

(1978) 01 AP CK 0002

Andhra Pradesh High Court

Case No: None

Chunduri Gopalakrishna Murthy

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Jan. 25, 1978

Acts Referred:

- Prevention of Food Adulteration (Extension To Kohima And Mokokchung Districts) Repeal Act, 2002 - Section 2
- Prevention of Food Adulteration Act, 1954 - Section 14, 16, 19, 7

Citation: (1978) CriLJ 1365

Hon'ble Judges: Gangadhara Rao, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Gangadhara Rao, J.

In this case the petitioner had been convicted for an offence u/s 16(1-A) (sic) read with Sections 7 and 2 (a) and (j) of the Prevention of Food Adulteration Act as amended by Act 34 of 1976 and was sentenced for one year and also to pay a fine of Rs. 2,000 and in default to suffer simple imprisonment for 9 months. The petitioner is having a fancy goods shop at Repalle. On 31-12-1976 the Food Inspector of Repalle Municipality went to the petitioners shop and purchased 1500 grams of sweet peppermints by paying him Rs. 9/-. The sample was sent to the Analyst. He gave his opinion that the sweets contained Rhodamine B, a coal tar dye, the use of which is prohibited. The defence of the accused is that he had purchased the peppermint packets in polythene packets of one K. G. each from one Srinivasa Confectionery a manufacturer of Tenali, and he sold the same packets to the Food Inspector. To evidence his purchase, he had produced the cash bill, Ex. D-1 D/- 20-11-1976. The accused examined himself as D.W. 2. The learned Judge believed his version that he had purchased the peppermints from Srinivasa Confectionery,

Tenali, under the cash bill, Ex. D-I. But on the ground that the cash bill does not give the nature and quality of the article that was sold he held that it could not be treated as a warranty. Aggrieved by that judgment the accused has filed this revision.

2. Section 19 of the Prevention of Food Adulteration Act provides that a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded articles of food if he proves that he had purchased the article of food from any manufacturer, distributor or dealer with a written warranty in the prescribed form and that the article of food while in his possession was properly stored and that he had sold it in the same state as he had purchased it. In this case the accused had purchased the peppermints from the manufacturer Srinivasa Confectionery, Tenali. He had also sold them in the same state in which he had purchased them. But he did not have a written warranty in the prescribed form from the manufacturer.

Section 14 of the Act reads as follows:

14. Manufacturers, distributors and dealers to give warranty.- No manufacturer or distributor or dealer in, of any article of food shall sell such articles to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor or dealer in such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section. The proviso was inserted by Amendment Act 34 of 1976. The reason for introducing the proviso is stated in the Joint Committee Report as follows. Section 14 of the principal Act imposes obligation on every manufacturer, distributor or dealer to give a warranty in writing in respect of the nature and quality of every article of food sold by him to a vendor. During the course of the evidence tendered before the committee the representatives of the retailers represented that the requirement of the law was not being followed by the manufacturers or dealers as a result of which the vendors had to suffer. The Committee has remedied the situation by inserting a proviso to the section to the effect that a bill, cash memorandum or invoice given by a manufacturer, distributor or dealer in respect of any article of food purchased by the vendor shall be deemed to be a warranty.

3. A reading of the proviso shows that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor or dealer in such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under that section. In this case, it is found that the cash bill Ex. D-1 was given to the accused by the Manufacturer of the peppermints. If so it will be deemed to be a warranty in writing in the prescribed form given by the manufacturer u/s 14. If he had produced the warranty there is no question of penalising him. The learned Judge evidently erred in holding that because the cash bill did not give the details as to the nature and quality of the

articles sold it cannot be treated as a warranty.

4. The learned Public Prosecutor submitted that under Rule 12-A every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or label a warranty in Form VI-A. Then he had referred me to Form VI-A and submitted that since the cash bill in this case does not contain the warranty in Form VI-A, the proviso to Section 14 has no application. Rule 12-A was there before the insertion of the proviso to Section 14. The proviso does not say that the cash bill should be in accordance with Rule 12-A. If a bill is given in terms of Rule 12-A then that itself is the warranty and there is no question of deeming it to be a warranty under the proviso to Section 14. On the other hand the proviso to Section 14 makes it clear that if a bill is given for the sale of an article by the manufacturer it would be deemed to be a warranty given by the manufacturer.

5. Consequently I hold that the conviction of the petitioner is not sustainable and I acquit him. Accordingly the revision is allowed. If he had paid the fine, it shall be refunded to him.