President, Travancore Devaswom Board and Others Vs State of Kerala and Another

Court: High Court Of Kerala

Date of Decision: June 1, 1998

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 482
Prevention of Food Adulteration Act, 1954 â€" Section 10, 16, 16(1), 2(xiii), 6(1)(a)

Citation: (1998) 2 KLJ 1

Hon'ble Judges: K.V. Sankaranarayanan, J

Bench: Single Bench

Advocate: P. Sukumaran Nair, Thottathil B. Radhakrishnan and G. Unnikrishnan, for the Appellant; N. Santha), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.V. Sankaranarayanan, J.
The petitioners are the President and members of the Travancore Devaswom Board, who have been arrayed

as accused persons 3, 4 and 5 in S.T. No. 175 of 1997 on the file of the Judicial First Class Magistrate, Ranni, a case instituted on a complaint by

the second respondent, the Food Inspector, Ranni-Perinad Panchayat, Pathanamthitta Circle alleging an offence under the Prevention of Food

Adulteration Act. On 8-1-1997 at about 4 P.M., the second respondent Food Inspector, Ranni-Perinad Panchayat, Pathanamthitta Circle

inspected the Devaswom premises in Sabarimala. He found four tanks of ghee stored for preparation of appam and aravana. The Store

Superintendent of the Devaswom, named as first accused in the case, told the Food Inspector that the ghee was kept in the tanks after completing

the final purification process and was ready for supply. The Food Inspector asked for 450 ml of ghee from the Superintendent and obtained it on

payment of Rs. 45/- as its cost and issued cash receipt for the purpose and divided the ghee into three portions packed and sealed it as per rules

and sent one sample to the public analyst. On receipt of a report that the sample did not conform to the standards prescribed for ghee under the

Prevention of Food Adulteration Rules, the complaint was filed before the learned magistrate impleading the Store Superintendent as the first

accused. Executive Officer of the Devaswom as the 2nd accused, President and two members of the Board as accused 3 to 5 and the Devaswom

Board itself as the 6th accused. In the complaint the 6th accused was shown as represented by accused 3 to 5, the President and two members of

the Board.

2. On receipt of summons from the court, the petitioners who are accused 3 to 5 in the case entered appearance on 17-3-1997. Though the 6th

accused was shown as represented by accused 3 to 5, the learned magistrate noting that there was no appearance for the 6th accused directed

issue of warrant for arrest. The petitioners herein filed an application for recalling the warrant stating that they had already appeared. The learned

magistrate dismissed the petition by order dated 20-3-1997 staling that the 6th accused had not filed any vakalath and there was no appearance,

for the 6th accused, so the issue of warrant was justified. The petition is filed under Sec.482 of Cr.P.C. praying for quashing the entire prosecution

proceedings and also the order directing issue of warrant.

3. As per the provisions in Travancore-Cochin. Hindu Religious Institutions Act and the Rules framed thereunder, the Travancore Devaswom

Board is normally represented by its Secretary in legal proceedings but in this case the President and Members are shown as representing the

Devaswom Board. Prima facie, there was no justification on the part of the magistrate issue warrant against them when they had already entered

appearance. Anyhow, it was only a matter for filing a vakalath on behalf of 6th accused. The question for consideration is whether the prosecution

itself is sustainable.

4. It is submitted for the petitioners that appam and aravana are offerings in the Sabarimala Temple forming part of the religious rituals and

practices followed by the devotees. The distribution of appam and aravana to the devotees as prasadam of the offerings and remittance of money

by the devotees for conducting the said offerings do not amount to "sale" as defined in the Prevention of Food Adulteration Act. The offerings

made by the devotees and the distribution of prasadam in any form including appam and aravana do not constitute a commercial transaction to

bring it under the definition of "sale" and so the prosecution is ill-advised.

5. On behalf of the State, it is pointed out by the learned Public Prosecutor that even a sale to the Food Inspector for the purpose of analysis will

be a sale and hence the prosecution is maintainable.

6. It is averred in the complaint petition, a copy of which is produced as Annexure I that a substantial quantity of ghee had been stores in four tanks

and the Superintendent told the Food Inspector that it was for preparation of appam and aravana. It is explained by the learned counsel for the

petitioners that devotees coming to Sabarimala from different parts of the country bring ghee as an offering and part of it is collected and used for

preparation of appam and aravana for distribution as prasadam. The Food Inspector does not have a case that ghee as such is sold. The basis of

the prosecution appears to be that appam and aravana are sold, but there is no specific averment in the complaint that either the ghee or appam or

aravana is kept for sale in the temple. It is only stated that the first accused, the Store Superintendent sold adulterated ghee to the Food Inspector

on behalf of the Devaswom Board.

7. It is not in dispute that the ghee found collected in the temple premises was the ghee brought as offerings for abishekam and other purposes by

the devotees within the State and outside. As pointed out by the learned counsel for the petitioners, the standard prescribed for ghee in different

States vary. What is kept in the temple is the collection of ghee brought from different States. The learned counsel has also produced a copy of the

public analyst''s report for perusal which only states that the sample did not conform to the standard prescribed. It was not found adulterated with

any adulterant. There cannot also be dispute that appam and aravana are distributed from the temple as prasadam. What is paid by the devotees

into the temple is their offering and what is distributed is prasadam. Even if it is done over the counter, it can never be considered as sale or

purchase between the Devaswom and the devotees. This would be the position even if the ghee is supplied to the devotees who bring it as an

offering or to others. So, it is not a case where ghee is stored for the purpose of sale or for the preparation of an article of food for sale as per the

explanation to Sec.7 of the Act.

8. Learned Public Prosecutor has pointed out the decision in State of Tamil Nadu Vs. R. Krishnamurthy, and earlier decisions to the effect that a

''sale'' under Sec.2(xiii) covers every kind, manner and method of sale. An unqualified sale of food for analysis to the Food Inspector will also be a

sale within the definition. That was a case where gingelly oil mixed with 15% of ground-nut oil was sold as gingelly oil by the respondent in that

case to the Food Inspector. The defence was that the respondent had kept the oil in the shop to be sold, but it was not for human consumption.

The Supreme Court held that gingelly oil was an article of food and it had been kept for sale and even if it was not intended for human

consumption, as it had been sold for purposes of analysis to the Food Inspector, the respondent was liable for prosecution. The learned Judges

observed that the respondent could have avoided prosecution by informing the Food Inspector that it was not intended for human consumption.

But he had not done so and it was an "unqualified" sale.

9. In Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another, a five Judges Bench of the Supreme Court has,

following earlier decisions, held that a sale to the Food Inspector for purposes of analysis was a sale under Sec.2(xiii) of the Act. Food Inspector,

Calicut Corporation v. C. Gopalan (1972 (1) SCC 322) was a case where sugar kept in a tea shop for preparation of tea was taken by the Food

Inspector for purposes of analysis and it was found adulterated with saccharin. The learned Judges, following the decisions in Mangaldas''s case

and upholding the view in Municipal Board Vs. Lal Chand Surajmal and Another, and Public Prosecutor v. Palanisami Nadar (AIR 1965 Mad.

96) held that when there is a sale to the Food Inspector of an article of food which is found to be adulterated, the accused will be guilty of an

offence punishable under the Act. In that case the sugar itself was not kept for sale, but was it was intended for preparing tea sold to the

customers. This decision was followed in Mohammed Yasin v. State of U.P. (1972 SCC (Crl.) 655) where jaggery allegedly kept for sale was

found adulterated and the defence plea was that it was not kept for sale, but for manufacturing rab, which was also an article of food. In that case

also, either the adulterated article itself or product of which it was an ingredient was intended for sale.

10. In Om Prakash Vs. Delhi Administration and Another, it is observed as follows:

It is clear on a plain reading of Sec.7 of the Act that the acts prohibited by that section include manufacturing for sale, storing, selling or distributing

any adulterated article of food. The law is now well settled that the act of storing an adulterated article of food would be an offence only if storing is

for sale. If adulterated article of food is stored by any person for consumption or for any purpose other than sale, it would not come within the

inhibition of the section.

There also the learned Judges noticed that sale under Sec. 2(xiii) includes a sale to the Food Inspector for the purpose of analysis. In that case, a

truck containing 25 to 30 cans of cow''s milk, which was being carried for sale by the accused, was taken into custody by a raising party. It was

taken to the Municipal Office and from there, samples were taken from 8 cans chosen by the Food Inspectors. Each sample was found to be

adulterated and 4 separate complaints were filed and the separate convictions in those cases were upheld by the Supreme Court. In that case also,

the milk transported was intended for sale.

11. In Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others, , a three judges bench of the Supreme Court answering a question

whether the expression ''store'' as used in Ss.7 and 16 of the Act means storage simplicitor or storing for sale, has held, as follows:

From a conjoint reading of the above referred provisions, it will be clear that the broad scheme of the Act is to prohibit and penalise the sale, or

import, manufacture, storage or distribution for sale of any adulterated article of food. The terms ""store"" and ""distribute"" take their colour from the

contract and the collection of words in Which they occur in Ss.7 and 16. ""Storage"" or ""distribution"" of an adulterated article of food for a purpose

other than for sale does not fall within the mischief of this section. That this is the right construction of the terms ""store"" and ""distribute"" in Sec.16(1)

will be further clear from a reference to Sec.10. Under that section, the Food Inspector, whom the Act assigns a pivotal position for the

enforcement of its provisions, is authorised to take samples of an article of food only from particular persons indulging in a specified course of

business activity. The immediate or ultimate end of such activity is the sale of an article of food. The section does not give a blanket power to the

Food Inspector to take samples of an article of food from a person who is not covered by any of the sub-clauses of sub-section 1(a) or sub-

section (2). The three sub-clauses of sub-section 1(a) apply only to a person who answers the description of a seller or conveyor, deliverer, actual

or potential, of an article of food to a purchaser or consignee or his consignee after delivery of such an article to him. Sub-section (2) further makes

it clear that sample can be taken only of that article of food which is ""manufactured"", ""stored"" or exposed for sale. It follows that if an article of

food is not intended for sale and is in the possession of a person who does not fulfil the character of a seller, conveyor, deliverer, consignee,

manufacturer or storer for sale such as is referred in sub-sections 1(a) and (2) of the section, the Food Inspector will not be competent under the

law to take a sample and on such sample being found adulterated, to validly launch prosecution thereon. In short, the expression ""store"" in Sec.7

means ""storing for sale"", and consequently storing of an adulterated article of food for purposes other than for sale would not constitute an offence

under Sec.6(1)(a).

12. It is clear from the above decision that the Food Inspector can take samples only if the article is kept for sale. All the decisions of the Supreme

Court noticed above where a sale to the Food Inspector for purposes of analysis has been held to be a ""sale"" for purposes of the Act are cases

where the article had been kept for sale or for preparing an article of food which was intended for sale. In this connection, it may be noticed that in

State of Kerala v. John (1978 KLT 738) a learned Judge of this Court distinguished the decision in Municipal Corporation, Delhi v. Laxmi Narain

Tandon (cited supra). That was a case where the Food Inspector bought a quantity of milk from the 1st accused in that case who had brought it

for supply to the co-operative society at Nedumkandam. The evidence in that case was that the society was collecting milk and supplying it to the

Milk Supply Union at Kottayam where it was pasteurised before sale. The learned Judge found that the acquittal by the trial court accepting the

argument that the milk was being taken by the first accused only for the purpose of storing in the society was erroneous. But in that case also, the

milk was ultimately intended for sale. The evidence also showed that the society paid the value of the milk according to its quality. None of the

decisions noted above is an authority for the proposition that the Food Inspector can take a sample out of a stock which is not kept for sale. In this

case, as noticed above, the ghee was not for sale, nor for preparation of an article of food intended for sale. So, the Food Inspector had no

authority to collect a sample. So the supply of the sample and payment of its cost cannot amount to ""sale"" for purposes of the Act. The conduct of

the Food Inspector in collecting the sample was, to say the least, a perverse act. The prosecution of the accused persons in the case pursuant to

the sampling is also totally improper and illegal and liable to be quashed.

For the reasons stated above, the proceedings in S.T. No. 175/97 on the file of the Judicial First Class Magistrate, Ranni and the proceedings for

issue of warrant of arrest to the accused persons are hereby quashed. Crl.M.C. is allowed as above.