

Kendrapara Municipality Vs Sk. Abdul Aziz

Court: Orissa High Court

Date of Decision: Jan. 14, 1968

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 342

Prevention of Food Adulteration Act, 1954 â€” Section 13, 16(1), 2, 7

Prevention of Food Adulteration Rules, 1955 â€” Rule 14, 15, 16, 5

Citation: (1969) 35 CLT 208

Hon'ble Judges: A. Misra, J

Bench: Single Bench

Advocate: P.K. Dhal, for the Appellant; L.S. Misra in Criminal Appeal No. 126 of 1966 and R. Ch. Mohanty in Criminal Appeal No. 127 of 1966, for the Respondent

Final Decision: Dismissed

Judgement

A. Misra, J.

These two appeals are directed against orders of acquittal passed by the S.D.M., Kendrapara acquitting the Respondents in

each of the appeals of the charge u/s 16(1)(a) of the Preventing of Food Adulteration Act. The prosecutions out of which the two appeals have

arisen, were started by the, Kendrapara Municipality.

2. The Food Inspector of that Municipality (p.w. 1), while inspecting the grocery shop of the Respondent Cr. A. No. 12666 on 6-6-1964,

suspected that the mustard oil stored for sale was adulterated, took samples and sent it to the public analyst. On receipt of his report that the

sample was found to be adulterated, with the sanction of the Municipality prosecution was initiated. Similarly, while inspecting the grocery shop of

the Respondent in Cr. A. No. 127/66 on 17-9-1964, the said p.w. 1 suspected adulteration of mustard oil stored for sale, took samples which he

sent to the public analyst and on receipt of the report, with the sanction of the Municipality initiated the prosecution. In each of the cases, besides

p.w. 1, two other witnesses have been examined for the prosecution. P.ws. 2 and 3, in each of the cases, happen to be the seizure witnesses, i.e.,

persons in whose presence the samples were said to have been seized. One sample bottle on each occasion was made over to respective

Respondent; the other sent to the public analyst and the this kept with p.w. 1. In the case against which Cr. A. No. 127/66 has been preferred,

one defence witness has been examined, while in the other case, defence declined to adduce any evidence.

3. The learned Magistrate, in each of the cases, found that the evidence of p.w.s. 2 and 3 being discrepant in material particulars did not afford

corroboration to the testimony of p.w. 1 about the actual purchase and seizure of the mustard oil from the respective shops. He also declined to

place any reliance on Ex. I, the receipts granted by each Respondent at the time of seizure, on the ground that it purported to contain a statement

by him to a person in authority. On these grounds, he held that the prosecution failed to prove the purchase of mustard oil on each of the occasions

by p.w. 1 from the respective Respondents and quitted them.

4. Learned counsel for Appellant contends that the learned Magistrate grossly erred in arriving at the aforesaid findings. According to him, apart

from the evidence of seizure witnesses, the evidence of p.w. 1 together with the admissions contained in Ex. 1 affords conclusive proof of the

prosecution case that p.w. 1 actually on the respective dates suspected adulteration of the mustard oil stored for sale in the shop of each of the

Respondents, purchased small quantities which, in the presence of the vendor, be put into three different bottles, packed and sealed them and sent

one bottle on each occasion to the public analyst for his report. According to him, u/s 16 (1)(80) a person storing, selling or distributing any article

of food in contravention of the provisions of the Act or the Rules is punishable. Section 7 prohibits manufacture for sale, storage, selling or

distribution adulterated food. The expression "adulterated" is defined in Section 2. Under Sub-clause (1) of Clause (1) of this section, if the quality

or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits or

variability, it will be deemed to be adulterated. Rule 5 of the Rules framed under the Act provides the definition and standards of quality, and so far

as mustard 011 is concerned, paragraph A. 17"06 of the Appendix gives the specifications of the standard. The public analyst"s report which is

Ex. 6 in the case against which Cr. A. No. 126/66 has been preferred and Ex. 5 in the case against which Cr. A. No. 127/66 has been preferred,

prove that the samples which were sent in each case to the public analyst were not consistent with the specifications given in the Appendix.

Therefore, it is argued that the offence in each case is proved against the Respondents.

5. For Respondents, on the other hand the appeals have been resisted on various grounds. It is contended that an appeal against acquittal by the

Municipality is not maintainable as the complaint petitions in these cases have not been filed by the Executive officer of the Municipality. Secondly,

it is argued that apart from proving the seizure of the mustard oil from the respective shops, it is incumbent on the prosecution to prove that the

seized material was an article of food; that the accused was storing or selling the same and that it is adulterated. In these cases, where is no positive

evidence or proof that the mustard oil is an article of food. Thirdly, it is contended that there is no proof that the mustard oil seized from the

respective shops on different dates was adulterated at the time it was seized. In this connection, it has been emphasized that when there is time-lag

of considerable duration between the date of seizure and the date of alleged examination by the public analyst, it cannot be said that adulteration

was present at the time of seizure as the possibility of subsequent deterioration cannot be excluded. Lastly, it is pointed out that Rules 14,15 and

16 of the Rules framed under the Act prescribe the manner of sealing, fastening and despatching of samples to the public analyst. It is contended

that in these two cases, there is absolutely no evidence that the requirements of these rules were complied with, and as such, even assuming that the

sample oil was taken from the shops of the respective Respondents, the necessary percolations as required under the rules not having been taken,

it cannot be said that the samples reached the analyst in the same condition in which they were seized.

6. As already stated, to successfully sustain a prosecution for an offence u/s 16(1)(a) of the Prevention of Food Adulteration Act, the prosecution

must prove that on the day in question the accused was selling or storing the articles that the same is an article of food and that it was adulterated.

If the prosecution fails to prove any of these elements, the accused cannot be convicted. In the two cases under consideration, there is positive

evidence of p.w 1 that he purchased mustard oil from the respective shops, put it in sample bottles and sealed them. No doubt the evidence of

p.ws. 2 and 3 is discrepant with the testimony of p.w. 1 in some material particulars. They make contradictory statements about this presence at

the time of actual seizure and putting the same in bottles. Apart from this evidence, Ex. 1 which contains the signature of respective Respondents in

each case affords ample corroboration that mustard oil was seized from this shops by p.w. 1. This provides sufficient proof that mustard oil was

purchased by p.w. 1 from the respective shops on the dates in question. It is difficult to agree with the reasoning of the learned Magistrate that

because p.ws. 2 and 3 have made Borne contradictory statements this fact is to be disbelieved, particularly when Respondents do not purport to

offer any convincing explanation regarding Ex. 1.

7. The next point is whether mustard oil is an article of food. In my opinion, the contention of Respondents that prosecution has failed to prove

mustard oil to be an article of food has no force. The definition of the expression "food" in Section 2(v)(a) includes any article which ordinarily

enters into, or is used in composition or preparation of human food.

As was held in the decision reported in State v. Uma Charan Ram (1966) 32 C.L.T. 18 the user of the article for some other purposes is

immaterial The this element to be proved is that the mustard oil was adulterated. It is contended for Respondents that when from the records, it is

apparent that there was a time-lag between the date of seizure and the date of examination by the public analyst it will not be safe to bold that at

the time of seizure the samples sent in both the cases contained the components as found in the public analyst's report. It is argued that due to

delay in examination, it is possible for certain changes to take place in the components of the article. Some decisions relating to milk and the effect

of delay in examination were cited, but they are not relevant to the present issue. The deterioration which may result in milk by lapse of time may

not occur in the case of oil This aspect, however, need not be further pursued, because on another material ground the prosecution must fail.

8. It is not denied that in the circumstances the report of the public analyst only can afford proof that the mustard oil seized was adulterated, i.e.,

did not agree with the standards specified in the Appendix. As already stated, in one case, the seizure of mustard oil was on 6-0-1964 and in the

other on 17-9-1964, mustard oil seized on 6-6-1964 : was sent to the public analyst on 1-7-1934 after detention of more than 20 days and it was

examined by the analyst on 1-9-1964. The mustard oil seized on 17-9-1964 was, no doubt, sent on 18-9-1964, but was examined by the analyst

on 7-12-1964. Not only inordinate delay was committed in examining the samples, but as appears from the records, Respondents had no notice of

the reports before the defence was closed. The records show that in the case of accused Respondent Balaram Las, his statement was recorded on

16-4-1964 and the report of the analyst purports to have been admitted in evidence on 19-4-1964. The result is that this is a piece of evidence

which was not available to Respondent to explain in his examination u/s 342, Code of Criminal Procedure or challenge it otherwise. The Act itself

contains a provision in Section 13 enabling either the accused or the complainant to send the sample left with him to the Director of the Central

Food Laboratory and obtain his report. When the reports of the public analyst were not brought to the notice of accused, Respondent in each

case had practically no opportunity to challenge the same or offer any explanation. On such evidence, therefore, it will not be fails or equitable to

act and give a finding that the article seized was adulterated, as opined by the public analyst. Learned counsel for Appellant does not dispute that

this piece of evidence cannot be utilized in evidence against Respondent in each case. If this item of evidence is eliminated, proof that the mustard

oil was adulterated is lacking. Therefore, apart from other things on this ground itself, the prosecution must fail having come to this conclusion, I do

not consider it necessary to go into the other points argued at length before me. Hence, I do not find any merit in these appeals.

9. In the result, the appeals fail and are dismissed.