(1963) 09 KL CK 0018

High Court Of Kerala

Case No: Crl R.P. No. 39 of 1962

M/s. Narayandas Kesurdas and Sons and Another		APPELLANT
	Vs	
Food Inspector, Kozhikode		RESPONDENT

Date of Decision: Sept. 19, 1963

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16(1)(g), 19, 19(2), 19(2)(i)

Citation: (1963) KLJ 1189

Hon'ble Judges: Govinda Menon, J; Anna Chandy, J

Bench: Division Bench

Advocate: K.P. Radhakrishna Menon, for the Appellant; V. Balarishna Eradi and K.P.G. Menon, for the Respondent

Final Decision: Allowed

Judgement

Govinda Menon, J.

This revision petition is filed by the accused who were convicted by the District Magistrate, Kozhikode for an offence u/s 16(l)(g) of the Prevention of Food Adulteration Act - Act 37 of 1954 (hereinafter referred to as the Act). Accused No. 1 is the firm Messrs. Narayandas Kesurdas & Sons and the second accused is its partner and power of attorney holder. P.W. 2, Subramania Iyer is a trader within the Kozhikode Municipality. On 4-7-1960 P.W. 1 one of the Food Inspectors of the Municipality visited the shop of P.W. 2 and purchased 12 packets of compounded asafoetida from but of the stock labelled as "Super fine Misky-NKG-Compounded asafoetida-Narayandas Kesurdas and Sons, Madras, Bombay and Kumbakonam. The packets purchased were taken out from an unopened bag kept for sale. This stock had been purchased by P.W. 2 from the accused under invoice Ext. P. 8 dated 10-3-60. After the purchase the Food Inspector notified his intention to have the article analysed. It was duly sampled. One part was handed over to P.W. 2, the other part was retained by him and the third part was sent to the Public Analyst,

Trivandrum for analysis. The standard of quality for compounded asafoetida is prescribed in clause A.04 to Appendix B to the rules framed under the Act. Clause A.04 reads:

x x x

Compounded asafoetida or Banjhani hing is composed of one or more varieties of asafoetida (Irani and/or pathani hing), gum arabic and wheat and/or rice flour). It shall not contain sand, gravel or other foreign mineral matter, colophony resin, galbonum resin, ammoniacum resin or any other foreign resin. The ash content shall not exceed 10 per cent of its weight and the alcoholic extract (with 90 per cent alcohol) shall not be less than 10 per cent. Use of coaltar dyes or mineral pigment is prohibited.

In his report Ext. P. 3 the Public Analyst certified that the sample analysed is adulterated as it contained only 53% of compounded asafoetida and as it was mixed with coaltar dye. If the quality or purity falls below the standard it shall be deemed to be adulterated within the meaning of Section 2 of the Act. Section 7 of the Act prohibits the manufacture, sale, storage or distribution of such food and Section 16 provides the penalty for the contravention of the provisions of Section 7. The Food Inspector, therefore, filed a complaint against P.W. 2. On receipt of the summons P.W. 2 informed the municipality by notice Ext. P. 4 that he has a written warranty from his suppliers - the accused in this case - and that he intends to rely on that warranty as his defense and that the warranty covered the stock from which the said sample was taken. On the basis of this intimation the accused was indicted for an offence punishable u/s 16(1)(g) of the Act. Section 16(1)(g) provides that if any person whether by himself or by any person on his behalf gives to the purchaser a false warranty in writing in respect of any article of food sold by him, commits an offence.

2. The accused admitted having sold compounded asafoetida to P.W. 2 as per the invoice Ext. P. 8, but denied that the sample sent for analysis was from out of the stock supplied by them. It was also stated that no warranty was given to P.W. 2 along with Ext. P. 8, nor was the giving of the warranty a term of the contract of sale. Ext. P. 11 they claimed is not a warranty as contemplated under the Act, but is only an advertisement leaflet.

On a consideration of the evidence adduced before him the learned District Magistrate found that the sample analyzed is from out of the stock supplied by the accused, that a warranty had been given in respect of the stock, that the article being found to be adulterated the warranty is false and convicted and sentenced each of the accused to pay a fine of Rs. 1000/-. In appeal, the learned Sessions Judge of Kozhikode confirmed the conviction and sentence. Aggrieved with the order the accused have come up in revision.

3. The fact that P.W. 2 had purchased forty packets of compounded asafoetida from the petitioners and that the packets sold to the Food Inspector were from out of that stock is well proved and is rightly not disputed before us. The only question that arises for decision is whether Ext. P. 11 is a warranty in proper form as contemplated under the Act. It cannot be doubted that it is only in a case where the vendor can successfully plead the exception provided in Section 19 that the person who gives the warranty could be proceeded against for giving a false warranty. In other words every person who in respect of an article or substance sold by him in respect of which a warranty might be pleaded under the Act gives to the purchaser a false warranty in writing is guilty of the offence u/s 16(1)g).

Section 19(2) is in the following terms:

x x x

(2) A vendor shall not be deemed to have committed an offence if he proves -

(i) that the article of food purchased by him was the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality;

(ii) that be had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality; and

(iii) that he sold it in the same state as he purchased it:

Provided that such a defense shall be open to the vendor only if he has submitted to the Food Inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom be received it, and has also sent a like notice of his intention to that person.

The warranty referred to in Section 19(2)(i) by the terms of the section itself is a written warranty in the prescribed form. A label or cash bill cannot be termed as a warranty unless it falls within the proviso to Rule 12A. The learned Sessions Judge proceeded on the basis that Ext. P. 11 is a proper warranty and the questioning of the accused was only in respect of Ext. P. 11 and not about any label. It is also not known whether the label in this case would satisfy the conditions prescribed in Rule 12A. So the case has to be decided on the warranty Ext. P. 11 alone.

4. The term warranty has not been defined in the Act. What would amount to a warranty within the meaning of the section has been elaborately considered by one of us in Criminal Appeal No. 133 of 1961, not reported. (Since reported in 1963 K.L.J. 1100). The wording in Section 19(2)(i) shows that the warranty must have been obtained by the vendor at the time of his purchase of the article in question. The words used are, "the article of food was purchased by him.... with a written warranty

in the prescribed form...". Rule 12A says that every trader selling an article of food to vendor shall, if the vendor so requires, deliver to the vendor a warranty in form VIA and form No. VIA contemplates a warranty being contemporaneously given in respect of each invoice. In the English Act, Section 25 of the Food and Drugs Act 1875 there is no mention of the warranty being in any particular prescribed form. But even there the English decisions say that the undertaking to give a warranty must have been one of the terms of the contract of purchase and it is only then that the warranty obtained subsequently can be availed of as a defense. In this case admittedly no warranty was given at the time of the sale. The attempt of P.W. 2 was to make out that even at the time when the contract was entered into there was an agreement to give a warranty and the warranty Ext. P. 11 was afterwards given in pursuance of that stipulation in the contract.

5. According to P.W. 2 in the first week of January 1960 one Iyyangar who was an agent of the accused-firm approached him for the purchase of their compounded asafoetida, that he insisted on getting a warranty, the, agent promised to give the warranty as soon as the stock is taken delivery of, that he gave an order which was in the printed form and that he had signed the order. But he has admitted that the order form contained no reference to any promise to give a warranty. The invoice sent by the accused-firm is Ext. P. 8 and no warranty was sent along with that. Even after the consignment was taken delivery of, P.W. 2 did not write and make enquiries why the promised warranty was not sent. It was only after the food Inspector purchased the packets for the purpose of analysis that P.W. 2 for the first time sent the letter Ext. D1 to the accused. Ext. D1 is dated 4-7-60, the date on which the sample was taken. Request is made therein to send a guaranty certificate and there is no reference in it to any agreement made at the time of the contract to furnish the warranty. The next letter is Ext. D2 dated 13-7-60 in which also there is no reference to any prior agreement to give a warranty. That was followed by another letter Ext. P. 9 dated 23-7-60. In that letter P.W. 2 refers to the previous two letters Exts. D1 and D2 and wanted the certificate to be sent immediately. He further stated;

We need hardly add that in the absence of a certificate from you, we will be put to much harassment and loss. As you know other suppliers issued such certificates and your representative also assured us when he came here last and received our part payment that we would have no difficulty in the matter. Requesting you once again to send me the certificate by return post.

So even here, he did not state that at the time the order was given there was a stipulation to give a warranty. What he says, is that when the agent came to collect the part payment, he said there would be no difficulty in sending the certificate. This letter instead of helping P.W. 2 negatives the case set up by him that at the time the order was given there was a stipulation to give the warranty. The accused acknowledged the letter by Ext. P. 10 enclosing Ext. P. 11 which is now said to be the

warranty.

Ext. P. 11 is a printed leaflet seen to have been issued on 2-7-59 long prior to the order given by the accused and it is not addressed to any particular person but to the customers in general. It is not at all in conformity with the prescribed form and there is no requisite certificate appended as we see in Form VI A. We are unable to see how on this evidence the courts below could come to the conclusion that there was an agreement at the time when the contract was entered into to send the warranty and how Ext. P. 11 could be considered as a warranty under the Act.

6. P.W. 2, no doubt, has given evidence that there was an oral agreement between him and the agent, at the time of booking the order, but excepting his interested testimony there is no other evidence in support of it and as stated already the documents produced in the case are all against this case. The Food Inspector, no doubt, deposed in Court that at the time he took the sample P.W. 2 had told him that he would be getting a warranty from his suppliers. In Ext. P. 2 the counterfoil he did not make any mention of P.W. 2 promising to produce any warranty. The relevant column ''whether there is warranty'' has been answered in the negative. Any way even if what P.W. 1 says is true it does not advance P.W. 2''s case. We have carefully scrutinised the documents produced in the case and we are unable to spell out any agreement between P.W. 2 and the accused, or his agent to furnish a warranty in respect of the articles sold to him.

7. Again Ext. P. 11 cannot be construed as a warranty. It is a sort of an advertisement circular. Warranty u/s 19 must be in writing and in the prescribed form. It makes no difference whether the form was prescribed by rules only in 1956. We cannot accede to the argument of the learned counsel for the municipality that to make out an offence u/s 16(1)(g) the warranty need not be in any particular form or in the form prescribed as mentioned in Section 19. We hold that Ext. P. 11 is not a warranty as contemplated under the Act and it follows that the accused cannot be found guilty of the offence of issuing a false warranty. It was argued by the learned counsel for the respondents that the courts below have, on the evidence, found that there was in fact an agreement between P.W. 2 and the authorised agent of the accused at the time when the contract was entered into that they would furnish a warranty regarding the stock supplied and in revision we are bound by this concurrent findings of fact. As regards questions of facts though this court''s jurisdiction to interfere in respect of the correctness of the findings of fact even when the findings are concurrent is unquestionable, normally the High Court would not interfere in revision with questions of fact and undertake to reappraise the evidence. But it is invariably exercised in cases where it is established that the findings of fact reached by the two courts below are based either on no evidence or on inadmissible evidence, or on legally inadequate evidence or when the findings are otherwise unjustifiable or perverse. Judged by these standards, we feel no doubt in our mind that this is a case where we should interfere in the interests of justice.

In the result, the conviction and sentence are set aside and the accused are ordered to be acquitted. Fine, if collected, would be refunded. Revision petition is allowed.