BENNY THOMAS

v.

FOOD INSPECTOR, KOCHI AND ANR.

(Criminal Appeal No. 998 of 2008)

JULY 7, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Prevention of Food Adulteration Act, 1954 – s. 16 (1) (a) (i) r/w s. 7 (1) and s. 2 (ia)(m) / Prevention of Food Adulteration Rules, 1955 – r. 5 r/w Appendix B, Item A.07.08 and r. 50, 17 and 18 – Food sample – Collected by Food Inspector after effective purchase – On analysis sample found to be adulterated – Initiation of prosecution – Conviction by courts below – On appeal, held: In the facts of the case, prosecution proved that the sample was adulterated – There was no violation of rr. 17 and 18 – Public Health and Safety.

Food Inspector (PW1) while inspecting shop of the appellant, purchased one of the four bottles of synthetic syrup kept in the shop and received voucher for payment (Exbt P-4). The analysis report of the sample of the syrup showed that it did not conform to the standards prescribed under the rules and therefore was adulterated. Appellant-accused was prosecuted. He was found guilty u/s 16 (1) (a) (i) r/w s. 7 (1) and s. 2 (ia) (m) of Prevention of Food Adulteration Act, 1954 and also u/r 5 r/w Appendix B, Item A.07.08 and r. 50 of Prevention of Food Adulteration Rules, 1955. Appellate Court as well as revisional court confirmed the conviction. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. The prosecution has been able to establish that the sarbath purchased from the accused by PW1 is adulterated. Admittedly, the sample was collected by the Food Inspector after effecting purchase and had given

A **the receipt. As rightly noted by the High Court the articles were intended for sale. When the accused was questioned under section 313 Cr.P.C., he conceded that he had sold sarbath to PW1. Further the sale of sarbath to PW1 is proved by Ex. P4 voucher issued by the accused towards**
B **the purchase and acceptance of its cost from PW1. He had also given Ex. P3 Form VI notice to the accused, the receipt of which has been acknowledged by him as per Ex. P3 (a) endorsement and signature. [Paras 7 and 8] [74-E,F,G,H; 75-A & F]**

C **2. From the evidence of PW-1 it is clear that at one point of time the sample was handed over to the public analyst the succeeding day of taking the sample from the shop of the accused. PW-1 also stated that other two parts of the sample alongwith Form No.VII Memorandum and**
D **the specimen impression of the seal used to seal the sample bottles were handed over to the Local Health Authority by PW-1 and copy of the information had been given to PW-2, the Local Health Authority. PW-2 stated in his evidence that he had received two parts of the sample**
E **alongwith Form VII and the specimen impression of the seal used to seal the sample in separate sealed cover. Therefore, there was no violation of Rules 17 and 18 of the Rules. [Para 10] [76-G,H; 77-A & B]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
F No. 998 of 2008

From the final Judgment and Order dated 25.5.2006 of the High Court of Kerala at Ernakulam in Criminal Rev. Pet. No. 1917 of 2004

G K. Rajeev for the Appellant.

R. Sathish for the Respondents.

The Judgment of the Court was delivered by

H **Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Kerala High Court dismissing the Criminal Revision Petition which was filed questioning correctness of the conviction for offence punishable under Section 16(1)(a)(i) read with Section 7(1) and Section 2(ia)(m) of the Prevention of Food Adulteration Act, 1954 (in short the 'Act') and also under Rule 5 read with Appendix B, Item A.07.08 and Rule 50 of the Prevention of Food Adulteration Rules, 1955 (in short the 'Rules'). The appellant was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.2,000/- with default stipulation as recorded by learned Judicial Magistrate, Ist Class, Kochi. The learned IV Addl. Sessions Judge, Ernakulam in appeal modified the sentence and reduced it to simple imprisonment for six months and a fine of Rs.1,000/- with default stipulation.

3. Background facts in a nutshell are as follows:

On 22.5.2000 at about 4.00 p.m., the Food Inspector, P.W.1 inspected the shop of the appellant by name "Bejoy Fruits and Vegetables". He found four bottles of Sarbath (synthetic syrup) each of 700 ml. capacity, which were kept for sale. He bought one bottle of synthetic syrup, on paying Rs.40/-, Ex.P.4 being the voucher for payment. He sampled it according to the procedure. After analysis, he obtained Ex.P.12 report, which showed that the sample did not conform to the standards prescribed under the rules and, therefore, was adulterated. Accordingly, he proceeded against the appellant. Since accused abjured guilt, trial was held.

4. Four witnesses were examined and 21 documents were marked on the side of the prosecution and three documents were marked on the side of the defence. After appreciation of the evidence, the appellant was found guilty, convicted and sentenced accordingly. Appeal by appellant resulted only in reduction of sentence. The revision petition did not bring any relief.

5. Stand before the High Court was that articles purchased by the Food Inspector (PW-1) were not kept for sale and as

A such the same were not the food articles. It was further submitted that there was no enquiry made by the Food Inspector as to whether these articles were kept for sale. The High Court did not accept the stand. Referring to the evidence of PW-1, it noted that PW-1 had introduced himself as Food Inspector and had B expressed willingness to purchase 700 ml. of 'synthetic syrup (Sarbath)' which was kept for sale. He had purchased it after giving Rs.40/-. The High Court noted that if the articles were not kept for sale the question of selling it to the Food Inspector does not arise. It found that the articles purchased were for human C consumable and were kept for sale and on analysis did not conform to the requirement. It held that there was no violation of Rules 17 and 18 of the Rules as claimed. Noting that the minimum sentence has been imposed, revision petition was dismissed.

D 6. Learned counsel for the appellant submitted that no enquiry was conducted of the samples as to whether articles were kept for sale. It was further submitted that the articles were not meant for sale and, therefore, the said Rules have no application.

E 7. Learned counsel for the respondent-State on the other hand supported the impugned order. Admittedly, the sample was collected by the Food Inspector after effecting purchase and had given the receipt. As rightly noted by the High Court the articles were intended for sale.

F 8. The complainant, Food Inspector, Cochin Circle has given evidence as PW1. He has spoken about Sarbath, the food article involved in this case from the shop of the accused and also the various formalities done by him in sampling the G same. The fact that the sarbath was purchased from him is not disputed by the accused. When he was questioned under section 313 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C') he conceded that he had sold sarbath to PW1. Further the sale of sarbath to PW1 is proved by Ex. P4 voucher issued by the accused towards the purchase and acceptance H

of its cost from PW1. He had also given Ex. P3 Form VI notice to the accused, the receipt of which has been acknowledged by him as per Ex. P3 (a) endorsement and signature. As PW1, the Food Inspector has stated that he had disclosed to the accused the intention of the purchase of sarbath from him, what is contended by the accused is that the sarbath purchased from him was not intended for sale as such. According to PW1, the purchased sarbath was sampled by him at the spot as provided in the Rules, and one part of the sample prepared by him was sent to the public analyst for analysis and the remaining two parts of the sample were forwarded to the Local (Health) Authority, and received the result of the analysis of the sample from the public analyst, through Local (Health) Authority. Ex. P12 is the report of the Public Analyst, as per which the sample does not conform to the standards prescribed for sarbath under the Rules and so the sample is adulterated. On receipt of the intimation regarding the launching of prosecution against him, the accused filed a petition before the court below seeking to send one part of the sample kept with the local (Health) Authority to the Central Food Laboratory for analysis. Accordingly, one part of the sample was called for from the Local (Health) Authority and sent to Central Food Laboratory. Ex. P17 is the report obtained from Central Food Laboratory, as per which the sample does not conform the standard prescribed for sarbath under the rules and is, therefore, adulterated. Thus the prosecution has been able to establish that the sarbath purchased from the accused by PW1 is adulterated.

9. One of the contentions of the appellant/accused is that the Food Inspector had violated the mandatory provisions contained in Rule 17 & 18 of the Rules and so he is eligible for an acquittal. Rules 17 & 18 of Rules are as follows:

> "17. Manner of dispatching containers of samples :- The containers of the sample shall be dispatched in the following manner, namely:
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> a) The sealed container of one part of the sample for

A analysis and a memorandum in Form VII shall be sent in a sealed packet to the public analyst immediately but not later than the succeeding working day by any suitable means:

B b) The sealed containers of the remaining two parts of the sample and two copies of the memorandum in Form VII shall be sent in a sealed packet to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable means:

C (c) The sealed container of one of the remaining two parts of the sample and a copy of the memorandum in Form VII kept with the Local (Health) Authority shall within a period of 7 days be sent to the public analyst on requisition made by him to it by any suitable means:

D

Provided that in the case of a sample of food which has been taken from container bearing Agmark seal, the memorandum in Form VII shall contain the following additional information, namely:

E a) Grade

b) Agmark Label No. /Batch No.

c) Name of Packing station

F 18. Memorandum and impression of seal to be sent separately: A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the Public Analyst by any suitable means immediately but not later than the

G succeeding working day."

10. From the evidence of PW-1 it is clear that at one point of time the sample was handed over to the public analyst on 23.5.2000 i.e. the succeeding day of taking the sample from the shop of the accused. PW-1 also stated that other two parts

H of the sample alongwith Form No.VII Memorandum and the

specimen impression of the seal used to seal the sample bottles were handed over to the Local Health Authority by PW-1 and copy of the information had been given to PW-2, the Local Health Authority. PW-2 stated in his evidence that he had received two parts of the sample alongwith Form VII and the specimen impression of the seal used to seal the sample in separate sealed cover. Therefore, as rightly held by the High Court there was no violation of Rules 17 and 18 of the Rules.

11. The accused in his examination under Section 313 of the Cr.P.C. admitted that he had sold the articles in question to PW-1. The plea that the articles were not intended for sale has no substance as noted above. The sentence imposed as aforenoted is minimum and, therefore, the plea, that the sentence is harsh, has no substance.

12. Looked at from any angle, the appeal is without merit, deserves dismissal, which we direct.

K.K.T. Appeal dismissed.