

PETITIONER:
RANGANATHA REDDIAR

Vs.

RESPONDENT:
THE STATE OF KERALA

DATE OF JUDGMENT:
14/08/1969

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
MITTER, G.K.
REDDY, P. JAGANMOHAN

CITATION:
1970 AIR 520 1970 SCR (1) 864
1969 SCC (2) 457
CITATOR INFO :
D 1980 SC 360 (18)

ACT:

Prevention of Food Adulteration Act, 1954, s. 14--The Prevention of Food Adulteration Rules, 1954 R. 12-A, proviso--Scope of---Cash memo-covering food item found adulterated-Containing wording "quality upto the mark"--If sufficient warranty in terms of proviso.

HEADNOTE:

It was alleged in a complaint against the appellant, who held a wholesaler's license, that he had stored and sold compounded asafoetida which was found to have been adulterated. It was the appellant's case that he had purchased the asafoetida from a distributor in enclosed packets and that the cash memo furnished to him by the distributor stated inter alia that "quality is upto the mark". It was therefore contended on his behalf that the case fell within the proviso to Rule 12-A of the Prevention of Food Adulteration Rules, 1955, framed under Act 37 of 1954 in that no warranty in a prescribed form was necessary as the cash memo contained a warranty that the food contained in the package was the same in nature, substance and quality as demanded by the appellant.

Although the Trial Court upheld the appellant's contention, the High Court on appeal held to the contrary.

In the appeal to this Court it was respondent's contention that the warranty must state expressly that the food mentioned in the cash memo was the same in nature, substance and quality as demanded by the vendor and if these words did not exist in the cash memo, the proviso would not apply.

HELD: Allowing the appeal:

The words "quality is upto the mark" in the cash memo meant that the quality of the article was upto the standard required by the Act and the vendee. Quality in this context would include nature and substance because the name of the article was given in the cash memo. The cash memo was the document using the language of a tradesman. Any tradesman who was assured that the quality of the article was upto the

mark would 'readily conclude that he was being assured the article was not adulterated. [867 H]

When the proviso to Rule 12-A expressly says that no warranty in the prescribed form shall be necessary in certain eventualities, it would be rewriting the rule to hold that nevertheless the same things must exist in the label or the cash memo. If the words used in the warranty can reasonably be interpreted to have the same effect as certifying "the nature, substance and quality" of an article of food, the warranty will fail within the proviso. [867 D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 141 of 1967.

Appeal from the judgment and order dated July 21, 1967 of the Kerala High Court in Criminal Appeal No. 109 of 1966. 865

A.S.R. Chari, A. S. Nambiar and K.R. Nambiar, for the appellant.

V.K. Krishna Menon and M.R.K. Pillar, for the respondent. The Judgment of the Court was delivered by

Sikri, J. In this appeal by certificate the only point that arises is whether the cash memo, Ex. D1, issued by the seller to the appellant contains a warranty within r. 12A of the rules framed under the Prevention of Food Adulteration Act, 1954 (Act 37 of 1954), hereinafter referred to as the Act. The Magistrate, who tried the complaint, held that Ex. D1 was a proper warranty and it fell within the proviso to r. 12A. The High Court on appeal held to the contrary.

The relevant facts are these. The appellant is a Rice & General Merchant and holds a wholesaler's licence. It was alleged in the complaint that the appellant had stored and exposed for sale and sold compounded asafoetida which was found to have been adulterated by wheat starch and tapioca starch and that non-permitted orange coal-tar dye was present. The report of the Public Analyst to Government, Trivandrum, was relied on in this connection.

The appellant appeared as a witness and he stated that he purchased asafoetida from L.T. Alakesan and Brothers, received it in enclosed packets in bags and sold it in bags. He received invoice which reads as follows:

"Lt. T. Alhakesan & Brothers,
Asafoetida Merchants, Veliamadam
Sri K. Ranganatha Reddier, Kottarakara
Rate: 6.00

Particulars: C.S.T. Rs. 2. One case of Asafoetida
Misky bag 30 Rs. 180/
The quality is up to the mark. C.S.T. Rs. 3.60

Rs. 183.60

Rupees one hundred and eighty three and N.P. sixty only.

One case (1d) (Id) 1/4/64 (Sd.) 147542 18/5/64"

He further stated that "it is written on the packet as "Extra Superior" in English and as "Compounded misky full of quality and flavour" in Tamil."

The relevant statutory provisions are:

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The Prevention of Food Adulteration Act, 1954

"S. 14. Manufacturers, distributors and dealers to give warranty.--

No manufacturer, distributor or dealer of any

article food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor."

"S. 19(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 proved---

(a) that he purchased the article of food--

(i) in a case where a license 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." The Prevention of Food Adulteration Rules, 1955

"Rule 12-A. Warranty--Every trader selling an article of food to a vendor shall, if the vendor so requires, deliver to the vendor a warranty in Form VI-A:

Provided that no warranty in such form shall be necessary if the label on the article of food or the cash memo delivered by the trader to the vendor in respect of that article contains a warranty certifying that the food contained in the package or container or mentioned in the cash memo is the same in nature, substance and quality as demanded by the vendor.

Explanation.--The term "trader" shall mean an importer, manufacturer, wholesale dealer or an authorised agent of such importer, manufacturer or wholesale dealer."

We are not concerned with the question whether rule 12A is contrary to the provisions of the Act. We take it that it is valid and if the appellant's case falls within the proviso he is entitled 'to acquittal.

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It was contended before us on behalf of the respondent that the warranty must state expressly that the food mentioned in the cash memo was the same in nature, substance and quality as demanded by the vendor, and if these words did not exist in the cash memo, the proviso would not apply. We are unable to accede to this contention. It may be that if the warranty is not contained in a label or cash memo the warranty must be in Form VI-A, which uses these words:

"We hereby certify that the food/foods mentioned in this invoice is/are warranted to be the same in nature, substance and quality as that demanded by the vendor."

But we do not decide this as it is not necessary to do so. In our view when the proviso expressly says that no warranty in such form shall be necessary in certain eventualities it would be rewriting the rule to hold that nevertheless the same things must exist in the label or the cash memo. It seems to us that if the words in the warranty can reasonably be interpreted to have the same effect as certifying "the nature, substance and quality" of an article of food, the warranty will fall within the proviso. The Act is of wide

application and millions of small traders have to comply with the provisions of the Act and the Rules. The learned counsel for the State says that if they are not able to comply with the provisions they should stop carrying on their trade. But if the object underlying the Act can be achieved, without disorganising the trade, by giving a reasonable interpretation to Rule 12A, it is our duty to do so.

A number of English cases were referred to us, but we do not find it necessary to refer to them as they interpret the Sale of Food & Drugs Act, 1875, and the later Food & Drugs Act, 1955. The language of the relevant sections dealing with defences is different and warranties employing different words have been interpreted. But they do at least show this that trade can be carried on and the object of the Act is not defeated even if traders use ordinary language of the trade or popular language in warranties.

Coming now to the language used in the cash memo it seems to us that the words "quality is up to the mark" mean that the quality of the article is up to the standard required by the Act and the vendee. Quality in this context would include nature and substance because the name of the article is given in the cash memo. It must be remembered that it is not a document drafted by a solicitor; it is a document using the language of a tradesman. Any tradesman, when he is assured that the quality of the article is up to the mark will readily conclude that he is being assured

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that the article is not adulterated. The offence, if any, has been committed by the seller and not the appellant.

There was some argument before as to the difference in the meaning of the words "nature, substance and quality". It was pointed out that s. 14 only uses two words "nature and quality" and not substance. But it is not necessary to express our views on this point. Reference was made to the case of Baburally v. Corporation of Calcutta(1). This Court held that the words on the label and the so called cash memo in that case did not contain the requisite warranty. But we are unable to see how that case assists either the appellant or the State.

In the result the appeal is allowed, judgment of the High Court set aside and that of the Magistrate restored. The appellant's bail bond shall be treated as cancelled.

R.K.P.S.

Appeal allowed.

(1) [1966] 2 S.C.R. 815.

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