KERALA HIGH COURT

Food Inspector

Vs

Gopinathan

(K P Janaki Amma, J.)

25.11.1981

JUDGMENT

Ku. P. Janaki Amma, J.

1. The Food Inspector of the Punalur Municipality is the appellant. The appeal is filed against the acquittal of the accused in C. C. No. 117 of 1978 of the Judicial Magistrate, First Class, Punalur, for alleged offences punishable Under Section 16 (1) read with Section 2 (i) (e) (f) and Section 7 (1) of the Prevention of Food Adulteration Act.

2. P.W. 1. who is the complainant-Food Inspector, went to the provision store of the accused on 27-2-1978. After following the formalities prescribed under the Prevention of Food Adulteration Act, for short the Act, he purchased 750 grams of "vadaparippu" after paying the price thereof under Ext. P 1 (a) acknowledgement and Ext. P 2 bill. He divided the sample into three equal parts, filled them in three clean dry bottles, packed and sealed as provided under the rules. One of the sample bottles was sent to the public analyst with the specimen seal. The public analyst sent Ext. p 5 report, stating that the sample did not conform to the standard prescribed for foodgrains in the rules framed under the Act. In due course the accused was tried for the offences already mentioned.

3. The Court held that there was no evidence to show that the "vadaparippu" purchased was injurious to health and therefore unfit for human consumption. It was held that the "vadaparippu" is a primary food in its natural form and that it was not made out that it became infested on account of any human agency and as such it could not be held to be adulterated within the meaning of that word as defined in the Act. The Court further held that there was non-compliance of Rule 22 of the rules framed under the Act inasmuch as there is no definite evidence to the effect that PW-1 sent 250 grams of the sample for analysis. It was also found bv the court that there was no proper mixing Up of the sample and as such the sampling was defective and no conviction can be entered on the result of the analysis that followed.

4. Ext. P5 is the report of the public analyst. The result of the analysis is as follows:

(See Table below)

General	: The sample comsists of smooth pea dhall (Pisum Arvense). It is free artificial colouring matter.
Living Insects	: Present
Foreign matter	: Abenst
Insect damaged grains.	: 17.0 per cent (by count)
Uric acid	: 30.0 mgms. per 100 gms.
Rodent hair and excreta	: Absent
Moisture	: 7.0 per cent,

This does not conform to the standard fixed for foodgraing in A. 18.06 Appendix I of the rules framed under the Act. Under Section 2 (i-a) (f) an article of food is to be deemed to be adulterated if it consists wholly or in part of any filthy, putrid, rotten decomposed or diseased animal or vegetable substance or is insect-infested Or is otherwise unfit for human consumption. The trial Court held that under the above definition it is incumbent that the article should satisfy the condition mentioned in the earlier part of the clause and also should be unfit for human consumption. Since the public analyst did not express any opinion regarding the unfitness of the article for human consumption it was held that the article was not adulterated. But the reasoning does not appear to be correct, especially in view of the interpretation given to Section 2 (i-a) (f) by the Supreme Court in the case Delhi Municipality v. Tek Chand . The Supreme Court held that once it is made out that the article consisted wholly Or in part of any filthy, putrid, rotten, decomposed or deceased animal or vegetable substance or was insect-infested, the prosecution need not prove in addition that it was unfit for human consumption. In the instant case, Ext. P5, report of the public analyst, clearly mentions that the article was insect-damaged, that there were living insects and that it did not conform to the standard prescribed under the rules. It was therefore adulterated.

5. The next ground which weighed with the trial Court is based on proviso to Section 2 (i-a) (m). which deals with primary food. The Court held that it had not been made out that the "vadaparippu" became insect-infested due to human action. Primary food has been defined in Section 2 (xii-a) of the Act, as meaning any article of food, being a produce of agriculture or horticulture in the natural form. The trial Court proceeded on the footing that "vadaparippu" purchased was in the natural form and as such it was primary food and therefore the proviso to Section 2 (i-a) (m) applied. This finding is challenged by the appellant. It is pointed out that "vadaparippu"' purchased is pea dhall and as such it cannot be taken as a produce of agriculture in its natural form. The respondent, accused, on the other hand, would point out that there is an admission on the part of the Food Inspector himself that the article that was purchased by him was primary food and that the said admission is binding on the prosecution. No doubt, PW-1 in

the course of his cross-examination has made an admission that "vadaparippu" is primary food. But it is only an expression of his opinion. Whether an article is "primary food" or not is to be decided by the Court on the basis of the definition of the term in the Act and not on the views expressed by the Food Inspector. No doubt "vadaparippu" is derived from a product of agriculture. But it is not a product of agriculture in its natural form. It is common knowledge that foodgrains are converted into "parippu" Or "dhall" only after undergoing a processing. It cannot therefore be said that the "vadaparippu" purchased in the case satisfied the definition of primary food. The trial Court was therefore not correct in holding that the dhall was not adulterated.

6. The next ground on which the order of acquittal was passed is that there was contravention of Rule 22. It is pointed out that under Rule 22 the Food Inspector is expected to send 250 grams of article for the purpose of analysis, whereas he has sent only 225 grams. In the first place there is no clear evidence to the effect that the Food Inspector sent only 225 grams. No doubt, he casually mentioned 225 grams and then corrected himself saying that the quantity sent was 250 grams. Even assuming that there was any deficiency that by itself is not a ground for acquittal in view of the fact that non-compliance of Rule 22 is only an irregularity. If any authority is needed there is the decision of the Supreme Court in *State of Kerala v. Alasserry Mohd*[1].

7. The last ground which weighed the trial Court for acquitting the accused is that the evidence in the case is to the effect that the sample was taken from the too portion of the gunny baa wherein the article was kept and there was,, no mixing of the article before taking up, of the sample. The argument appears to' To be that without stirring and mixing, the article purchased could not be said to be a representative sample of the "vadaparippu" kept for sale and therefore no weight should be attached to the report of the public analyst. But the provisions of neither the Act nor the Rules iustify such a conclusion. The Act and the Rules do not direct that before to kine the sample the Food Inspector should stir or mix the contents of the container where it is kept. The principle underlying Rule 22-A and the decision in Food Inspector v. Koyakutty, 1972 Ker LT 464, do not support the above contention. It may be that in the case of a mixture of articles having different specific gravity a proper mixing and stirring would help in making the sample more representative but when the article kept for sale consists of substance of the same structure and specific gravity no such mixing or stirring is necessary.

8. The result is that none of the grounds mentioned by the trial Court for acquitting the accused is sustainable.

9. On behalf of the respondent, accused, it has been argued that the accused was misled in his defence by the admission made by the Food Inspector that the sample consisted of primary food and that the accused could not therefore put forward other defences available to him and therefore an opportunity should be given to him to put forward other defences if any. The respondent, however, did not specify the other grounds of defence available to him. Now that I have found that the grounds mentioned for acquittal are not sustainable the case has to go back

for disposal according to law. The accused, if found to be guilty, has to be given an opportunity to be heard on the question of sentence. Under such circumstances, it is only fair that the accused be heard on other defences if any that are available to him before the case is finally disposed of.For the reasons mentioned, I allow the appeal, set aside the order of acquittal and remand the case to the trial Court for disposal according to law.

Cases Referred.

1AIR 1978 SC 983 : 1978 Cri LJ 925