
(1990) 08 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 604 of 1989

Adda Kasivisweswara Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 12, 14, 7

Citation : (1990) 3 ALT 220 : (1990) 2 APLJ 437 : (1991) CriLJ 227

Hon'ble Judges : Bhaskara Rao, J

Bench : Single Bench

Advocate : T. Bali Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This revision is filed against the conviction of the petitioner u/s 16(1-A) and 7 read with 2(i-a)(m) of Prevention of Food Adulteration Act and sentence to six months R.I. and a fine of Rs. 1,000/-.

The facts of the case are, that P.W. 1 the Food Inspector, Eluru, visited the shop of the petitioner and found 9 gingili oil tins of 15 kgs. each, and took a sample having purchased 375 grams of gingili oil for Rs. 7-10 ps. under a receipt. He served Form No. VI on the petitioner informing him that he took samples for the purpose of analysis; he divided the said gingili oil into three parts and filled the said parts in three clean, dry and empty bottles and sealed the said bottles according to the procedure prescribed under the Prevention of Food Adulteration Act and Rules and sent one such bottle to the Public Analyst for analysis, and that the Public Analyst after analysis opined that the sample sent to him is not conforming to Butyrorofractometer reading, Iodine value and Saponification value, and is therefore, adulterated. So, a complaint was filed by the Food Inspector. The prosecution examined P.Ws. 1 and 2 i.e. the Food Inspector and another and marked Exs. P-1 to P-16. The defence examined one witness as D.W. 1. The trial Court, after considering the entire material on record found the accused guilty of the offence with which he was charged, convicted add sentenced him to undergo R.I. for one year and to pay a fine of Rs. 2,000/- in

default to suffer 4 months R.I. Against that judgment, an appeal is preferred. The appellate Court after having considered the entire material available on record, confirmed the conviction of the trial Court but reduced the sentence to six months R.I. and a fine of Rs. 1,000/-. Against that, the present revision is filed.

2. Sri T. Bali Reddy, learned counsel appearing for the petitioner submitted that there is no proper sanction for prosecution in this case inasmuch as it is not in accordance with law. Ex. P-13 is the sanction order in this case. The sanction order reads as follows :

"Sanction : Dt. 27-9-86. RC. No. 216/F1/86 Ref :- 1. Public Analyst Report No. 504/85 dt. 26-8-86. 2. RC F2 No. 13093/86 dt. 15-9-86 of Health Officer i/c Eluru Municipality.

3. The Food (Health) Authority A.P., Hyderabad on perusal of the detailed report submitted in the letter second cited and mediators Report accords sanction to launch prosecution under provisions of P.F. Act, 1954 and Rule thereunder against Adda Kasi Visweswara Rao, proprietor of Srirama Gingelly Oil Mill, Boadati vari Veedhi D. No. 22-10-34, 14th Ward, Eluru in respect of sample bearing Code No. and Serial No. 5/51 No. 33/85-86, Gingelly Oil () which is found to be adulterated as per Public Analyst Report Ist cited.

4. The Health Officer i/c Eluru Municipality is requested to see that prosecution is launched immediately and intimate the date of institution of prosecution and C.C. No.

Sd. Director and Food (Health) Authority".

5. By reading the above sanction order it is very clear that the authority has not applied its mind as to what is the adulteration and for what reasons it is according sanction. The above sanction order clearly shows that the order is passed mechanically without applying its mind properly. Section 20 of the Food Adulteration Act as follows :

"20(1) : No prosecution for an offence under this Act, not being an offence u/s 14 or Section 14-A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchase referred to in Section 12, if he produces in Court a copy of the report of the public analyst along with the complaint.

2. to 3

6. As per the above section, the sanctioning authority has to apply its mind before granting sanction to the Food Inspector to the facts of the case. The learned counsel for the petitioner referred to some of the judgments delivered by

this Court. This court in *B. Raja Gowd v. State (Food Inspector)* 1990 (2) A.L.T. 54 held as follows :

"According to the latest law laid down by the Supreme Court the sanctioning authority is not only required to apply its mind to the facts of the case but it should satisfy itself that there is prima facie case and should also record reasons for launching prosecution and also specify that it is necessary in the public interest."

7. The Bombay High Court in *Gahininath v. State of Maharashtra*, 1988 Cri. LJ 48 held as follows (at page 48 Cri LJ 1988) :

"The order u/s 20 sanctions prosecution of the offender should not be vague and omnibus. The sanctioning authority must point out the relevant particulars on the basis of which the prosecution was based. It is not enough to fill up the blanks in the performance of the sanction order which demonstrates total non-application of mind on the part of the sanctioning authority. Therefore, the sanctioning authority should not only apply its mind to the facts and circumstances to be satisfied that prima facie case existed but also record reasons why launching of prosecution against the offender is necessary in the public interest."

8. This Court again, considering in Criminal Revision Cases Nos. 58 and 61 of 1989 held as follows :

"..... The instant sanction order is thus worse than the one before the Supreme Court. It does not provide the provisions of law, does not show the material that gave rise to accord sanction and does assign reasons as to how it is necessary to prosecute the accused in the public interest. It, therefore, follows that there was no application of mind in according the sanction thereby rendering the very section order invalid. Consequently the prosecution of the accused on the basis of an invalid sanction order is bad and renders the conviction illegal."

9. The Supreme Court in *A.K. Roy and Another Vs. State of Punjab and Others*, while considering Section 20 regarding sanction of prosecution under the Prevention of Food Adulteration Act held as follows (at page 2165 AIR 1986 SC) :

"The use of the words 'in this behalf' in Section 20(1) of the Act shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose, to authorise a designated person to institute such prosecutions on their behalf. The terms of Section 20(1) of the Act do not postulate further designation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and record his reasons for the launching of such prosecution in the public interest."

10. The above judgments clearly held that the sanctioning authority should not only to apply its mind to the facts of the case but also give it reasons for according sanction. Thus, the above judgments make it clear that the sanctioning authority must first state what is adulterated as per the report of the Public

Analyst and what material it has passed and then what are the reasons for granting the sanction in the right of the public interest. The sanction order must contain the above said material so as to be in accordance with Section 20 of the Prevention of Food Adulteration Act. If there is any lacuna in the sanction order, then the entire prosecution vitiates and the accused is entitled for its benefit. In the present case also the sanction order Ex. P-13 is not a proper sanction order. Therefore, the conviction and sentence imposed by the Appellate Court are set aside. The fine amounts if any paid may be returned the petitioner. Accordingly the revision is allowed.

11. Revision Allowed.