
(1961) 10 MAD CK 0027

Madras High Court

Case No: None

In Re: P. Mohammud
Sheriff Saheb

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 10, 1961

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16(1), 7

Citation: AIR 1962 Mad 342 : (1962) CriLJ 380

Hon'ble Judges: Veeraswami, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Veeraswami, J.

The petitioner was convicted u/s 16(1) read with Section 7 of the Prevention of Food Adulteration Act, 1954, it is in evidence that on 12-8-1959, at about 9-10 a.m. the food inspector of the Ayyampet Panchayat Board visited the business premises of the petitioner where he was vending gingelly oil, purchased a quantity of the oil and when it was sent for chemical analysis, it was found to contain 6.8 per cent of oleic acid. These facts are not disputed.

2. But the learned Counsel for the petitioner contends that although the sample of the oil was taken on 12-8-1959, actually it was analysed by the chemical analyst only On 25-8-1959, and the certificate was issued only on 13-2-1960, and that the presence of oleic acid in the gingelly oil in excess of the permitted limit might possibly have been due to the delay of H days in analysing the sample. That there was a delay of 11 days is undoubted. The only question is whether the excess of oleic acid over the allowed percentage of 3 per cent was due to causes beyond the control of the petitioner. In support of his argument learned Counsel draw my attention to a judgment of my learned brother Kunhammed Kutti, J., in CrI. R. C. 273 of 1960 (Mad) in which he took the view

that the delay of 11 days in that case between, the seizure of the sample and the chemical analysis gave rise to a doubt whether the offending excess percentage of fat in the oil might not be due to causes not attributable to the accused in that case. The learned judge gave the benefit of that doubt to the accused. But a perusal of his judgment shows that there was evidence in that case that the increase in the percentage of free fatty acid could be due to natural cause"s. There is no such evidence in the present case.

3. learned Counsel for the petitioner, nevertheless, contends that it is a well known scientific fact which Courts can take judicial notice of that when gingelly oil is exposed to the sun or atmospheric conditions, the fatty content in the oil is by that reason likely to in-crease. To substantiate this, reference has been made to two authorities. One of them is "Industrial and manufacturing chemistry" by Martin and Cooke, 7th Edn, At page 62 of this book the authors note;

The acid value This is a measure of the quantity of potassium hydroxide required to neutralise the free fatty acids in an oil. Gradual decomposition of the glycerides into their components glycerol and free fatty acids takes place when a fat is exposed to tine action of light and air, with the result that the acid value steadily rises. This value may therefore be a test of the freshness of an oil. Old and rancid fats sometimes have very high acid values.

At page 54 there is a table which is said to have been taken from A. C. Wright"s analysis of oil which summarises the chief chemical and physical properties of certain oils. One of the oils dealt with sesame oil, which I am told by the learned Counsel, would correspond to gingelly oil. Column 1 of the table shows 2.8 per cent to be acid value. A note at the bottom of this table shows that the acid values frequently vary greatly and in most cases the acid value is not to be regarded as the superior limit.

4. in McGraw-Hill Encyclopaedia of Science and technology at page 185 and under the head "spoilage factors" it is stated.

Oxidation and hydrolysis are spoilage factors in the production and storage of edible fats and oils ... Rancidity Is an advanced state of Oxidative deterioration. Oxygen, from the air first reacts with the unsaturated fatty acids at or adjacent to the double bonds to form hydroperoxides which then decompose to yield aldehydes having the pungent odour and flavour of rancid fats. Oxidation is catalyzed by light and metals such as copper or iron and in accelerated by heat

Though the passages extracted above may not be conclusive as to the precise effect of exposure of the oil for any particular period, It is generally clear from them that gingelly oil, like perhaps any other oil, is subject to deterioration in the process of which the fat content is likely to increase. At any rate, it cannot be asserted in the absence of evidence that the excess in this case, which in itself is not appreciable, over the 3 per cent fatty "content permissible under the rules framed under the Act might no have been due to the

delay in analysing the sample. It is for the prosecution to establish their case beyond doubt and if there is a delay of this kind in the analysis, it is for them to satisfy the Court that it had no relation to the incriminating excess percentage of the fatty content in the oil.

5. The petitioner is entitled to the benefit of the said doubt. The conviction and sentence are set aside and he is acquitted. The fine, if any, paid by him, will be refunded.