

(1979) 06 KL CK 0008

High Court Of Kerala

Case No: None

Food Inspector of Cannanore
Municipality

APPELLANT

Vs

C. Mohan

RESPONDENT

Date of Decision: June 5, 1979

Acts Referred:

- Evidence Act, 1872 - Section 114
- Prevention of Food Adulteration Act, 1954 - Section 16, 7

Citation: (1980) CriLJ 521 : (1979) 2 ILR (Ker) 376

Hon'ble Judges: S.K. Kader, J; P. Narayana Pillai, J

Bench: Division Bench

Judgement

P. Narayana Pillai, J.

Appeal from acquittal.

2. Prosecution was under the provisions of the Prevention of Food Adulteration Act for sale of adulterated buffalo-milk. There were three accused persons in the case. The trial court acquitted the second and third accused but convicted the first accused u/s 16(1)(a)(i) read with Section 7(1) of the Act and sentenced him to simple imprisonment for six months and a fine of Rs. 1000/-. In the appeal filed by the first accused the lower appellate court acquitted him. This appeal is from that acquittal.

3. Both the courts below found that the first accused sold buffalo-milk to P. W. 1, the Food Inspector, .The acquittal of the first accused by the lower appellate court would appear to be on the sole ground that there was no satisfactory evidence to show that Rule 18 of the Prevention of Food Adulteration Rules, which provides (i) that copy of memorandum and specimen impression of the seal should be separately sent to the Public Analyst and (ii) that they should be sent by registered post or delivered to him or any person authorised by him, had been adhered to in the present case.

4. The lower appellate court relied upon omission on the part of P. W. 1 to produce receipts to show sending of copy of the memorandum and specimen impression of seal by registered post, to find against the prosecution on the question of compliance with the provisions of Rule 18. Failure to produce those receipts is not fatal to the prosecution case.

5. Ext. P-6 is the report of the Public Analyst. The facts mentioned therein show that copy of the memorandum and specimen impression of the seal were actually sent to the Public Analyst and that separately.

6. Under Rule 7 the Public Analyst has certain duties to discharge. On receipt of the package containing sample for analysis he has to compare seals on the container and outer cover with specimen impression received separately and prepare a report in Form III. In the present case after discharging those duties he mentioned in Ext. P-6 that he received the sample properly sealed and fastened, that the seal on the container tallied with the specimen impression of the seal and that it was separately that the specimen impression of the seal had been sent. Ext. P-5 is the memorandum in Form No. 7. That also shows that copy of the memorandum and specimen impression of the seal were actually sent separately by post to the Public Analyst. The number given by P. W. 1 to the sample is 99. That is clear from the mahazar, Ext P-4, the acknowledgment made by the first accused, Ext. P-7, for receipt of the sample-bottle and Ext. P-5. Ext. P-6 shows that the sample received bore the same number, that is No. 99. These items of evidence unmistakably show that all the provisions in Rule 18 had really been complied with in the instant case. The lower appellate court was in such circumstances not right in acquitting the first accused "on the ground that the prosecution did not produce the acknowledgment-receipt for having sent the memorandum and specimen impression of the seal by registered post.

7. Counsel appearing for the respondent-first accused, relied upon the single Judge's decision in Food Inspector v. Ambuhunji 1978 KLT 523 for the position that on the basis of the statement in the report of the Public Analyst alone it was not, safe to hold that the provisions of rule 18 had been complied with. In cases of this kind besides the Public Analyst's report there would usually be among the records proved mahazar, acknowledgment-receipt and memorandum in Form No. 7 like Exts. P-4, P-7 and P-5 in the instant case which would, if at all any corroboration is required, corroborate some of the relevant facts given in the Public Analyst's report. Further the Public Analyst's report being a public record of an official act presumption regarding its regularity can be drawn u/s 114 of the Evidence Act. It was held so in Muthukumaran v. State of Kerala 1968 K LT 909, a Division Bench decision of this Court, and that decision shows that the report can safely be acted upon. That decision was upheld by the Supreme Court in appeal in Kassim Kuriju Pookunju v. Ramakrishna Pillai 1969 K LT 50. In fact there are several other decisions of this Court also bearing on this matter. They are State of Kerala v. A. N.

Ramakrishnan Nair 1965 K LT 402 , [Food Inspector, Cannanore Municipality, Cannanore Vs. Pandavalappil Kannan,](#) , Food Inspector, Mattannur Panchayat v. Govindan 1978 FAJ 438 (Ker) and State of Kerala v. Mammu Musaliar 1974 K LT 792 at pp. 80,2 and 803 (FB) and of them the last mentioned is a Full Bench decision. None of these decisions was brought to the notice of the learned Judge who disposed of Food Inspector v. Ambuhunji. In a subsequent decision of the Supreme Court in [Shambhu Dayal Vs. State of Uttar Pradesh,](#) it has been specifically held that statements in the Public Analyst's report which have not been challenged constitute clear evidence of "the facts mentioned therein and that decision also, shows that such statements can safely be acted upon, Food Inspector v. Ambuhunji is overruled as we do not consider that decision correct.

It is clear from the evidence adduced that the provisions of Rule 18 of the Prevention of Food Adulteration Act have been complied with in the present case. As the ground given by the lower appellate court for acquitting the first accused is unsustainable the judgment of acquittal is set aside and this appeal is disposed of by remitting the case to the lower appellate court for fresh disposal in the light of the observations made above.