

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 2699 of 2003 (C)

**AGAINST THE JUDGMENT IN CRL.A.NO.61/1993 of ADDL. DISTRICT & SESSIONS
(AD HOC) FAST TRACK COURT - II, PATHANAMTHITTA, DATED 13-12-2002**

**AGAINST THE JUDGMENT IN C.C.NO.465/1990 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, RANNY, DATED 29.06.1993.**

REVISION PETITIONER(S)APPELLANT/ACCUSED:

**BABU.T.A.
THENALIL HOUSE,
ANGAMOOZHI, ANGAMOOZHI P.O.,
SEETHATHODU PANCHAYAT.**

BY ADV. SRI.V.PHILIP MATHEW

**RESPONDENT(S)/STATE & COMPLAINANT:
ACCUSED 2 AND 3/RESPONDENTS 3 AND 4
BEFORE THE SESSIONS COURT ARE
NOT MADE PARTIES HEREIN AS THEY
ARE NOT NECESSARY PARTIES IN THE REVISION.**

- 1. STATE OF KERALA
REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM**
- 2. FOOD INSPECTOR
SEETHATHODU PANCHAYAT
PATHANAMTHITTA CIRCLE.**

BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
17.08.2015, THE COURT ON, 03-09-2015 PASSED THE FOLLOWING:**

MrCs

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.2699 of 2003

Dated 03rd September, 2015

ORDER

1. In this revision petition filed u/s 397 r/w S.401 of the Code of Criminal Procedure, the petitioner challenges concurrent verdicts of guilt in a prosecution under the Prevention of Food Adulteration Act, 1954, as amended (hereinafter referred to as "the PFA Act" for brevity). He was prosecuted by the Food Inspector, Pathanamthitta Circle for having sold adulterated coriander. After an elaborate trial, he was convicted u/s 16(1)(a)(i), (2) (i-a) of the Prevention of Food Adulteration Act, 1952 and Appendix BA 05.08.01, and was sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs.1000/- for the offence and in default of payment of fine, to undergo simple imprisonment for one month.

2. The case of the prosecution can be summarised as follows:-

on 12.8.1987 the Food Inspector, Seethathode panchayat inspected the provisional shop run by the petitioner and after disclosing his identity purchased six packets of Coriander powder each weighing 100 gms. The sampling was conducted as per the rules and one of the samples were despatched to the local health authority and the other to the public analyst on 13.8.1987. As per Ext.P11 report dated 16.9.1987 the public analyst had declared that the sample does not confirm to the standards prescribed for Coriander (Coriander sativum) powder under PFA Rules, 1955 and is therefore, adulterated. Ext.P11 report dated 16.9.1987, reads as follows :-

"I further certify that I have caused to be analysed the aforementioned sample and declare the result of the analysis to be as follows:

<i>Microscopic Examination</i>	<i>The same consists of Coriander (Coriandrum Sativum (L) Powder</i>
<i>Moisture</i>	<i>6.1 percent by weight</i>
<i>Total Ash</i>	<i>7.98 percent by weight</i>
<i>Ash insoluble in dilute hydrochloric acid</i>	<i>1.05 percent by weight</i>
<i>Added colouring matter</i>	<i>Absent</i>
<i>Test for starch</i>	<i>negative</i>

3. The statutory authority has prescribed standards for Corianders in A 05 08 01 of Appx.B to the PFA Rules 1955 as it stood then. It reads as follows:-

<i>Moisture</i>	<i>Not more than 12 per cent by weight</i>
<i>Total ash</i>	<i>Not more than 7.0 per cent by weight</i>
<i>Ash insoluble in dilute HCL</i>	<i>Not more than 1.5 per cent by weight</i>

[It shall be free from added colouring matter]

4. As is revealed from Ext.P11, the Public analyst

came to the conclusion that the sample did not confirm to specification because of the fact that the total ash contained in the sample was 7.98% by weight instead of the allowable limit of 7.0% by weight. In other words, 0.98% of total ash was present over and above the permissible limit.

5. On the basis of the above report issued by the Public Analyst, complaint was preferred by the Food Inspector.

6. After entering appearance, accusation of the offence was read over to the complainant to which he pleaded not guilty. When the case was posted for evidence of the complainant and his witnesses, petition was filed by the petitioner seeking to implead the wholesale distributor as well as the manufacturer of the Coriander powder. The 2nd

accused who is the manufacturer of the Coriander powder, and the 3rd accused, the retail dealer from whom the petitioner had purchased the said sample as per bill, was impleaded as accused Nos.2 and 3.

7. The prosecution examined PW1 to 3 to prove its case through whom Ext.P1 to P15 were marked. After the close of the prosecution evidence, the petitioner was questioned with regard to the incrimination materials. Thereafter, on the side of the defence DW1 to 4 were examined and Exts.D1 to 3 were marked. Petitioner herein entered the box and gave evidence as DW4.

8. The learned Magistrate, on an elaborate appreciation of the evidence let in came to the conclusion that the petitioner was unsuccessful in proving Ext.D3 bill as per which it was claimed that

the Coriander powder manufactured by the 2nd accused was sold by the 3rd accused to the petitioner. On its basis it was held that the petitioner was not entitled to get the benefit u/s 19(2) of the PFA Act. Holding so, the petitioner was convicted and sentenced to undergo simple imprisonment for six months and to pay fine of Rs.1000/- as aforesaid. The appeal preferred against the conviction and sentence was dismissed as per judgment dated 13.12.2002. It is against the above concurrent verdicts that the petitioner has approached this Court by filing this revision petition.

9. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

10. The learned counsel for the petitioner has

mainly targeted Ext.P11 report of the Public Analyst and contended that except for a marginal increase in the total ash contained in the sample, there was nothing in the report submitted by the Public Analyst to find fault with the food article sold by the petitioner. According to the learned counsel, no adulterant has been added so as to make the food item unfit for human consumption. Nor is there a case for the prosecution that extraneous matter has been added to the food article. It was further submitted that the petitioner has been grossly prejudiced as the mode of sampling adopted by the Food Inspector was not in accordance with law. Basing his argument on Ext.P4 seizure mahazar, it was submitted that on the date of sampling by the Food Inspector it was revealed that the Coriander was packed in polythene covers of 100 gms each and by denying the benefit of warranty under 19(2) of

the Act, the courts have committed a grave error. According to the learned counsel, petitioner was running a small grocery shop and it was inconceivable as to how he could have sold the items manufactured by the 2nd accused from his manufacturing unit at Kollam. It was also contended that merely because the Court below have entertained some suspicion with regard to Ext.D3 bill and warranty issued in favour of the petitioner by the 3rd accused the benefit u/s 19(2) should not have been denied to the petitioner. Inviting the attention of this Court to the evidence of PW1, the Food Inspector and also Ext.P4 mahazar it was pointed out that out of six packets seized by the Food Inspector on the date of inspection, only one packet having a capacity of 100 gms contained label declaration. That label was that of the 2nd accused, Kayees food products, Kilikollur, Kollam. None of the other

packets contained any label declaration. According to the learned counsel, the Food Inspector ought to have made the sample homogeneous and ought not have proceeded on the basis that the samples were having identical label declaration. It was further contended by the learned counsel that a perusal of the complaint would reveal that the same is vague and it was owing to the said fact that the petitioner did not exhaust his rights u/s 13(2) of the Act for sending the sample to the Central lab for analysis. Finally, it was finally urged that there was violation of s.11 of the Act and as the discrepancy detected by the Public Analyst was very minimal, petitioner was entitled to an acquittal.

11. On the other hand, the learned Public Prosecutor has contended that adulteration of food articles and selling of articles which does not conform

to specification cannot be taken lightly and as both the Courts below have concurrently held that the defence taken by the petitioner was not sustainable, this Court will not be justified in interfering with the said findings in revision.

12. I have anxiously considered the rival contentions raised by the learned counsel appearing for the petitioner as well as the learned Public prosecutor.

13. It is borne out from the complaint as well as the mahazar produced before Court and marked as Ext.P4 that on 12.8.1987, the Food Inspector had visited the shop of the petitioner and had taken samples for analysis after issuing Form-vi notice. Each polythene packet was of 100 gms capacity and six packets stored in the shelf was taken by the

Food Inspector. Since the packets were found sealed by the Food Inspector, he divided the six packets into three, and the same was tied with twain, sealed and labelled. One of the samples were sent to the Public Analyst. A perusal of Ext.P4 mahazar produced and marked before the Court below would reveal that out of these six packets only one packet contained label declaration to the effect Kayees Brand, Malli powder, registration No.09/08/12664 SSI 100 gms no price – date - . In the same packet, there was another label as Kayees curry powders, Kayees Natural food compound, Kayees industries, Kilikollur, Kollam- 691004. Reference to Ext.P4 would reveal unmistakably that only one packet out of the six packets purchased by the Food Inspector contained a label declaration.

14. When PW1 was examined, he would say that

the coriander powder was packed in a polythene cover and in one of the packets, there was a label of Kayees, the 2nd accused. He does not have a case that any of the other five packets contained any label declaration. In cross examination he has asserted that only packet contained label declaration.

15 . Question is whether the contention of the learned counsel that prejudice was caused to the petitioner for non compliance of S 11 particularly in view of Exhibit P 11 , report of Analysis.

16. S.11 of the Act deals the procedure to be followed by Food Inspectors.

S.11- Procedure to be followed by food inspectors -

(1) When a food inspector takes a sample of food for analysis, he shall -

(a).....

(b). except in special cases provided by rules

under this Act, divide the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed."

17. Further, a reference to 22(A) of the PFA Rules, 1955 would also be profitable. Rule 22(A) refers to contents of one or more similar sealed containers having identical labels to constitute the quantity of a food sample - It reads as follows :-

"Where food is sold or stocked for sale or for distribution in sealed containers having identical label declaration, the contents of one or more of such containers as may be required to satisfy the quantity prescribed in Rule 22 shall be treated to be a part of the sample".

18. In view of the fact that only one packet of 100 gms out of six packets purchased by the Food Inspector contained a label declaration, question is whether the Food Inspector ought to have concluded

that the same was representative of the whole sample. In the instant case, what is evidenced by Ext.P11 report of the Public Analyst is that, total ash was found .98% in excess. According to the learned counsel, if the Food Inspector had made the food article homogeneous instead of taking representative samples as provided under Rule 22A, this minor discrepancy would not have occurred. It was also pointed out by the learned counsel that the Public Analyst instead of subjecting the food article to a micro chemical test, has analysed the sample by using a microscope.

19. A reading of Rule 22A of the Rules 1955, would reveal that the same is a special exception to the statutory requirement u/s 11. Rule 22A is a special case exempted from the requirement mentioned in s.11(1)(b) of the Act. In **Food Inspector v. Jose**

(1987 (2) KLT 190) this Court had observed as follows:-

"Where food is sold or stocked for sale or for distribution in sealed containers having identical label declaration, the contents of one or more of such containers as may be required to satisfy the quantity prescribed in R.22 shall be treated to be a part of the sample.

The said rule undoubtedly is a special case exempted from the requirements mentioned in s.11(1)(b) of the Act. What could be the legislative idea in exempting food articles kept in sealed containers having identical label declaration from the necessity of division ? The answer can be partly gathered from R.32. The rule mentions about various specifications for labels. The name, trade name or description of the food, name and business address of the manufacturer, the net weight or number, batch number or code number, and the month and year in which the commodity is manufactured are some of those specifications which R.32 insists for being inscribed on the labels, though the said specifications are also subject to some exceptions. The reasonable assumption is that packets or containers having identical label declarations proclaim that the contents in each of such packets or containers is identical with the other. When food packed in such containers is purchased by a food inspector, no additional purpose is served by mixing the contents of such containers together. Even without mixing them up the contents in each such container can be presumed to be homogeneous of the other.

20. Rule 22A when read along with R.32 of PFA

Rules, 1955 was considered in the above judgment. In the case on hand, it cannot be said that the six items were having identical label declarations proclaiming that the content of each of such packet or container is identical with the other. When that be the case, I am of the view that the food Inspector ought to have mixed the contents of these packets together. Without mixing up the contents it cannot be presumed that they are homogeneous of the other.

21. Further, in the instance case, Ext.P11 report would reveal that the Public Analyst had conducted the test by microscopic examination. In **Jagdish Chandra v. State of U.P (1982 (1) SCC 350)** the Apex Court has observed as follows:-

"A glance at the above Rules would show

that the percentage of the various ingredients such as ash, insoluble in Hcl, or volatile oil or moisture in the sample in question, cannot be ascertained with any degree of accuracy by mere ocular examination under a microscope. Chemical tests including treatment of the ash in the sample with Hydrochloric Acid would be a must. Since in the instant case, the sample was not subjected to any chemical test or analytical process, the opinion of the Public Analyst was not entitled to any weight whatever."

22. In the case on hand, the prosecution has not let in any evidence to show that the analyst had conducted any chemical test. In view of the peculiar facts and circumstances of this case and in view of the specific mention of adopting microscopic examination in Ext.P11 report of the Public Analyst, some error in the method of analysis also cannot be ruled out. I take note of the fact that the detection was in the year 1987 and more than 25 years have elapsed.

23. In **Nortan Mal v. State of Rajasthan (1995**

SCC (Crl) 780), the Apex Court has observed that when total ash permissible is not more than 8% by weight and when in a case, the sample obtained from the vendor was 8.38% by weight, the variation is minimal and there could be a possibility of error of judgment in analysis. It was further held that the functions of the Public Analyst being that of an expert, his word in that regard in the normal circumstances is to be given considerable weightage. It was further held that the same cannot be put on the pedestal of being the gospel truth. The Apex Court finally held that the adulteration found in the instant case being marginal, the possibility of there being an error of judgment in analysis and the matter being as mentioned at the outset cannot be ruled out.

24. In the case on hand the food inspector has

purchased 6 packets of coriander powder and there was only one packet which contained label declaration. In the facts and circumstances, it cannot be held that the sampling of the food article was conducted by complying with the directives contained in S 11 (1) (b) of the Act. Ext. P11 report prepared by the public analyst based on microscopic examination revealed only marginal increase in total ash content. I am of the view that the failure on the part of the food inspector to make the samples sent for analysis homogeneous and representative has resulted in prejudice more so because the samples sent did not contain identical label declaration.

25. In the facts and circumstances, I am of the considered view that the benefit of doubt has to be extended to the petitioner. In view of the above, the conviction of the petitioner u/s 16 (1) (a)(i), 2 (i-a)

of the Prevention of Food Adulteration Act, 1954 cannot be sustained and the same is liable to be set aside.

26. In the result, the revision petition is allowed. The conviction and sentence passed against the petitioner is set aside and the petitioner is set at liberty.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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P.S to Judge