

**IN THE COURT OF APPEAL**  
**OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

Public Health Inspector  
Weragala.

**Complainant**

**Vs.**

Rev. Kegalle/5114  
HC/Warakapola 84179  
Case No.CA/PHC/213/17

1. M.S. Jayasinghe  
Jayasinghe Stores  
Dippitiya, Mahapallegama
  
2. Manager  
Raigam Wayamba Salterns P.L.C.  
Kalpitiya Road  
Palavi, Puttlam.

**Accused**

**And**

Raigam Wayamba Salterns P.L.C.  
Kalpitiya Road  
Palavi, Puttlam.

**2<sup>nd</sup> Accused-Petitioner**

Public Health Inspector  
Weragala

**Complainant-Respondent**

Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent**

**And now**

Raigam Wayamba Salterns P.L.C.  
Kalpitiya Road  
Palavi, Puttlam.

**2<sup>nd</sup> Accused-Petitioner-Appellant**

Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent-Respondent**

BEFORE: **PRASANTHA DE SILVA J.**  
**K.K.A.V. SWARNADHIPATHI J.**

COUNSEL: A.S.M. Perera (P.C.), With Uvindu Jayasinghe  
For the Accused Appellant-Petitioner.

Indika Nelummini  
For the Respondent-Respondent

Date of Argument: 31.10.2022

Date of Order: 16.03.2023

**K.K.A.V. SWARNADHIPATHI J.**

**ORDER**

The Complainant-Respondent-Respondent [hereinafter named called as the Respondent] filed charges against two accused in the Magistrate Court of Warakapola under case No.84179.

The accused were charged under Section 2(1)(F) of the Food Act No.26 of 1980, amended by Section 2(1)(a) of the Act No.20 of 1991 and Section 5(e) of the Food Iodization of Salt Regulations 2005 punishable under Section 18(1)(c)(1) of Food Act No.26 of 1980 read with Section 14(1)(c) of Food Act (Amended ) No.20 of 1991. The charge sheet was filed on the 13<sup>th</sup> of July 2015, on the same day the learned Magistrate ordered to issue summons to both accused.

On the notice returnable date, the 5<sup>th</sup> of October 2015, the 1<sup>st</sup> Accused appeared before the Court and pleaded guilty to the charge. On summons, the 2<sup>nd</sup> accused appeared before Court on the 4<sup>th</sup> of January 2016. On that date, an amended plaint was read to the 2<sup>nd</sup> accused, who pleaded not guilty.

On the 22<sup>nd</sup> of August 2016, the prosecution started giving evidence. While P.W. 1 was giving Evidence-in-Chief, the prosecution produced a document they sought to mark as [P3]. On behalf of the 2<sup>nd</sup> Accused, an objection was taken against accepting the document marked [P3].

The document sought to be marked as [P3] was a Government Analyst's report of the salt samples sent by the prosecution.

The learned Magistrate overruled the objection on the 19<sup>th</sup> of September 2016. Among other facts, the learned Magistrate cited Section 44(3) of the Criminal Procedure Code, making annexing documents with the summons mandatory.

Aggrieved by this decision, the 2<sup>nd</sup> Accused filed a revision application to the High Court of Kegalle under Case No. H.C.R./5114/R. After listening to both parties at the inquiry, the learned High Court Judge held with the Magistrate by order dated 12<sup>th</sup> of December 2017.

The 2<sup>nd</sup> Accused, who is the Appellant of the present case, and other party parties filed their written submissions and held oral arguments in Court, and this judgment is in respect of those arguments. The Appellant and the Respondent placed arguments before this Court on the same arguments they had placed before the Magistrate's Court and the High Court.

The Appellant placed his arguments and stated that the Respondents had not followed the statute.

Section 23(1) of the Food Act No.26 of 1980 reads as follows:-

"In the absence of evidence to the contrary, a document purporting to be a report or a certificate signed by the approved Analyst or an additional approved Analyst upon any matter submitted to him for examination or analysis shall be sufficient evidence of the facts stated therein."

It further states that such report or a certificate of the approved Analyst shall not be received in evidence by the learned Magistrate unless the prosecution has complied with the two conditions in Section 23(3) of the Food Act.

According to Section 23(3)

- The prosecution should have furnished a copy of the report or certificate to the Accused.

And

Reasonable notice of the intention of producing the report or certificate in the evidence must be communicated to the Accused person.

In the Magistrate's Court and the High Court, the judges were satisfied that the summons had given enough notice of the intention regarding marking the Analyst's report in evidence.

On behalf of the Appellant, it was argued that Section 24(2) of the Food Act had given an opportunity to the Accused person to challenge the report. Provision is made in the Act to request from Court to send the remaining sample to another Analyst.

According to the Food Act, when the prosecution requests a sample to be sent to the Analyst, it is mandatory for the Magistrate to send ½ to the Analyst and retain the other ½.

When perusing the Magistrate Court's case record, the Analyst examined the sample and made his report on the 5<sup>th</sup> day of 2015. This indicates that the report had come to Court within a short time. The prosecution pointed out that the time taken by the Analyst to report back was two months. However, for 18 more months, the report was kept away from the 2<sup>nd</sup> Accused.

The prosecution argued that the accused was served a copy along with the charge sheet, therefore he was aware that the report would be marked in evidence. If the Accused was interested, he could have requested from Court to send the remaining sample to the Analyst. When the Appellant had not exercised his right, he cannot now seek relief from this Court.

To accept the prosecution's argument, they should satisfy that summons contained a copy of the report even though Section 44(3) of the Criminal Procedure Code stipulates that sending a copy of the Case record does not bear witness to sending a copy. The amended charge sheet holds the names of two witnesses and three documents named Idiripathkirima in Sinhalese.

An argument was formed by the prosecution that it is not late, even now, for the Appellant to request to send a sample. What he should have done on the day he objected to the marking of [P3] was to request from Court to send the other half to an Analyst.

As pointed out by the Appellant, after a delay of eighteen months, the sample will not hold the evidential value. Iodine will change due to sunlight and other external reasons.

For centuries, this country's criminal law principles held that let a hundred guilty go free rather than one innocent person is punished. This rule made judges to be very careful when the Court exercises its powers in imposing punishments. The verdict should be pronounced not on a balance of probability but beyond a reasonable doubt.

When a person is handed over the charge sheet and evidence taken on the same day, there is no time to object or request from Court to send a sample to the Analyst.

According to the record, the amended charge sheet was read in Court and given to the 2nd Accused (The Appellant) on the 4th of January 2016. On that same day, P.W.1 had given evidence, and the prosecution had sought permission to mark the document as [P3].

The prosecution must take all steps to prove its case. Any doubt should be read in favour of the Accused person. The owner of the benefit of the doubt is the Accused person.

Since the prosecution had failed to prove that a copy of the report was sent along with the charge sheet or that the Accused was given a copy before the 4th of January 2016, the Respondents had not complied with mandatory provisions of the Food Act.

Therefore, we allow the appeal.

**Judge of the Court of Appeal**

**PRASANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**