Food Inspector, Palghat Municipality Vs P. Sathish Kumar and Another

Court: High Court Of Kerala

Date of Decision: July 22, 1985

Acts Referred: Evidence Act, 1872 â€" Section 106, 114(e)
Penal Code, 1860 (IPC) â€" Section 79
Prevention of Food Adulteration Act, 1954 â€" Section 14, 16, 16(1)(a)(i), 16(1)(a)(i), 17(1)

Citation: (1985) KLJ 662

Hon'ble Judges: S. Padmanabhan, J

Bench: Single Bench

Advocate: K.J. Joseph, for the Appellant; S. Vijaya Kumar, for the Respondent

Judgement

S. Padmanabhan, J.
The appellant (Food Inspector, Palghat Municipality) prosecuted respondents 1 and 2 in S. T. Case No. 109 of

1980 before the Chief Judicial Magistrate, Palghat, for an offence punishable u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 for

the alleged contravention of Section 7(1) thereof. The sample involved is arrow root powder. Sale to the Food Inspector was on 16-10-1980 at

10 a.m. by the 2nd respondent who was the Salesman - cum - Cashier. The purchase was from Deepa Medicals, Palghat owned by the first

respondent After duly sampling, one sample was sent to the Public Analyst and Ext. P18 report was obtained which showed that what was sold as

arrow root powder consisted wholly of corn-starch and as such adulterated because under clause (a) of sub-section (ia) of Section 2 of the

Prevention of Food Adulteration Act an article is adulterated if what is sold by the vendor is not of the nature, substance or quality demanded by

the purchaser and is to his prejudice or is not of the nature, substance or quality which it purports or is represented to be. The Magistrate acquitted

both the respondents on the sole ground that they have established the defence u/s 19(2) of the Prevention of Food Adulteration Act. In the light of

the arguments advanced before me by either side the two questions arising for consideration are; (1) whether the appellant violated the provisions

of Rule 17 (a) of the Prevention of Food Adulteration Rules; and (2) whether the respondents established the defence available u/s 19(2) of the

Act. Rule 17 (a) reads thus:

The sealed container of one part of the sample for analysis and a memorandum in from VII shall be sent in a sealed packet to the public analyst

immediately but not later than the succeeding working day by any suitable means.

Admittedly first respondent is the Proprietor and 2nd respondent is the Cashier-cum-Salesman. So also there is no dispute that the article was sold

by the 2nd respondent to the Food Inspector and the formalities of sampling were observed. The only complaint is that the Food Inspector, when

he was examined as P. W. 1, has not specifically spoken that one part of the sample for analysis together with memorandum in Form No. VIT has

been sent in a sealed packet to the public analyst. There is no complaint that the sample was sent after the next working day. Two unreported

Single Bench decisions of this Court were relied on by the respondents to show that Rule 17 (a) and (b) are mandatory. In Crl. R. P. No. 483 of

1981 it was held that rule 17 (a) is mandatory and its violation will result in acquittal. In Crl. R. P. No. 272 of 1981 rule 17 (b) was held to be

mandatory.

2. If so the first question that has to be considered is whether rule 17 (a) has been violated as contended. The only objection is that P. W. 1 has

not spoken in detail regarding the compliance of the formalities in connection with observance of rule 17 (a). It will be always advisable for the

Food Inspector to mention the details in the mahazar as well as in the box. But that does not necessarily mean that absence of a detailed narration

either in the mahazar or in the box by itself must always result in acquittal in a given case even if the evidence of the Food Inspector is only in a

general way in relation to the observance of the formalities, the court can go into the entire evidence and see whether the mandatory formalities are

sufficiently complied with. Cross examination is intended to challenge the evidence of a witness and expose its falsity or hollowness. When that

opportunity is not utilised to challenge the evidence on a particular point, the same has to be taken as not disputed. When the evidence of the Food

Inspector captains a general statement that the formalities under rule 17 (a) has been complied with and when that statement is practically

corroborated by the documents proved by him. omission of the accused to challenge the veracity of those documents and that part of the evidence

of the Food Inspector must lead to the only conclusion that the evidence in that respect is admitted, Any doubt or dispute entertained by the

accused regarding observance of the formalities could have been put to the witnesses so that they could have given further clarifications, if any.

necessary. In this case silence was not only during cross-examination of P. Ws. 1 and 2 but also during final arguments before the trial court. The

contention regarding non-observance of rule 17 fa) came for the first time during the fag end of arguments before this court when the respondent

realised that their defence u/s 19 is not going to stand. By such a contention appearing like a bolt from the blue for the first time at the time of

arguments before the appellate court the prosecution cannot be allowed to be taken by surprise.

3. In Dalchand v. Municipal Corporation. Bhopal (ATR 1983 SC 303) the Supreme Court had occasion to consider what are the circumstances

under which a particular provision could be held to be mandatory. Here there is no contention that in sending the sample to the public analyst the

time limit in rule 17(a) was not observed. I will be dealing with the observance of the other formalities under rule 17 (a) later. In the peculiar

circumstances of this case even non-observance of the minute formalities under rule 17 (a) cannot be taken as fatal. What is sold as arrow-root

powder is corn-starch in full The public analyst received the sample with seals in tact and the sample was found fit for analysis also. The samples

themselves were in scaled packets and the result of analysis was that the sample was wholly corn-starch and not arrow-root powder. Even by a

slight defect in the sealed container or sealed packet there is no question of any prejudice.

4. Sometimes it may not be possible for the Food Inspector to give a detailed description of observance of the various formalities required to be

complied with under different provisions of the Act and the Rules. If in such cases technical contentions are allowed to prevail that will definitely

result in miscarriage of justice. The effect of not putting questions in relation to the specific contentions to the Public Analyst while he was in the box

has been considered by the Supreme Court of India in the decision in Amathabhai Arjanbbai v. C D. Patel & anr, reported in 1982 F. A J. 321. In

that case special leave was rejected on the grounds that no question based on the new contention was put to the Food Inspector or Public Analyst

when they were in the box nor raised before the courts below. In this case also when the Food Inspector was in the box he was not asked even a

single question regarding non-compliance of the formalities of rule 17 (a) of the Prevention of Food Adulteration Rules and no such contention was

taken before the trial court.

5. The deposition of the Food Inspector or the mahazar prepared by him on the spot are not the only pieces of evidence that may be available to

the court for being considered in order to decide whether the various formalities were properly complied with or not. Even if the Food Inspector

has given evidence only in a general way, atleast when his evidence is supported by other items of oral as well as documentary evidence and

especially when the evidence of the Food Inspector is not challenged in cross-examination, the court may be justified in drawing the presumption

u/s 114(e) of the Evidence Act that official acts have been regularly performed. An accused who has chosen to sleep over his rights when the

Food Inspector or the other witnesses were in the box cannot be allowed to raise such new contention during the appellate or revisional stage.

6. In this case admittedly the second respondent was present at the time of purchase and sampling. It was he who sold the article to the Food

Inspector. Ext. P3 is the notice that was accepted by him. Ext. P4 is the bill given by him for having received the price. P. W. 1 said that he

packed the samples into three and observed the formalities regarding sampling. He has spoken to the preparation of Ext. P5 mahazar, affixing of

paper slip as well as sealing of the samples. He said that one of the samples was forwarded to the Public Analyst with Form No. VII memorandum

and specimen impression of the seal in a sealed packet. Postal receipt for the same has been produced and proved by him as Ext. P6 and the

acknowledgement is Ext. P7. Copy of Form VII memorandum is Ext. P8 and Copy of the covering letter is Ext. P9. So also the report received

from the Public Analyst was proved by him as Ext. P18. What Ext. P18 says'' is that the sample was received in good condition fit for analysis The

Public Analyst has also stated in Ext. P18 that seals fixed on the container and the outer cover of the sample tallied with the specimen impression of

the seal separately sent to the Food Inspector. Compliance of Rule 17 (b) was also spoken to by him and the relevant records were also

produced. Compliance of Rule 17(b) is not disputed. The documents described above especially the report of the Public Analyst, bear ample

corroboration to the evidence of Food Inspector. In this case there is, in addition, the evidence of an independent witness Judgment of the trial

court shows that at the time of arguments no contention other than satisfaction of the conditions prescribed in Section 19(2) was taken before him.

The present contention regarding non-observance of rule 17 fa) is evidently an after-thought and it is mala fide also. Therefore, that contention has

only to be rejected.

7. Then the only other question to be considered is whether the respondents were able to establish the defence u/s 19(2) of the Prevention of Food

Adulteration Act. The defence lawyer is of the view that offences under the Prevention of Food Adulteration Act are no exceptions to the general

concept of criminal jurisprudence that mens rea is an essential element to constitute the crime. In his opinion the Act has only relieved the

prosecution from the burden of proving mens rea, created a presumption regarding existence of mens rea and placed the burden on the accused to

prove that he acted without mens rea in order to get an acquittal, What he argued before me was that as soon as the accused succeeds in

establishing before court that he was dealing in the adulterated item of food without knowing or having reason to believe that it is adulterated, his

burden is discharged and the only course open to the court then is to acquit him unconditionally even if the evidence established beyond doubt that

what he was dealing in was adulterated item of Food. He went a step further and said that even in the discharge of the burden his onus is not so

tough or hard as that of the prosecution and that he can even discharge his burden by preponderance of probabilities basing on facts and

circumstances brought out by the prosecution evidence without adducing any evidence of his own. So also I was told further by the defence lawyer

that in this connection the accused has two separate and distinct defences independent of each other, one u/s 19(1) and the other Section 19(2)

which read thus:-

19(1). It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely

that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for

analysis was not prejudiced by the Sale.

(2). A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he

proves--

(a) that he purchased the article of food--

(i) in a case where a licence is prescribed for the sale thereof, from a duly licenced manufacturer, distributor or dealer;

(ii)in any other case from any manufacturer, distributor or dealer, with a written warranty in the prescribed from; and

(i(b) that the article of food while in his possession was properly'' stored and that he sold it in the same state as he purchased it.

It was further argued by the counsel that Section 79 of the Indian Penal Code adopted a universal rule which is applicable even in food adulteration

offences and unless that principle is given due weight in food adulteration offences also the result will be miscarriage of justice. Section 79 of the

Indian Penal Code reads thus:

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of

law in good faith believes himself to be justified by law, in doing it.

8. Therefore, the argument of the advocate was that if by preponderance of probability the accused in a food adulteration offence is able to

establish that by mistake of fact and in good faith he believed that the article was not adulterated and that he was justified in law. He will have to be

totally exonerated from liability. I was told about Section 16 of the Prevention of Food Adulteration Act which makes the manufacturer also liable.

My attention was further drawn to Section 14 of the Prevention of Food Adulteration Act and Rule 12-A of the Rules which make it compulsory

for distributors, manufacturers or dealers to effect sale only with a warranty. So also he reminded me of the duty of the courts u/s 20A to implead

the manufacturer in appropriate cases.

9. But unfortunately I am not in a position to agree with the above said contentions raised by the counsel for the respondents. In my opinion mens

rea is not an essential factor in offences under the Prevention of Food Adulteration Act. What is created u/s 7 of the Act is an absolute liability

which is free from the element of mens rea. The result of Section 19(1) of the Act is that a person who claims absence of mens rea must not only

allege the same but also prove the facts and circumstances which would entitle him to establish effectively a plea of mistake of fact by way of an

exception to criminal liability. The only circumstances under which such a plea could succeed are those given u/s 19(2) and the two provisos

thereunder. I do not think that there is any force in the contention that Section 19(1) of the Act afford any defence. That is the sub section which

makes it clear that mens rea is not at all required. In my understanding that sub section is not at all intended to create a defence in favour of the

accused.

10. In a prosecution under the provisions of the Prevention of Food Adulteration Act ignorance of the accused regarding the nature, substance or

quality of the article is undisputedly not a defence at all. The Act is intended to protect the public from using adulterated food in order to avoid

danger to life and health, which is the duty of the State to protect. It is with this purpose in view that the provisions were enacted Even knowledge

of the purchaser that the food is adulterated will not exonerate the dealer. Even a defence that the item was exposed for sale as if it is adulterated

and not intended for human consumption will not be a defence available to an accused in a food adulteration case. The contention that the accused

was not responsible for the alleged adulteration and that he sold the article in the form in which he received it from his vendor is also expressly

excluded. Absence of guilty knowledge is not a defence to the prosecution under the Act. The only provision to the contrary, available to the

accused, so far as the case in hand is concerned is Section 19(2) and nothing else Of course in relation to a case involving prosecution of a

company there may be the provisions contained in Section 17(4) and the proviso to Section 17(1). We are not concerned with those provisions.

11. The principle underlying Section 19(2) is that when goods are found to be covered by warranty, any offence committed under the provisions of

the Act may attach not to the person from whom the sample was taken, but to the actual person who may be deemed to have been responsible for

the adulteration. Mistake of fact by way of exception to criminal liability is available only by alleging and proving effectively the factors required u/s

19(2). Otherwise than u/s 19(2) there is no question of proving absence of mens rea. belief regarding justification or good faith. No plea of mistake

of fact or mistake of law independent of Section 19(2) will be available to an accused in a food adulteration offence. Section 19(1) is not an

independent provision creating any defence in favour of the accused. It only says that a mere allegation that the vendor was ignorant of the nature,

substance or quality of the food is not sufficient According to the learned counsel for the respondents the words ""allege merely"" indicates that a little

bit of something more than a mere allegation, amounting to proof by preponderance of probability of absence of mens rea. by itself, will be

sufficient to escape liability. But in my opinion ""allege merely"" occurring u/s 19(1) cannot be interpreted to mean something more than a mere

allegation. What that ''something more is provided in Section 19(2) which operates as an exception to Section 19(1), The accused will have to

prove that he purchased the articles of food from a duly licensed manufacturer or dealer in a case where a licence is prescribed for the sale thereof

and in any other case from any manufacturer, distributor or dealer with a written warranty in the prescribed form, provided the article while in his

possession. was properly stored and sold in the same condition. Under Rule 50 of the Prevention of Food Adulteration Rules licence is required

for dealing in this particular item of food. Therefore, allegation and proof of purchase from a duly licenced manufacturer or dealer is a must so far

as this case is concerned. The offences under the Prevention of Food Adulteration Act come within the limit of exceptional classes of offences

which can be held to be committed without a guilty mind. If good faith on the basis of preponderance of probability is allowed to prevail, any

dealer could escape liability by manipulating a licence, bill or warranty without disclosing the actual manufacturer, distributor or dealer. It is to avoid

such a contingency and to plug such loopholes that specific provisions are made u/s 19(2). The provisions of Section 19(2) cannot be allowed to

be overcome by faint pleas of bona fides on the assumption that Section 19(1) allows such pleas. The only method of escaping liability is strict

proof of the ingredients of Section 19(2). In this case it must be proof of purchase from a duly licensed manufacturer. The provisions of the Act

also acts as an exception to the general rule that a master is not liable for the unauthorised acts of his servants. Otherwise every master will be able

to escape liability by employing servants and hiding himself behind the screen. That is also not permitted under the Act.

12. In this case the contention of the respondents is that they made the purchase from a duly licensed manufacturing concern at Cannanore called

Taju''s Products''''. At the same time it is curious to note that both the respondents have not cared to make any enquires as to whether such a

manufacturing concern is there at Cannannore, whether it is having a licence, or who is the actual manufaturer. If their version is accepted,

somebody claiming to be the authorised representative of ''''Taju''s Products'''' came to them and they purchased labelled and sealed packets of

arrowroot powder with license number and Ext. D1 bill with warranty. But they are not in a position to say who was the representative that came

to them for effecting sale. The mere fact that when the Food Inspector came the items of food were preserved in the selfsame sealed packets

containing label and licence number or that they were having in their possession a bill with warranty cannot be taken as proof of bona fides even if

bona fides has any place. Even if the alleged bona fides is true it cannot save them without strict proof of the provisions of Section.19(2) The

labelled and sealed packets with a bogus licence number and a bogus bill with a warranty are within the reach of any vendor to manipulate if he is

so interested. It is not the bona fides of the vendor in purchasing the articles that is the deciding factor. The bona-fides could be accepted by the

court as a deciding factor only if it is tested and proved by the touch stones of the provisions contained in Section 19(2)

13. In this case the Food Inspector issued notice to the manufacturer covered by the alleged business name, license number and warranty. But the

notice came back with the endorsement that the addressee is not known. Then he wrote to his counterpart at Cannanore and got Ext. P14 reply

that there is no such manufacturing concern there. The building number of the manufacturing concern was found to be that of a mosque at

Cannanore and P. W. 3 found that there was no such manufacturer at all. It is true that in Ext. P14 reply P. W. 3 stated that he will be making

further enquiries. In the deposition of P. W. 3 there seems to be a mistake. Instead of recording that there was no such manufacturer it is seen

mistakenly recorded that there is such a manufacturer. Evidently that is a mistaken recording by the court and this is clear from the judgment of the

trial court in which the evidence of P. W. 3 was construed as if he stared that there is no such manufacturer. P. W. 3 was not cross-examined also.

But still at the time of arguments the counsel for the respondents persistently wanted me to construe the evidence as if it is to the effect that there is

such a manufacturer. On the basis of Ext. 14 P. W. 1 issued Ext P15 notice to respondents and they gave Exts. P16 and P17 replies admitting that

it was only after getting Ext. P 15 that they realised that actually no such manufacturing concern is existing. But even after that the defence counsel

pursued his argument that the evidence of P. W. 3 is that there is such a manufacturing concern. In my opinion that persistent argument is really

uncharitable. It was still more uncharitable on his part to have argued that the Food Inspector exonerated the manufacturer at the stage of enquiry

by not impleading him as an accused in the case-I fail to understand how he found fault with the Food Inspector in this respect when his clients

themselves admitted in Exts. P 16 and Pl7 that they realised that no such manufacturing concern in existing.

14. Section 14 of the Prevention of Food Adulteration Act prohibits manufacturers, distributors and dealers from selling food articles to vendors

unless they give a warranty in writing in the prescribed form. Rule 12-A of the Rules also provided for it. These provisions will have to be read

along with Section 19(2). If so it is clear that in cases covered by Section 19(2) the legislature wanted strict proof of the following matters:

(1) that the purchase was from a duly licensed manufacturer, distributor or dealer where the licence is prescribed for the sale;

(2) in any other case from any manufacturer, distributor or dealer; and

(3) that too with a written warranty in the prescribed form.

It has further to be proved that the articles were properly stored and sold in the same condition. In Mangaldas Raghavji Ruparel and Another Vs.

The State of Maharashtra and Another, it was held:

Here S. 19(1) of the Act clearly deprives the vendor of the defence of merely alleging that he was ignorant of the nature, substance or quality of the

article of food sold by him and this places upon him the burden of showing that he had no mens rea to commit as offence under S. 16(1)(a) of the

Act.

That was a case in which there was an argument that it was necessary to establish that the accused had the mens rea to commit the offence. The

Supreme Court was dealing with this contention. Finally at the end of that paragraph it was found that:

We are, therefore unable to accept the contention of learned counsel.

In K. Krishnankutty Nair v. State (1982 F.A J. 177) it was observed:-

The Act creates an absolute liability. Unlike offences under the general law, the prosecution is not called upon to prove mans rea to establish crime.

In rare cases courts may receive evidence from the side of the accused to establish absence of mens rea.

15. The words ""merely alleging"" and proof of absence of mens rea appearing in the first decision and the sentence ""in rare cases courts may receive

evidence from the side of the accused to establish absence of mens rea"" appearing in the second decision were interpreted by the respondent''s

counsel to substantiate his earlier arguments that Section 19(1) affords an independent remedy and that burden of proof in regard to absence of

mens rea is cast on the accused. But in my opinion those two decisions do not mean what the learned counsel interprets. What the two decisions

mean is only the matters covered by Section 19(2) and nothing else.

16. This is further clear from the decision in Saharanpur Municipality v. Dhian Singh (AIR 1967 Allahabad 491) wherein it was observed:

A contention on behalf of the respondent accused was that the prosecution must prove that the vendor knew that the food sold was actually

adulterated. This contention is met effectively by the provisions of section 19(1) of the Act which was also pointed out by their Lordships of the

Supreme Court in Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another, . The Supreme Court has held there that

the result of section 19(1) of the Act is that a person who alleges absence of mens rea must not only allege but prove facts and circumstances

which would entitle him to establish effectively a plea of a mistake of fact by way of an exception to criminal liability. The circumstances in Which

such a plea will succeed are given in section 19(2) of the Act and the two provision to subsection (2) of section 19 of the Act. It appears that the

law has made ample provision for those labouring under bona fide mistakes of fact so as to escape criminal liability. The facts constituting bona fide

belief that the food exposed to sale was not adulterated certainly lie within the special knowledge of the person pleading the belief and its burden

would be upon him by reason of section 106 of the Evidence Act also.

17. The decision clearly shows that what section 19(1) as well as Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and

Another, and 128 and 1928 F. A. J. 177 contemplated by way of proof of absence of mens rea are only the ingredients of Section 19(2) and

nothing else. If the argument advanced by the defence counsel is accepted the provisions of Section 19(2) will become absolutely meaningless, of

by the words ""allege merely"" occurring in section 19(l) the legislature wanted to exonerate an accused by mere proof of absence of mens rea or

presence of bona tides by preponderance of probabilities without insisting on proof of factors incorporated in Section 19(2), then the provisions of

Section 19(2) would not at all have been incorporated. The facts to be established u/s 19(2) are matters within the exclusive knowledge of the

vendor and by reason of Section 106 of the Evidence Act also the burden is on him. The argument based on Section 20A that the Magistrate

failed in discharging his duty of impleading the manufacturer is also in my opinion uncharitable in view of the clinching evidence that the

manufacturer is a fictitious person. The court need take steps u/s 20A only when it is satisfied on the evidence that a manufacturer, distributor or

dealer was also concerned with the offence. If there was actually such a manufacturer, distributor or dealer the respondents could have furnished

their address and requested the court to implead them.

18. The reason why the proof of formalities required u/s 19(2) is strictly insisted has been considered in Delhi Municipality v.Tek Chand(A.I.R

1980 S. C. 360) by quoting an observation from Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra, which reads:

The reason why a warranty is required in both the cases contemplated in Section 19(2)(i) and (ii) is that if warranty were not to be insisted upon by

the statute and if a vendor would be permitted to have a defence merely by stating that the vendor purchased the goods from a licenced

manufacturer, distributor or dealer adulterated or misbranded articles would be marketed by manufacturers, distributors, dealers as well as

purchasers from them with impunity. That is why a written warranty is enjoined in both the cases in Section 19(2)(a)(i) and (ii). Sec. 19(2)(a) of the

Act will provide a defence where a vendor purchases articles of food from a licensed manufacturer, distributor or dealer with a written warranty in

the prescribed form. Again a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded

article of food if he proves that he purchased the article from any manufacturer, distributor or dealer with a written warranty in the prescribed form.

These salutary provisions are designed for the health of the nation. Therefore, a warranty is enjoined. No laxity should be permitted.

The above quoted passage was considered and the decision further held:

That, in our opinion, really concludes the matter. In the instant case, there is no proof that the samples were taken from tins bearing the

manufacturer''s label guaranteeing purity of goods, nor is there any such warranty in the invoice Ext. D. W 3/A. It is, however, urged that the tins

bore the imprint ""Good"" There is nothing to substantiate this fact, and even if it were so, it is of little consequence. The word "Good" on which

great emphasis is placed merely contains a description of the goods. At the most it amounts to ''puffing of goods''. The word "Good" is not a

warranty as to quality. The respondent is, therefore, not protected u/s 19(2) of the Prevention of Food Adulteration Act, 1954 read with Rule 12A

of the rules framed under the Act.

19. The same principle has been repeated in Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra, with the further observation that no

laxity should be permitted in such cases.

20. Here the respondents are having Ext. Dl bill with a warranty and the labelled packets with the licence number. There is no such licensee and no

such licence number. There is no such manufacturing concern also. The respondents themselves had to admit these facts when Ext. P15 was sent

to them. Still they want this court to say that they were acting bona fide and they were able to establish absence of mens rea. In fact it is not the

duty of the prosecution to prove the ingredients of Section 19(2). Those ingredients will have to be specifically alleged and proved, by the accused.

The warranty will have to be proved, if possible by examining the warrantor who issued the same. Here the respondents are not aware as to who

is the warrantor and they cannot even point out the representative who sold the articles to them. Good faith presupposes reasonable enquiries and

reasonable satisfaction on the basis of such enquiries. A person who did not make any enquiries regarding the manufacturer cannot even claim that

he was acting in good faith. The respondents are not entitled to the defence available u/s 19(2) of the Prevention of Food Adulteration Act.

21. What was sold as arrow-root powder was nothing other than cornstarch in full. The opinion given in Ext. P18 that the food item is adulterated

is not challenged. Respondents are therefore proved beyond doubt to have committed an offence punishable u/s 16(1)(a)(i) read with Section 7(1)

of the Prevention of Food Adulteration Act. The acquittal entered by the Magistrate will have to be set aside and I do so. Both the respondents

are found guilty of having committed an offence punishable u/s 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act.

When the counsel for the respondents was asked he could only say that the minimum sentence alone may be awarded. The appeal is allowed,

acquittal is set aside and respondents 1 and 2 are convicted for an offence punishable u/s 16(1)(a)(i) read with Section 7(1) of the Prevention of

Food Adulteration Act and each of them is sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1.000/-

each. In default of payment of fine each of them will undergo simple imprisonment for a further period of three months.

After the judgment was pronounced the counsel for the respondents prayed that the sentence as against respondents 1 and 2 may be suspended in

order to enable them to move for special leave before the Supreme Court. n an identical case in Crl. M.P.No. 891 of 1985 in Crl. A. No. 150 of

1982 a Division Bench of this Court has suspended the sentence and released the convicts on bail. Therefore, the request is allowed and the

sentence is suspended for a period of three months and respondents 1 and 2 are ordered to be released on bail on their executing bonds for Rs.

5,000/- each with two solvent sureties each for a like amount to the satisfaction of the Chief Judicial Magistrate. Palghat in order to enable them to

appear before the Supreme Court and get appropriate orders.

Issue carbon copy of this judgment to the parties on usual terms.