

(1987) 01 KL CK 0007

High Court Of Kerala

Case No: Criminal A. No. 407 of 1984

Food Inspector, Kodungallur
Municipality

APPELLANT

Vs

Vidhyadharan and Others

RESPONDENT

Date of Decision: Jan. 30, 1987

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 13, 13(1), 13(2), 13(3), 16(1)
- Prevention of Food Adulteration Rules, 1955 - Rule 5, 7

Hon'ble Judges: Shamsuddin, J

Bench: Single Bench

Advocate: V. Ramachandran, for the Appellant; T.M. Chandran, for the Respondent

Final Decision: Dismissed

Judgement

Shamsuddin, J.

The Food Inspector, Kodungallur Municipality, the complainant in S.T. 113 of 1983 on the file of the Judicial Magistrate of the I Class, Kodungallur, has filed this appeal against the order of acquittal of Respondents of the offence u/s 2(ia) and 7(i) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act 37 of 1954 and Rule A. 05.08.01 of Appendix B of Rule 5 of the Food Adulteration Rules, 1955.

2. The prosecution case is as follows: On 22nd January 1983 at about 9.30 a.m. the Appellant visited the shop of the A-1 which was conducted in Door No. 13/294 of the Kodungallur Municipality. A-2 was the salesman. He purchased 500 grams of coriander powder for the purpose of analysis. After complying with the formalities, the sample was sent for analysis. Ext. P-2 report of the Public Analyst disclosed that the sample did not conform to the standard prescribed by the Act and the Rules and therefore the stock kept for sale was adulterated.

3. On the basis of the report a complaint was lodged by P.W. 1. The matter was intimated to the Local Health Authority. The Local Health Authority sent a copy of

the report and notice to the accused. Exts. P-2 and P-3 are respectively the postal acknowledgments for having received the report and notice. P-5 mahazar was prepared at the time of taking sample which was attested by P.W. 2 the nearby shop owner.

4. On the accused pleading not guilty, the prosecution examined P.Ws. 1 to 3 and also marked Exts. P-1 to P-13 and the material objects packets 5 in number. In their statement u/s 313, the accused denied the incriminating circumstances appearing against them in the prosecution case.

5. P.W. 1 is the complainant, P.W. 2 is the nearby shop-owner and P.W. 3 is peon of P.W. 1 who accompanied him to the shop. P.W. 2 however did not support the prosecution case and turned hostile. Ext. P-8 application and P-9 copy of the licence clearly indicate that A-1 was the owner of the shop and the lower Court has correctly found that A-1 is the owner.

6. However, the lower Court acquitted the accused on the ground that there was no proper analysis. P-10 would show that he conducted microscopic examination. He had not stated in Ext. P-10 report that he has done any test other than microscopical test and the indication from Ext. P-10 is that he conducted only microscopic test. The lower Court found that in the absence of chemical test it cannot be held whether or not the sample conformed to the prescribed standard. In coming to the conclusion, the lower Court relied on the ruling of the Supreme Court in the decision in [Jagdish Chandra Vs. State of Uttar Pradesh](#). In that case the lower Court acquitted the accused on the ground that the Public Analyst did not perform the chemical test for analysing the sample and the only test conducted was the microscopic test. The items concerned in that case were A. 05.06 and A. 05.061 of the Prevention of Food Adulteration Rules, 1955. Their Lordships of the Supreme Court, after noticing the standard prescribed for these items held that various ingredients such as ash, insoluble in HC. 1, or volatile oil or moisture in the sample in question could not be ascertained with any degree of accuracy by mere ocular examination under a microscope and chemical test including treatment of the ash in the sample with hydrochloric acid would be a must and that since the sample was not subjected to any chemical test or analytical process, the opinion of Public Analyst was not entitled to any weight.

7. The standard prescribed for coriander powder is as follows:

A. 05.08.01 Coriander (Dhania) powder means the powder obtained by grinding clean dried coriander fruits of *Coriandrum Sativum* L. It shall be in the form of a rough or fine powder. It shall conform to the following standards.

Moisture ... Not more than 12.0 per cent by weight.

Total ash ... Not more than 7.0 percent by weight.

Ash insoluble in

dilute HC. 1 ... Not more than 1.5 per cent by weight.

The Supreme Court in the above decision has pointed out that the percentage of the various ingredients such as ash, insoluble in HC. 1 or moisture in the sample cannot be ascertained with any degree of accuracy by mere ocular examination under a microscope. The report clearly indicates that the only test conducted by the Public Analyst in this case is microscopic test.

8. The learned Counsel for the Appellant brought to my notice a Full Bench Decision of this Court in *State of Kerala v. Mammu Musaliar* 1974 KLT 792 and in particular paragraph 6 of the judgment where the following passage occurs:

The Act is a self-contained one and what is required to be stated in an analyst's report is as laid down in Section 13, Rule 7 and Form III. When those conditions are satisfied ordinarily it is not necessary for the Court to go behind the result declared by the analyst, enquiring into the correctness of the technical process involved or the methods adopted during the course of the analysis by the Analyst. Satisfaction of the Court by such searching enquiry as a condition precedent to the acceptance of the report of the Public Analyst as legal evidence does not appear to be warranted by any provision of law. The report of the Analyst by no means is conclusive. Wherever the accused entertains a doubt regarding the correctness about the report of the Analyst, it is open to him by virtue of the provisions contained in Sub-section (2) of Section 13 of the Act, to get the sample analysed by the Director of Central Food Laboratory, whose certificate by virtue of the provisions contained in Sub-section (3) shall supersede the report given by the Public Analyst under Sub-section (1) of Section 13. The decision as to whether the sample in question is adulterated or not is one to be taken by the Court on the materials placed before it. The report of the Analyst is one of the pieces of evidence that comes to the assistance of the Court in determining whether the sample is adulterated or not. If there is room for any doubt in the mind of the Court about the correctness of the result declared in the report delivered by the Analyst or the certificate issued by the Director the Analyst or the Director, as the case may be, could be summoned and examined to elicit clarifications. Where the reliability of the result declared in Analyst's report of the Director's certificate is in doubt, the Court has a right and duty to do this, and the short cut of acquittal of the accused rejecting the Analyst's report for want of what is purported to be the necessary particulars, without resorting to such course, certainly is not the safe route to be pursued by it.

9. The facts of that case are not applicable to the present case. Here P-10 report clearly shows that the only examination conducted by the Public Analyst is the microscopic test which the Supreme Court found in a situation as in this case, is inadequate to come to the conclusion whether sample taken conforms to the standard prescribed.

10. The learned Counsel for the Appellant submitted that the matter may be sent back to the lower Court for ascertaining whether the Public Analyst conducted any other test. Since the report itself discloses that the result was obtained by microscopical examination. I do not think that any purpose would be served by remanding the matter to the lower Court.

In the result the criminal appeal fails and is dismissed.