

(1962) 05 KL CK 0015

High Court Of Kerala

Case No: Criminal Appeal No. 391 of 1961

Food Inspector, Quilon

APPELLANT

Vs

Muhammed Haneef and Another

RESPONDENT

Date of Decision: May 28, 1962

Acts Referred:

- Constitution of India, 1950 - Article 20(3)
- Prevention of Food Adulteration Act, 1954 - Section 16(1)(a)(i), 2(1)

Citation: (1962) KLJ 1007

Hon'ble Judges: Anna Chandy, J

Bench: Single Bench

Advocate: T.K. Narayana Pillai, for the Appellant; K. Velayudhan Nair for Respondent 1 and Public Prosecutor for Respondent 2, for the Respondent

Judgement

Anna Chandy, J.

This is an appeal against an order of acquittal. The case of the complainant, the Food Inspector of the Quilon Municipality was that the accused a shop keeper sold him adulterated tea. On 7th September 1960 the complainant purchased three fourths of a pound of tea dust from out of the stock of 65 pounds which was exposed for sale in the accused's shop. The complainant paid the price of Re. 1.31 to the accused who received it and issued a cash bill signed by him in favour of the complainant. Notice of the intention to have the tea analysed was given to the accused then and there and he accepted it. One part of the sample taken was delivered to the accused and he acknowledged receipt of it. A mahazar was drawn up giving the details about the sale, the sampling and the delivery of the sample to the vendor and that record was also signed by the vendor. The report of the Public Analyst showed that the tea was adulterated as the sample contained 10 per cent extraneous matter consisting of a mixture of gram husk and coffee husk. The accused admitted having sold three-fourths pound of tea to the Food Inspector. He also admitted having issued the cash bill and signed the mahazar and the

intimation. However he denied having accepted the price for the tea and added that he was induced to sign the cash bill, the mahazar and the intimation form by the Food Inspector under threat of criminal prosecution. The learned Magistrate held that there was no sale of the tea to the complainant as the sale was effected with the knowledge that the buyer was the Food Inspector. The mahazar was eschewed from evidence on the ground that it offended Article 20(3) of the Constitution against compulsory self-incrimination. The Analyst's certificate was not acted upon since the learned Magistrate was of the view that in the absence of evidence to establish that gram husk and coffee husk were injurious to health the tea that was sold cannot be deemed adulterated. The correctness of all these findings is challenged in appeal.

2. The finding that the sale effected to the Food Inspector is not a sale coming within the purview of the Food Adulteration Act is clearly unsustainable. The evidence in the case has established that the tea was exposed for sale in the shop and was purchased by the Food Inspector on payment of money. The accused himself does not dispute that the tea was exposed for sale or that he sold three-fourths pound of tea out of that stock to the Food Inspector. He only denies having received any money for it. However in view of Ext. P. 2 the cash bill given by the accused, his story that no money was paid, seems to be only an afterthought. The decision reported in *Food Inspector v. Parameswaran Chettiar* (1961 KLT 308) relied on by the learned Magistrate is not applicable to the facts of this case. A subsequent decision of this Court reported in *Food Inspector, Palghat Municipality v. Syed Abdul Kasim* (I.L.R. 1962(1) Ker 359) has taken the view that a voluntary sale of an article for money is a "sale" under the Prevention of Food Adulteration Act even though the vendor is a Food Inspector and the article sold is meant for purposes of analysis.

3. The view taken by the Magistrate that the taking of the signature of the accused to the mahazar offends Article 20(3) of the Constitution is also erroneous. Apart from the fact that there is nothing except the mere ipse dixit of the accused that any compulsion was involved in taking his signature to the record, to bring the statement within the prohibition of Art. 20(3),

"the person accused must have stood in the character of an accused person at the time he made the statement and it is not enough that he should become an accused any time after the statement has been made." Vide [The State of Bombay Vs. Kathi Kalu Oghad and Others](#), .

In this case the vendor had not assumed the character of an accused at the time the tea was purchased or sampled by the Food Inspector. He came to assume the position much later when the food was actually found to be adulterated on analysis and the complaint was filed against him.

4. The learned Magistrate's view that the tea could not be characterised as adulterated in the absence of evidence to prove that extraneous matter like gram

husk and coffee husk found in the tea was injurious to health is also faulty. It is against the very definition of the term "Adulterated" given in the Act. Section 2(1) of the Act defines the word "Adulterated" and it says that an article of food shall be deemed to be adulterated if it satisfies one or other of the conditions prescribed in sub-clause (a) to (1). Under sub-clause (i) an article of food shall be deemed to be adulterated :

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 of variability.

The prescribed standard for tea and its constituents are given in Appendix B under Item A 14. Tea is defined therein as:

Tea derived exclusively from the leaves and buds of plants of the Camellia Genus and the species.

and the specifications to which it shall conform are also mentioned.

Needless to say we do not find gram husk or coffee husk recognised as proper constituents of tea. Hence tea containing these items falls below the quality or purity prescribed for it and has therefore to be deemed adulterated apart from any consideration as to whether such extraneous matter is injurious to health.

5. It is therefore not possible to sustain the order of acquittal on any of the grounds mentioned in the judgment. Yet another contention put forward on behalf of the respondent in this Court is that the certificate cannot be acted upon as it does not contain the necessary data to enable the court to test the correctness of the finding that the tea contained extraneous matter like coffee husk and gram husk. That question does not assume importance in this case where the opinion given by the Analyst was supplemented by his evidence before court. The Analyst was cited as a witness by the accused and there is nothing in his evidence to doubt the correctness of the opinion given by him. The acquittal of the accused based on a mistaken notion of law has resulted in miscarriage of justice and that compels this Court to interfere with the order of acquittal. The order of acquittal is set aside and the accused is convicted u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act and sentenced to pay a fine of Rs. 100/- and in default to undergo simple imprisonment for one month.