Food Inspector, Calicut Corporation vs Cherukattil Gopalan And Anr on 6 May, 1971

Equivalent citations: 1971 AIR 1725, 1971 SCR 721, AIR 1971 SUPREME COURT 1725, 1971 2 SCJ 607, 1973 MADLW (CRI) 90, 1971 2 ANDHLT 282, 1971 CRI APP R (SC) 336, 1971 KER LT 462, 1971 SCD 750

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, A.N. Ray

PETITIONER:
FOOD INSPECTOR, CALICUT CORPORATION

Vs.

RESPONDENT:
CHERUKATTIL GOPALAN AND ANR.

DATE OF JUDGMENT06/05/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAY, A.N.

CITATION:
1971 AIR 1725 1971 SCR 721
1971 SCC (2) 322

ACT:
Prevention of Food Adulteration Act, 1954 (37 of 1954)-Section 16 (1)(a)(i)-Sale of Food for analysis-To be guilty of offence under section, food need not be intended for sale and person selling need not be a dealer.

HEADNOTE:
A sale of an article of food for analysis being "sale" within the meaning of s. 2(xiii) of the Prevention of Food Adulteration Act, 1954, an article of food sold to the Food Inspector, if found to be adulterated, the accused will be guilty of an offence punishable under s. 16(1)(a)(i) read with S. 7 of the Act. The article of food purchased by the Food Inspector need not have been taken out from a larger quantity intended for sale and the person from whom the

article of food has been purchased need not be a dealer as such in that article. [729 G]
Where sugar purchased by the Food Inspector from the Respondents' tea stall was found to be adulterated and the Respondents were charged with an offence under s. 16(1) (a) (i) of the Act, the respondents must be held guilty of the offence charged with, even though the sugar purchased was not intended for sale as such and the respondents were not dealers in sugar.
Mangaldas Raghavji Ruparel and Anr. v. The State of Maharashtra and Anr., [1965] 2 S.C.R. 849, State of Gujarat v. Asandas Kimmatrai Kevalramanni, A.I.R. 1964 Guj. 191, Municipal Board, Faizabad v. Lal Chand Surajmal and Anr., A.I.R. 1964 All. 199 and The Public Prosecutor v. Palanisami, A.I.R. 1965 Mad. 98, referred to.
Public Prosecutor v, Kandasamy Reddiar, A.I.R. 1959 Mad. 33. Explained.
In re: Govinda Rao, A.I.R. 1960 Andhra Pradesh 366, disapproved.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 281 of 1968.

Appeal by special leave from the judgment and order dated June 26, 1968 of the Kerala High Court in Criminal Appeal No. 113 of 1968.

A. Sreedharan Nambiar, for the appellant. S. K. Mehta, K. L. Mehta, and K. R. Nagaraja, for the respondents.

The Judgment of the Court was delivered by Vaidialingam, J.-This appeal, by special leave, by the Food Inspector, Calicut Corporation, is directed against the judgment and order dated June 26, 1968 of the Kerala High Court in 46-I S.C. India/7i Criminal Appeal No. 113 of 1968 confirming the acquittal of the respondents of an offence under S. 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954) (hereinafter to be referred to as the Act). The first respondent is the Manager and the second respondent, his wife, are the owner and licencee of a tea stallin the premises No. 4/777 Customs Road, Calicut. They were accused Nos. 1 and 2 respectively. On November 17, 1965 at about 9.45 A.M., the Food Inspector, Calicut Corporation, purchased from the first respondent 600 grams of sugar for a price of 78 paise ,for analysis from the stock of sugar kept in the premises to be used in the preparation of tea sold to customers in the said tea stall run by the second respondent under the licence issued by the Corporation. The quantity of sugar so purchased was sampled as per the rules in the presence of the first accused and the witnesses. One portion of the sample was sent to the Public Analyst for analysis.' The Analyst in his report Ex. P. 3 dated December 28, 1965 has certified that the sample contained artificial sweetner saccharin equivalent to about seven percent of cane sugar and therefore it was adulterated. In fact the analysis is as follows :

> "Ash 0.02 per cent Total sugar 96.00 per cent as cane sugar Saccharin 14.0 mgs. per 100 gms."

On the basis of this report the Food Inspector filed on March 21, 1966 a complaint against the two accused in the Court of the District Magistrate, (Judicial), Calicut. After setting out the necessary facts and the report of the Public Analyst, the complaint alleged that the sale of such sub-standard food which was adulterated is prohibited under S. 7 read with item A. 07.01 in appendix to the rules framed under the Act and therefore, it was an offence. There is a reference to the conviction of the first accused on prior occasions. It is not necessary for us now to refer it. Both the accused were charged of an offence under s. 16(1)(a)(i) of the Act for having sold on November 17, 1965 600 gm. of sugar for a price of 78 paise to the Food Inspector from the tea stall and which sugar was found to be adulterated by the Public Analyst.

Both the accused pleaded not guilty and even denied having sold sugar to the Food Inspector.

The learned District Magistrate recorded the following find- ings : The "sugar" is an article of food as defined under s. 2(v) of the Act ; the Food Inspector purchased sugar from the tea stall of the accused, sampled it then and there and handed over to the first accused. There was a sale as defined in the Act of sugar to the Food Inspector by the first accused; the ,purchase and the sampling by the Food Inspector were done in strict compliance with the provisions of the Act. The report of the Public Analyst establishes that the sugar purchased from ,the tea stall of the accused was adulterated. But in order to hold that the accused have committed an offence, it must be :established that the accused were selling sugar as such in the tea stall, which is not the fact in this case. On the other hand, the accused were selling tea and the sugar was kept only for the purpose of being mixed with tea which was sold to the ,customers and the Food Inspector has clearly admitted that sugar as such is not in the tea stall of the accused. Inasmuch as sugar was not kept for sale by the accused, they are not guilty ;of any offence. In this view, both the accused were acquitted ,under s. 258(1) of the Code of Criminal Procedure.

The State filed an appeal before the Kerala High Court challenging the acquittal of the respondents. The High Court agreed with the findings of the District Magistrate that there was a sale as defined in the Act of sugar to the Food Inspector by ,the accused on November 17, 1965 and the said article was adulterated as is established by the report of the Public Analyst. The High Court set before it the principle that the prosecution will have to establish, under such circumstances, that the persons from whom the article of food had been purchased are those "selling those articles as such". The High Court applied the test to find out whether the respondents "are persons selling ,sugar as such"

> and answered the question in the negative. Agreeing with the findings of the District Magistrate that the sugar in the tea stall of the accused was not kept for sale as such but for being utilised in the preparation of tea which was being sold to the customers, the High Court finally held that the purchase by the Food Inspector of sugar from the respondents cannot be considered to be a purchase under the Act so as to make them liable of the offence with which they were charged.

Mr. A. S. Nambiar, learned counsel for the appellant, urged that the views of both the High Court as well as the District Magistrate that the respondents are not guilty as they are not dealers in sugar as such, is erroneous, specially after a finding that there has been a sale to the Food Inspector under the Act and the article was found to be adulterated. According to Mr. Nambiar when once the article of food is sold to the Food Inspector for analysis, it is of no consequence that the said ,article was not intended to be sold as such by the accused, as a sale of an article of food under the Act attracts all the consequences that flow from such sale as provided under the Act.

On the other hand, Mr. S. K. Mehta, learned counsel for the respondents, urged that in order to make the respondents liable, it must be established that they were dealers in sugar as such. In view of the concurrent findings based upon the admission of the Food Inspector that the accused were not dealers in sugar as such and that the sugar kept by them was intended to be used in the preparation of tea, their acquittal is justified.

Before we proceed to deal with these contentions with reference to the provisions of the Act and certain decisions placed before us by both the learned counsel, it is to be recorded that Mr. Nambiar has made it clear that his clients do not want the respondents to be convicted, in case his contentions are accepted. On the other hand, he stated that the Corporation is only anxious to have a decision of this Court on the legal point. We will now refer to some of the material provisions of the Act.

Section 2(1) defines the various expressions enumerated therein. In particular it is only necessary to refer to clauses 5, 12, 13 and 14 defining the expressions "food", "prescribe", "sale" and "sample" respectively. They are as follows :

"(v) "food" means any article used as food or drink for human consumption other than drugs and water and includes-

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments "(xii) "Prescribed means prescribed by rules made under this Act."

(xiii) "sale" with its grammatical variations and cognate ex. pressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article and includes also an attempt to sell any such article.

(xiv) "sample" means a sample of any article of food taken under the provisions of this Act or of any rules made thereunder."

There is no controversy that sugar with which we are concerned in this case is an article used as food for human consumption or at any rate it is an article which ordinarily entered into or is used in the composition or preparation of human food. Even according to the respondents the sugar so kept in their tea stall was intended to be used in the preparation of tea which was being sold to the customers. A reference to the definition of 'sale' will also show that a sale of any article of food for analysis comes within that definition. That the sample of food purchased by the Food Inspector in this case satisfies the definition of 'sale' in clause 14 is also beyond controversy.

Before we refer to certain other sections, it is necessary to state that ss. 4(2) & 23(1) of the Act give power to the Central Government to make rules in respect of the matters referred to in those sub-sections. By virtue of the powers conferred under ss. 4(2) and 23(1) the Central Government have framed the Prevention of Food Adulteration Rules, 1955 (hereinafter to be referred to as the Rules). Rule 5 provides that the standards of quality of the various articles of food specified in Appendix B to the Rules are as defined in that Appendix. Appendix B deals with the definition and standards of quality. Item A. 07.01 of the appendix deals with cane sugar and enumerates its contents. It- is not necessary for us to deal with the definition of the expression 'adulterated' in s. 2(i) as well as the requirements under item A. 07.01 of the Appendix B of the Rules as there is no challenge to the report of the Public Analyst that the sugar in question was adulterated, as it does not conform to the requirements of the item mentioned above. In fact the High Court ,as well as the District Magistrate have also proceeded on that basis. We will now revert back to the Act. Section 7 prohibits the manufacture, sale etc. of certain articles of food. It is not necessary to refer to the various items enumerated therein. But we will refer only to the main part of s. 7, which is as follows "'Section 7. No person shall himself or by any person on his behalf manufacture for sale" or store, sell or distribute-

It will be seen that s. 7 deals not only with manufacture, sale, storing or distributing but also selling. We are particularly emphasising this aspect because it has been missed in this case not only by the two courts but also in some of the decisions, to, which our attention has been drawn. Section 10 deals with the powers of the Food Inspector. Under sub- section 10(i)(a) the Food Inspector has power to take samples of any article of food from any of the persons enumerated in sub-clauses (i) to (iii) Section 12 gives a right even to a purchaser, who is not the Food Inspector of having the article of food analysed by a Public Analyst in accordance with that section. Section 16(1)(a)(i), breach of which is alleged against the respondents is as follows "S. 16(1) If any person-

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food-

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health;

Here again it is to be noted that any person who sells any article of food which is adulterated shall be punishable in accordance, with that section. The Food Inspector purchased sugar on November 17, 1965, from the tea stall of the respondents on payment of price. The said transaction clearly amounts to a sale under s. 2(xiii) of the Act. From the definition of "sale" already quoted, a sale of an article of food, for analysis is a sale. Under such circumstances it amounts to a sale under the Act as has been laid down by this Court in Mangaldas Raghavji Ruparel and another v. The State of Maharashtra and another(1). It was held in the said decision that there is a special definition of "sale" in s. 2(xiii) of the Act which specifically includes within its ambit the sale for analysis. Mr. Nambiar referred us to certain decisions to the effect that when once there is a sale as defined in the Act of an article of food, it is not necessary to establish that the accused are dealers in that article as such In the decision reported in Municipal Board, Faizabad v. Lal Chand Surajmal and another(2) the accused had a shop where tea was sold and for the purpose of preparing tea, they had stored milk which was a necessary ingredient for the preparation of tea. The Food Inspector took a sample of milk from the tea shop and on analysis it was found' to be adulterated. The question was whether the accused could, be convicted for an offence under s. 16(1)(a)(i) read with s. 7 of the Act. The plea of the accused was that the milk kept in (1)[1965] 2 S.C.R. 894.

(2).R. 1964 All. 199.

the tea shot) was not intended to be sold as such but was kept for being used in. the preparation of tea. The High Court held that though the accused could not be convicted for storing the milk, which was found to be adulterated as the milk was not stored for sale as such, nevertheless, they did 'sell' milk to the Food Inspector. As the said sale was of adulterated milk, the accused have committed an offence. It is not necessary for us in the case before us to consider whether the expression 'stored? occurring in s. 7 and s. 16 should be interpreted as storage for purposes of sale. The case on hand can be disposed of without deciding that aspect.

In the State of Gujarat v. Asandas Kimmatrai Kevalramanni(1) the Food Inspector purchased 'Dahi' (Curd) and on analysis it was found to contain fifty percent fat deficiency. The accused was prosecuted for an offence under s. 16(1)(a)(i) of the Act. The accused pleaded that he had not stored 'Dahi' for purposes of sale but he was keeping it only for the preparation of 'Lachhi' and he further pleaded that the 'Dahi' purchased by the Food Inspector was not taken from a larger quantity which was stored by him for the purpose of sale as 'Dahi'. Here again we are not concerned with the observations of the learned Judge as to what constitutes storing under the Act. But the learned Judge held that it is not necessary that the accused should be a dealer in 'Dahi' as such and it is also not necessary that the 'Dahi' sold to the Food Inspector must have been taken out of a larger quantity intended for sale. It was held that so long as there has been a sale as defined under the Act to the Food Inspector of Dabi and when it was found adulterated, the accused is guilty of the offence.

To a similar effect is the decision of The Public Prosecutor v. Palanisami Nadar(2) where it was held that when there has been a sale to the Food Inspector for analysis of an article of, food, which, when found to be adulterated, the accused is guilty of an offence.

Mr. Mehta, learned counsel for the respondents, referred us to the decisions reported in Food Inspector, Kozhikode v. Punsi Desaie) Narain Das v. State,(1) and Rameshwar Das Radhey Led v. The State,(1). in all those decisions the Court has considered the question as to whether the storage of an article under (1) A.I.R. 1964 Guj. 191, (2) A.I.R. 1965 Mad. 98.

(3) A.I.R. 1959 Kerala 190.

(4) A.I.R. 1962 All. 82.

(5) A.I.R. 1967 Punjab 132.

the Act must be for the purpose of sale. We have already indicated that the- said question does not arise for consideration before us and we do not propose to refer to those decisions in detail. But we may point out that the decision in Narain Das v. State(1) has been distinguished by the same Court in Municipal Board Faizabad v. Lal Chand Surajmal and another,(2) to which we have already referred. Mr. Mehta referred us to two decisions; The Public Prosecutor ,V. Kandasamy Reddiar(3) and in Re. Govinda Rao(4) in support of his contention that the article of food purchased by the Food Inspector must be shown to have been kept by the accused for purposes of sale as such. In other words, according to the learned counsel the person "from whom an article of food is purchased by the Food Inspector must be a dealer in such article". In the Public Prosecutor v. Kandasamy Reddiar(3) the findings of the two courts were that the accused was carrying the milk taken from his own buffalo for his own use. This decision does not assist the respondents. But it must be stated that the said decision does not consider the legal effect of a sale to a Food Inspector under the Act and its consequences. But we may point out that under s. 10(1)(a) the Food Inspector has got power to take samples of any article of food from the persons enumerated in sub-clauses (i) to (iii). It will be seen in particular from sub-clause (ii) of s. 10(1)(a) that the Food Inspector can take samples from "any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee". In the case before us if the accused had purchased the sugar and it was in the process of being conveyed to be delivered to the accused, the Food Inspector could have taken the sample under s. 10 from any person in the course of conveying the article for delivery. Similarly, even if the sugar had been delivered to the accused, under sub-clause

(iii) of s. 10(1)(a), the Food Inspector could have taken the samples from them as consignee of the article. In the In Re. Govinda Rao(4) the accused who was the pro- prietor of a Coffee and Meals Hotel was prosecuted for having sold adulterated ghee to the Food Inspector. The defence was that the, accused was not a dealer in ghee as such and that, the said article was stored in the Hotel for the purpose of being served along with the meals to the customers or for using it in the preparation of other articles of food. The accused was acquitted on the ground that in order to constitute an offence, the (1) A.I.R. 1962 All. 82.

(2) A.T.R. 1964 All. 199.

(3) A.I.R. 1959 Mad. 333.

(4) A.I.R. 1960 Andhra Pradesh 366.

accused should have been a dealer in ghee,as such and that the _prosecution cannot succeed by the Food Inspector merely taking adulterated ghee which, was stored by the hotel keeper for being ,served with the meals or for preparing other articles of food.

We are not inclined to agree with this decision because it .has not considered, the legal effect of a sale to a Food Inspector under the Act. We do not also find any indication in the Act -that when a Food Inspector purchases an article of food from a person, the latter must be a dealer in that article as such.

Mr. Mehta, learned counsel for the respondents relied on ss. 12 and 14 to support his argument that the Act contemplates ,.that the person from whom an article of food is purchased must ,be a dealer of that article as such and if that article is found to be adulterated, a person can be found guilty under the Act. If article A is stored for the purpose of being used in the preparation of other articles of food, the fact that article A purchased by the Food Inspector is found to be adulterated will not make the person selling that article liable under the Act. Section 12 give a right to any purchaser, other than the Food Inspector, to have the article purchased by him analysed by the Public Analyst in accordance with that section. Section 14 makes it mandatory on a manufacturer, distributor or dealer of any article of food to give a warranty when he sells an article about the nature and quali ty of that article to the vendor. We are not able to find how these two sections support the propositions enunciated by Mr. Mehta. If a third party had purchased sugar from the tea stall of the accused and if the said purchase constitutes a "sale' under the Act, s. 12 gives such a party to have the article analysed by a Public Analyst. Similarly, s. 14 is also of no assistance to the respondents.

To sum up we are in agreement with the decisions reported in Municipal Board, Faizabad v. Lal Chand Surajmal and another(1) and The Public Prosecutor v. Palanisami Nadar(2) to the extent to which they lay down the principle that when there is a sale to the Food Inspector under the Act of an article of food, which is found to be adulterated, the accused will be guilty of an offence punishable under s. 16(1)(a)(i) read with s. 7 of the Act. We further agree that the article of food which has been purchased by the Food Inspector need not have been taken out from a larger quantity intended for sale. We are also of the opinion that the person from whom the article of food has been purchased by the Food Inspector need not be a dealer as such in that article. We are not inclined to agree with the decisions laying the contrary propositions.

(1) A.I.R. 1964 All. 199.

(2) A.I.R. 1965 Mad. 98.

Coming to the case on hand, on the finding of the two courts the sugar in question has been found to be adulterated. The purchase by the Food Inspector from the accused of sugar for purposes of analysis is a sale under s. 2(13) of the. Act. Section 7 prohibits a person from selling adulterated article of food. Similarly, under s. 16(1)(a)(i) any person who sells adulterated food commits an offence and is punishable therein. The sugar which is the commodity before us is food under s. 2(5)

of the Act. We have already pointed out that sugar by itself' is an article used as food or at any rate it is an article 'which, ordinarily enters into or is used in the composition or preparation of human food. In this case the sale was for analysis and the article was an article of food and in view of the concurrent findings of both the courts that it was adulterated, the respondent& have contravened ss. 7 and 16(1)(a)(i) of the Act. Hence it must be held that the respondents are technically guilty of the offence with which they were charged and they have been wrongly acquitted by the High Court and the District Magistrate. But in view of the fact that the appellant has argued the appeal only as a test case and does not challenge the acquittal of the respondents, we merely set aside the order and judgment of the High Court. But we may make it clear that apart from holding the respondents technically guilty, we are not setting aside the order of acquittal passed in their favour. In the result the judgment and order of the High Court are:

set aside and the appeal allowed.

We find that on December 12, 1968 when granting special leave this Court had directed the appellant to deposit Rs. 1000/to be used by the respondents for their costs and liberty has been given to the respondents to withdraw the amount to pay fee to, the counsel, in case they engage a counsel. As the respondents have engaged a counsel, they are entitled to withdraw from the court deposit the amount representing the costs incurred by them. and the fee payable to the counsel under the relevant rules. Surplus,, if any, will be refunded to the appellant.

K.B.N. Appeal allowed.