

**KERALA HIGH COURT**

P.B. Kurup

Vs

Food Inspector

CrI. M.P. No. 89 of 1969 from C.C. 328 of 1968

(K. Sadasivan, J.)

04.09.1969

**ORDER**

**K. Sadasivan, J.**

1. This is a petition filed under sections 435, 439 and 561 A of the Code of Criminal Procedure praying for quashing the proceedings in C.C. 328 of 1968 on the file of the Sub Divisional Magistrate, Malappuram so far as it relates to the petitioner. The petitioner is the proprietor of Techno Chemical Industries Ltd., Calicut. The concern is engaged in the manufacture of several articles including soft drinks; one of the drinks manufactured by them is labeled "orange beverage." This is sold in bottles containing net contents of 6.8 m. lit. and on each, a label in yellow colour with red print is affixed proclaiming that the beverage is free of sugar and saccharine. The petitioner supplies the beverage to retailers in various parts of Kerala. One such retail dealer is one Yusuf doing business at Malappuram. On 28-2-68 the Food inspector, Malappuram purchased from Yusuf the orange beverage for analysis and it was found on analysis that the sweetener used for preparing the beverage is neither sugar nor saccharine. The Analyst, in the circumstances, reported that the beverage is adulterated. Under the Rules framed under the Prevention of Food Adulteration Act (shortly stated the Act), no sweetener other than sugar or saccharine is allowed to be used for beverages, and as such the vendor of the article is liable to prosecution. When Yusuf was threatened with prosecution he produced before the Food Inspector the warranty issued to him by the petitioner - concern. The warranty is in a form in which the article sold was described as Orange beverage free of sugar and saccharine. At the bottom there is also an announcement that the article supplied is the same as demanded by the purchaser. On the basis of the warranty, Yusuf was exonerated by the Food Inspector and the case was registered against the petitioner-concern. The petitioner took the preliminary objection before the court below that the complaint does not disclose a case and in any event the prosecution is premature so far as the petitioner is concerned. The learned Magistrate after hearing arguments stated that he would proceed with the case. No order as such has been parsed on the preliminary

objection taken by the petitioner and the learned Magistrate has straightaway proceeded with the trial.

2. The question for consideration is whether the prosecution is premature, in that before the vendor of the article is prosecuted, no prosecution can lie against the manufactures, in the present case the warrantor. S. 19 of the Act enumerates the defense available to the accused in a prosecution under the Act. Sub-s. (2) of S. 19 reads:--

"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 proves--(a) (i) that he purchased the article of food from any manufacturer, distributor, or dealer, with a written warranty 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."

Sub-s(3) of S. 19 would state that:--

"Any person by whom a warranty as is referred to in "section 14" is alleged to have been given shall be entitled to appear at hearing and give evidence."

3. If a dealer succeeds in proving the above facts he can get an acquittal. From the case, notice must go to the warrantor so as to enable him to appear and plead his cause and also produce evidence. If the warranty is in the prescribed form and it satisfies all the requirements of the Rule, the dealer is exonerated and the case will proceed against the warrantor; but in the present instance the dealer was not prosecuted at all. On production of the warranty before the Food Inspector, the dealer was exonerated and the case was taken against the warrantor alone. The procedure adopted, I do not think, is proper. The dealer of the article must be treated as the primary offender and if any defense is put forward by him on the basis of the warranty or otherwise, the matter is to be placed before the court and appropriate orders will be passed by the court. Instead of doing that the Food Inspector himself sat in judgment over the matter and on accepting the warranty he has let off the dealer. Before such a decision is taken the question whether the warranty produced satisfies the requirements of the law has carefully to be considered, and that is the province of the court and not of the Food Inspector.

"It cannot be doubted that it is only in a case where the vendor can successfully plead the exception provided in S. 19 that the person who gives the warranty could be proceeded against for giving a false warranty. In other words, every person who is in respect of an article or substance sold by him in respect of which a warranty might be pleaded under the Act, given to the purchaser a false warranty in writing is guilty of the offence under S. 16(1)(g). "(Vide The Prevention of Food Adulteration Act, 1954 by Moti Ram a Sukhdev 3rd Edn p. 335).

4. The warrantor can normally be hauled up when it is seen that he has issued a false warranty; but in any event at the initial stage, the prosecution must proceed against the dealer, and only when he pleads by way of defense that the article is covered by a warranty and satisfies the court that the warranty is proper and in the prescribed form, the question of his exoneration can come. Even in such a case, under S. 19(3) the warrantor is entitled to a notice and it is open to him to appear and give evidence in support of his position. The prosecution, therefore, must first be instituted against the dealer. This view is seen taken by the Punjab High Court in *Chokra v. The State*<sup>1</sup>, The learned Judge in that case held:--

"There is no justification for the prosecution of a person, firm or company, who is alleged to have supplied goods to the dealer from whom the sample is actually purchased by the Food Inspector in the same trial as the dealer from whom the sample was taken.

The only section which brings a third party into the matter when an adulterated sample has been taken is S. 19, From S. 19 it is clear that the firm or company can only be brought into this case at all after accused dealer, who actually sold the adulterated article had set up the defence contemplated in S. 19(2) and complied with the other provisions of the sub-section. Any question of prosecuting the firm or company which is alleged to have given a warranty can only arise after the trial of the actual vendor had concluded with a successful defence by him under the provisions of S. 19(2) and the supplier of the goods to the actual vendor had been heard."

5. I am in respectful agreement with the above view and hold that the present prosecution is ill-conceived and premature.

6. The result is that the charge against the petitioner-concern will stand quashed and he is discharged. The Food Inspector, if so advised, can proceed against the dealer Yusuf and on the termination of it other appropriate proceedings can be taken against the present petitioner. The Cr. M. P. will stand disposed of as above.

Allowed.

<sup>1</sup> A.I.R. 1966 Pun 421