

P. Unnikrishnan vs Food Inspector, Palghat Municipally, ... on 15 February, 1995

Equivalent citations: AIR1995SC1983, 1995CRILJ3638, 1995SUPP(3)SCC186, AIR 1995 SUPREME COURT 1983, 1995 AIR SCW 3093, 1995 ALL CJ 1 469, (1995) 70 FACLR 1079, (1995) 3 SERVLJ 212, (1995) 2 GUJ LH 649, (1995) 30 ATC 69, 1995 SCC (SUPP) 2 246, (1996) 1 SCT 474, (1995) 2 CURLR 239, (1995) 2 JT 520 (SC), (1995) 2 SCR 121 (SC), (1995) 3 SCJ 56

Author: M.M. Punchhi

Bench: M.M. Punchhi

JUDGMENT

M.M. Punchhi, J.

1. The appellant was tried for an offence under Section 7(1) read with Section 16(1A)(a)(i) of the Prevention of Food Adulteration Act ('Act' for short). It is alleged that the Food Inspector, Palghat (PW3) purchased from the accused a sealed tin containing 100 grams of arrow root for the purpose of analysis and the Public Analyst found it to be adulterated. The accused took the plea that a representation of M/s. Tajus Productions, a firm located in Cannanore, about 200 kms. from the place of the accused came to his shop and sold the article and he also pleaded that he has a bill Ex. D1 which has the necessary warranty signed by the representative of the said firm. He put forth the defence under Section 19(2) of the Act. Accepting the plea, the learned Magistrate acquitted the accused.

2. The State preferred an appeal and the High Court after taking into consideration the evidence of PW1, Food Inspector, Cannanore and PW3, the complainant reached the conclusion that the said firm was a bogus non-existing manufacturing firm and therefore the accused was not able to prove that he is entitled to the benefit under Section 19(2) of the Act and accordingly reversed the order of acquittal and convicted the appellant. It may be mentioned here that the prosecution, however, examined PW1 the then Food Inspector, Cannanore and he deposed that he made enquiries and came to know that the firm by the name M/s. Tajus Productions does not exist at Cannanore and accordingly he informed PW3.

3. Section 19(2) of the Act lays down as under:

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -

(a) that he purchased the article of food -

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer.

with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

Rule 12A of the Prevention of Food Adulteration Rules reads thus:

12A. Warranty - 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 VIA.

4. In the instant case there is no material to show that the firm namely M/s. Tajus Productions had any licence. However, taking into consideration Section 19(2) along with Rule 12A what is necessary for the accused to show is that he has purchased the article from any manufacturer, distributor or dealer with a written warranty in the prescribed form. In the instant case admittedly there was a bill Ex. D1 which contained the warranty. Further it is also the admitted case that the tin purchased from the alleged manufacturer was sold to PW3, the Food Inspector, Palghat in the same form and in the same condition. Therefore the requirements of Section 19(2) read with Rule 12 A are satisfied in the instant case for the purpose of the defence taken by the accused.

5. The High Court, however, proceeded on the footing that the evidence of PW1, Food Inspector, Cannanore shows that M/s. Tajus Productions is a bogus non-existing manufacturing firm and therefore the accused is not entitled to the benefit under Section 19(2) since he could not discharge the necessary burden.

6. As rightly contended by the learned Counsel for the appellant, the High Court has not correctly appreciated the scope of Section 19(2) and Rule 12A and the necessary burden to be discharged by the accused. From the facts of the case it is clear that the representative of M/s. Tajus Productions, Cannanore came to the medical shop of the accused and sold the article to the accused and also gave a bill Ex. D1 which contained the warranty signed by somebody on behalf of the firm. Admittedly the article was in sealed tins which were not tampered with a label to the effect that it was a product of M/s. Tajus Productions. The accused sold it in the same manner and condition in which it was purchased by him. The further proof that the manufacturer from whom the accused purchased the article has been duly licensed, depends on the facts of each case. In every case the accused cannot be

expected to verify further whether the contents of the label on the tin and those in the bill containing the warranty are correct or not. In the instant case a representative of the firm situated at Cannanore, 200 kms. away, came to the shop of the accused, sold the tins with the label and also issued a bill having the warranty. The accused in turn sold the article in the same form to PW3. At that juncture no knowledge about the non-existence of the firm could be attributed to the accused and he could not be expected to verify as to what the actual position was regarding the existence of the firm at a place which was 200 kms. away. It may be that the firm was in existence and if for any reason subsequently the firm does not exist, the accused cannot be deprived of the defence to which he is entitled to under Section 19(2). Therefore, in the facts of the case it must be held that the accused has duly discharged the burden to the extent necessary under the above mentioned provisions.

For the reasons stated above, we set aside the conviction and sentence awarded and allow the appeal. The fine, if already paid, shall be refunded. The appellant is on bail. The bail bonds stand discharged.