus :

"19 (2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proved -

(a) that he purchased the article of food-

(1) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer.

(2) in any other case, from any manufacturer, distributor or dealer.

with a written warrantee in the prescribed form; and

(b) That the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

Rule 12-A of the rules Reads thus:

"12-A. Warranty. — Every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or label, a warranty in form VI-A."

The warranty shall be in the prescribed form VI-A which reads thus :

(See Form VI-A below)

FORM VI-A

(See Rule 12-A)

Form of Warranty

Invoice No. _____ Place _____
Form _____ Date _____
To. _____

Date of Sale	Nature and quality of article /Branch Name, if any	Batch No. or
Code No.	Quantity	Price

1	2	3	4	5
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I/We hereby certify that food/foods mentined in this invoice is/are warranted to be of the nature and quality which it/these purports/purport to be.

Signature of manufacturer/

distributor/dealer

Name and Address of

Manufacturer / Packer

in case of packed article

Licence No.....

(wherever applicable)

7. Thus it would be clear that with a view to absolve the appellant of the liability for being prosecuted, the vendor of the article of the food to the food inspector, has to prove that he purchased the article of food with a written warranty in the prescribed form VI-A in terms of Rule 12-A. It was contended that the distributor had come into the witness box stated that the article was of the same quality as was sold by him. The learned council has relied upon the memo of the sample taken by the Food Inspector which contains thus:

"450 gms of mustard oil from a packed tin containing the same weighing 16 kg. nett with a printed label on it "New Rice & Oil Mill, Raha, pure mustard oil (Biswanath Brand) nett wt. 16 Kg. stored for sale in the said premises."

8. It would only indicate that the packed tin containing the same weighing 16 Kg. nett with a printed label on it "New Rice & Oil Mill, Raha, pure mustard oil (Biswanath Brand) nett wt. 16 Kg." stored for sale in the said premises. From this, it is contended that the appellant had the warranty and that, therefore, by operation of Section 19 (2) read with Rule 12-A, the appellant is absolved of his liability to be prosecuted for sale of the adulterated article of food. We are afraid that we cannot accept the contention. In view of the above warranty as envisaged under Form VI-A, there must be specific mention therein by the dealer or distributor or manufacturer, that the article of food sold was in the same nature and quality of the article of food, as the case may be. Then only he would get acquitted, though the article of food was found adulterated. It would be then open to the prosecution to proceed against the manufacturer, dealer or distributor.

9. It is then contended that cash memo contains such a recital and he has taken us through the evidence stated by the witness. From the evidence, it is clear that it contained a warranty as prescribed in Form VI-A. Counsel seeks to place reliance on the judgement of this Court in K. Ranganatha Reddiar v. State of Kerala. (1969) 2 SCC 457 at p. 459 : (AIR 1970 SC 520 at P. 521). In that case, since the cash memo was produced as a part of the record and on consideration of recitals, this Court had considered that when a cash memo was given by the dealer to the accused, it must be construed in the language employed therein and the benefit of doubt was given. In this case, we cannot make any guess as to what would be the nature of the language used in the cash memo which was not filed in the absence of any specific recital therein. As seen in the recital of the Panchanama, there is no mention thereof as envisaged in Form VI-A. Under these circumstances, we are constrained to confirm the conviction and sentence minimum period of six months and is a mandatory after the Amendment Act, 1976 (Sic), we cannot interfere with the sentence.

10. The appeal is accordingly dismissed. Appeal dismissed.