

KERALA HIGH COURT

Food Inspector

Vs

Vincent

(M Menon,C.J.)

14.12.1981

JUDGEMENT

M Menon,C.J.

(1.) THE Food Inspector, Changanacherry Municipality is the appellant. Tho appeal is against the acquittal of the accused in respect of offences punishable Under Sections 7 (1) and (4) and 16 of the Prevention of Food Adulteration Act, 1954, for short the Act, read with Rule 44-A (b) of the Prevention of Food Adulteration Rules, 1955.

(2.) ON 29-9-1977, PW 1, Food Inspector, visited the shop of the first accused and purchased 750 grams of peasdhall for the purpose of analysis, on paying the price thereof. The public analyst reported that the sample was adulterated and that it consisted of a mixture of lacdhall, otherwise known as kesari dhall, to the extent of about 5 per cent and peasdhal to the extent of about 95 per cent, The complainant examined himself as PW-1 and the salesman of the shop, who is stated to have been present a the time of sampling, as PW-2. PW-2 turned hostile. The trial Court found from the mahazar evidencing the taking of the sample that of the two witnesses who witnessed the transaction, one was PW-2 the salesman of the shop of the accused and that the other was the peon of the Food Inspector. There was thus failure on the part of the Food Inspector to call one or more independent witnesses to be present at the time of the action taken by him, and as such there was non-compliance of Section 10 (7) of the Act. The accused were acquitted on that basis. The order of acquittal is challenged in this appeal. The main question that arises for consideration is thus whether there has been non-compliance of Section 10 (7) of the Act in view of the fact that the witnesses Under Section 10 (7) were either employees of the concern from where the sample was taken or subordinates of the Food Inspector. Shri Rama Sheno, the learned Counsel for the respondent, contended at the time of hearing that there is no uniformity in the decisions of this Court on the scope and application of Section 10 (7) of the Act, and therefore, it is desirable that the case is referred to a Division Bench. I felt that in the light of the representation I should review in detail the case law on the point to find out if there is any necessity to refer the question of a Division Bench. Section 10 (7) of the Act was amended in

1964. It may not be necessary to deal with the case law prior to the amendment. Suffice to say that the general trend of these decision was that non-compliance of the provision was a serious irregularity.

(3.) SECTION 10 (7) as it stands now reads: Where the Food Inspector takes any action under Clause (a) of Sub-section (1, Sub-section (2, Sub-section (4, or Subsection (6) he shall, call one or more persons to be present at the time when such action is taken and take his or their signatures. The earliest reported decision of this Court on Section 10 (7) after the amendment Act 1964 is *Food Inspector v. Vincent*¹, decided by Madhavan Nair J. , on appeal against an order of acquittal. In that case the two witnesses to the sampling were maistries subordinate to the Food Inspector. Following the decision, *State v. Sadhu Singh* it was held that the evidence relating to taking of sample must be above board and the witnesses in whose presence the sampling is taken should be independent and disinterested so as to inspire confidence. The salient safeguard provided in Section 10 (7) not having been observed, the sampling was held to have been done irregularly. The order of acquittal was not set aside, *Subramonian Chettiar v. Food Inspector*², is another case decided by the same learned Judge. In that case the appellant, second accused, was carrying milk for sale to a coffee club. The Food Inspector followed him inside the coffee club and took sample. PWs. 2 and 3, attestors to the mahazar, were two of the employees of the coffee club. PW 4 was the peon of the Food Inspector. The learned Judge held that the requirement of calling persons to witness the action of the Food Inspector is to assura fairness in the action and that it is essential that the witnesses concerned are persons unconnected with trade in articles of food. ;

Cases Referred.

1ILR (1966) 2 Ker 551
21966 Ker LT 788:1967 Cri LJ 1328 (2)