

Phulchand Kesarimal Mutha Vs D.R. Naik and Another

Court: Bombay High Court

Date of Decision: Jan. 9, 1975

Acts Referred: Prevention of Food Adulteration Act, 1954 " Section 16(1)(a)(i), 20A

Citation: (1976) CriLJ 1946

Hon'ble Judges: Bhole, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Bhole, J.

The petitioner-accused was prosecuted for an offence punishable u/s 16 (1) (a) (i) of the Prevention of Food Adulteration Act

for having sold on 19-4-1973 Tur Dal, which was found to contain extraneous non-permitted coal viz. metanil yellow after the analysis. The

accused is a grocer who sells food articles in Nanapeth, Pune. The Food Inspector wanted to purchase Tur Dal and therefore he went to the

accused's shop and purchased 600 grams of it for Rs. 1.44 P. The usual formalities were done by him and a sample of the Dal was also given in a

sealed packet to the accused. The Food Inspector on the analysis that the Tur Dal contained extraneous non-permitted coal and after obtaining the

necessary sanction prosecuted the accused in the Court of the Judicial Magistrate, Poona. The accused defended himself by explaining that he had

purchased three packets of the Tur Dal from the shop of one Devichand under a warranty and therefore he is not responsible for adulteration.

2. The learned Magistrate who tried the accused accepted the version of the prosecution, disbelieved the defence and convicted and sentenced the

accused to six months' rigorous imprisonment and a fine of Rs. 1,000/-. The accused went in appeal to the Sessions Court and requested that he

be permitted to examine shop keeper Devichand as his witness. He was allowed and he examined Kachardas, a partner of Devichand's firm. The

witness said that they had sold Tur Dal to the accused on 22-12-1972, but they did not sell coloured Tur Dal. He also said that they do not sell

coloured Tur Dal at all. The learned Sessions Judge after assessing the evidence of Kachardas as well as the other evidence agreed with the finding

of the trial Court and confirmed the conviction as well as the sentence passed by the Judicial Magistrate. That order of conviction and sentence is

now challenged here. The point, therefore, that has to be determined is whether this order is legal and proper.

3. Mr. Ganatra, the learned Advocate for the petitioner contends here that the accused who examined himself on oath must be believed and that

Kachardas, partner of the firm Devichand should not be believed because according to him Kachardas would naturally try to save himself from any

prosecution. If he had said that he had sold the Tur Dal which was sold to the Food Inspector, he would also have been prosecuted u/s 20-A of

the Prevention of Food Adulteration Act. To save his own skin he is, therefore, deposing falsely here. Mr. Ganatra says that ordinarily a retailer

would not colour food articles but a wholesaler or a Dal mill owner would be interested in colouring the Dal. According to Mr. Ganatra the

accused, therefore, should not be held responsible for adulteration which was found in Dal. On the other hand Mr. Bhonsale, the learned Asstt.

Govt. Pleader says that this is a revision petition and in such petition this Court cannot reassess the evidence and come to a different conclusion but

Mr. Ganatra answers him by saying that Kachardas was examined only at the appeal stage and that this revision petition is as good as an appeal. I

cannot, however, accept this contention of Mr. Ganatra for the obvious reason that the accused could have examined Kachardas if he wanted to at

the trial stage. He chose not to examine him for the reasons best known to him at the trial stage but chose to examine him only at the appeal stage.

Merely because Kachardas was examined at the appeal stage, therefore the petition which was made by the accused cannot be said to be a kind

of an appeal. Therefore, he is naturally confronted by a finding of fact that the accused was not in a position to establish the guarantee as

contemplated u/s 19 (2) of the Prevention of Food Adulteration Act. A vendor under that section shall not be deemed to have committed an

offence pertaining to the sale of an adulterated article of food, if he proves that he purchased the article of food from a licensed dealer or in any

other case from a dealer with a written warranty in the prescribed form. The accused has examined Kachardas but he stated that he had not sold

the kind of Dal which was sold by the accused to the Food Inspector. If that is so, then the receipt which is produced by the accused and

identified by Kachardas cannot be said to establish the warranty of the Dal, which the accused sold to the Food Inspector. Kachardas says that he

sold Mug Dal to the accused, that it was not coloured at all, that he after satisfying himself that it was not adulterated had sold it to the accused;

when he purchased Dal's in Yeotmal district, he purchased good Dal's and not adulterated ones. The word of the accused even on oath,

therefore, cannot be relied upon, when he says that he has nothing to do with the adulteration of the Dal which was sold to the Food Inspector, I

am, therefore, unable to interfere with the order of conviction and sentence passed by the learned Magistrate and confirmed by the learned

Sessions Judge.

4. This revision therefore, fails. I, therefore, confirm the order of conviction and sentence passed by the learned Magistrate and dismiss this

application. Rule discharged. Accused to surrender to bail.