

(2004) 10 AP CK 0109
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 980 of 1999

Food Inspector, Div. III

APPELLANT

Vs

J. Narasimha Rao and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 2, 20, 7
Prevention of Food Adulteration Rules, 1955 — Rule 23, 29

Citation : (2005) 3 ALT(Cri) 38 : (2005) CriLJ 536

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant; M.V.R.N. Charya, for No. 1, C. Praveen Kumar, for Nos. 2 and 3 and E.V. Bhagiratha Rao, for No. 4, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The Food Inspector, Division-111, Krishna, Machilipatnam represented by the Public Prosecutor, High Court of A.P. preferred this criminal appeal being aggrieved by an order of acquittal recorded by the Judicial Magistrate of First Class, Tiruvuru in C.C. No. 69 of 1997 dated 15-2-1999.

2. The complainant filed the complaint against the respondents/accused 1 to 4 under Sections 16(1)(a)(ii), 7(v) and 2(ia)(b) of Prevention of Food Adulteration Act, 1954 (hereinafter in short referred to as "Act" for the sake of convenience) and Rules 23 and 29 of Prevention of Food Adulteration Rules, 1955 and item A-18.06 of Appendix-B of Prevention of Food Adulteration Rules, 1955 (hereinafter in short referred to as "Rules" for the sake of convenience).

3. The case of the prosecution is as follows :

A1 is the proprietor of Krishna Merchant Shop situated at house No. 8/249, Vissannapeta, Krishna District. A2 is the Managing Partner of A3. A4 is the proprietor of Gaja Lakshmi Dhal Mill situated at D. No. 13.1.292, Vinukonda

Road, Narasaraopet. On 13-12-1995 at about 12.00 noon, T. Srinivasa Rao (PW-1) along with his attender R. Subbarao (PW-3) inspected the premises of A1 and found A1 was present and transacting the business. During the inspection, PW-1 called Mittapalli Suryanarayana, s/o Narasimham aged 56 years, r/o Vissannapeta, to act as mediator (PW-2). PW-1 enquired A1 about the green gram dhal, which was kept in open gunny bag having about the stock of 90 Kgs., in the said business premises. A1 admitted that it is green-gram dhal kept for sale to the public for human consumption. Then, PW-1 suspected the said green gram dhal as adulterated and purchased 750 grams of said Dhal from A1 by paying costs Rs. 15/-and obtained cash receipt. After serving a notice in Form VI on A1 intimating him that the said purchased green gram dhal will be sent to the Public Analyst, State Food Laboratory, Hyderabad for Chemical analysis, and get the acknowledgment on Form VI notice. The said purchased 750 gms. of green gram dhal was equally divided into three parts and placed them into three empty clean and dry plastic bottles and covered them with caps, tied them with twine thread and sealed the caps completely with wax and affixed the labels bearing No. 196/KR/DIII/17108/95, dated 13-12-1995 visibly on each sample bottle by means of gum and then each sample bottle was wrapped with thick brown paper and nicely folded the ends by means of gum. Then paper slips issued by the Local Health Authority, Krishna District, Machilipatnam bearing its code and serial No. 196/KR/DIII/17108/95 were pasted on each sample bottle in such a manner. The paper slip goes around the bottle i.e. from bottom to top of each sample bottle by means of gum. Then PW-1 obtained signatures of A1 on three sample bottles and the paper slip and wrapper paper both carry the part of signatures. Then, each sample bottle was tied with thread on all the four sides by covering nodules of the thread, affixed for seals on each sample bottle, one at the top, one at the bottom and two were on each side of the sample bottle by using specimen impression seal of the Food Inspector with wax. Then, PW-1 enquired the details of supplier for the said food article green gram dhal and A1 produced purchase bill intimating that the said food article was purchased by him from Sri Laxmi Narasimha Traders, Vijayawada vide bill No. 34/30, dated 12-12-1995. The complete procedure was drafted by PW-1 in the Mediator's report and attested by PWs-2 and 3 and A1. The complete Mediator's report was read out by PW-1 at the spot. On 14-12-1995, one part of the sample bottle along with Form VII Memorandum with specimen impressions was sent to the Public Analyst, State Food Laboratory, Hyderabad, for Chemical Analysis by Registered Parcel under R. No. 3135 and one more copy of Form VII Memorandum with specimen impression was also sent to the Public Analyst, State Food Laboratory, Hyderabad in a separate cover by Registered Post with Acknowledgment Due on the same day vide R. No. 82 and remaining two parts of sample bottles along with Form VII Memos in duplicate with specimen impression seal were handed over to Local Health Authority, Krishna District, Machilipatnam on 14-12-1995 and got the acknowledgment. Further a copy of Form VI notice together with covering letter was sent to A3 u/s 14A of the Act informing about the lifting of sample, on 14-12-1995. In turn, the supplier-A3 has submitted reply through their Advocate

informing that the said food article of green gram dhal was purchased by them from A4 and submitted purchase bill No. 17, dated 6-12-1995. Accordingly, a notice was sent to A4 by the complainant on 30-12-1995. For which, A4 has submitted the reply through their advocate on 12-2-1996. The Public Analyst, State Food Laboratory, Hyderabad has opined that the "sample contains added Synthetic Colour and is, therefore, adulterated" vide analysis report No. 856/95, dated 24-1-1996 and the same was delivered to the Local Health Authority, Krishna, Machilipatnam under a covering letter No. 604/1996, dated 24-1-1996. The same was "received by the complainant on 31 -1 -1996. Basing on the analysis report, the complainant has submitted a detailed report to the Local Health Authority, Krishna, Machilipatnam on 20-2-1996. Accordingly, Local Health Authority, Krishna Machilipatnam, has submitted detailed report to the Director and Food Health Authority, Andhra Pradesh, Hyderabad on 20-2-1996 seeking further orders. The Director and Food Health Authority, Hyderabad had accorded sanction for institution of prosecution against A1 to A4 through their letter Re. No. 968/F2/96-97, dated 7-2-1997.

4. The case was taken on file. PW-1 and two others were examined and Exs. P-1 to P-28 and Exs. DI to D3 were marked. On appreciation of evidence, the learned Magistrate recorded an acquittal. Aggrieved by the same, the criminal appeal is preferred.

5. The learned Additional Public Prosecutor had taken this Court through the evidence of PWs-1 to 3, Exs. P-I to P28 and the findings recorded by the learned Magistrate in this regard, and would contend that the learned Magistrate having recorded certain findings in favour of the prosecution mainly recorded an acquittal on the ground that the report of the Central Food Laboratory, Gajiabad was not taken into consideration while according sanction under Ex.P-19 which is subsequent to Ex.P18 and in the absence of obtaining of fresh sanction, the prosecution cannot be sustained and this view expressed by the Magistrate cannot be sustained. The learned Additional Public Prosecutor also had pointed out the findings recorded by the learned Magistrate while answering point Nos. 1 to 3.

6. Per Contra, Sri M. V. R. Narasimhacharya, learned counsel representing A1 made the following submissions :

The learned counsel would point out that as per the evidence of PW-1, it is clear that PW-1 had not followed the requisite procedure to be followed under the Act and the Rules. The learned Counsel also had taken this Court through the evidence of the witnesses and would contend that in the light of the clear findings recorded by the learned Magistrate relating to non-obtaining of the fresh sanction, especially, in the light of the analysis made by the Central Food Laboratory, Gaziabad, serious prejudice was caused to the accused and hence, acquittal is well justified.

7. Sri C. Praveen Kumar, learned counsel representing A2 and A3 well supporting

the contentions advanced by Sri Narasimcharya would further contend that certain findings recorded in favour of the prosecution would be of no consequence since ultimately acquittal had been recorded on the ground of non-obtaining of fresh sanction subsequent to the report of the Central Food Laboratory, Gaziabad. The learned counsel also had taken this Court through Ex.P-19 and would submit that even from the very reading of Ex.P-19, it is clear that the report of Central Food Laboratory, Gaziabad had not been taken into consideration at all. Evidently, it could not have been taken into consideration inasmuch as the said report is subsequent thereto even as per the evidence of PW-1. The learned counsel also pointed out the specific portions of the evidence of PW-1 in this regard, and would contend that the acquittal is well justified. The learned counsel also placed reliance on certain decisions to substantiate his contentions.

8. The testimony of PW-1 Food Inspector reads as follows :

On 13-12-1995 at about 12 noon, PW-1 inspected the shop of A1 along with PW-3 and inspected the food articles in the shop of A1, then he called PW-2 to act as mediator, he found green-gram dhal in an open gunny bag having about 90 Kgs. and on suspicion, PW-1 purchased 750 grams of green gram dhal from A1 by paying an amount of Rs. 15/- under Ex.P-1, then, PW-1 issued Ex.P-3 notice to A1 for sending the sample of green gram dhal for chemical analysis. Then, PW-1 divided the said purchased 750 grams of green gram dhal into three equal parts and placed it into three empty, dry and clean bottles covered with caps and tied with twine thread and sealed the caps with wax. After tying the said three bottles with a thread, sealed the caps and affixed the label on each sample bottle bearing No. 196/KR/DIII/17108/95, dated 13-12-1995 under Ex. P-4. After affixing the label on each bottle, covered each bottle with brown paper and ends each bottle with gum again on each bottle he affixed the label bearing No. 196/KR/DIII/17108/95 were pasted on each bottle from top to bottom and closed with gum. Then PW-1 obtained the signature of A1 on the label and on the brown paper and also taken the signature of the PW-2 in such manner on each sample bottle and he also signed on each bottle and tied each sample bottle with thread on four sides covering nodules of the thread, affixed four seals on each sample bottle, one at the top, one of the bottom and two other on each side of bottle by using the specimen impression after following the procedure. PW-1 enquired with A1 about his purchase of green gram dhal. Then A1 produced Ex.P-5 in respect of his purchase of green gram dhal from A3, and then PW-1 drafted Ex.P-6 in the presence of A1 and PW-2, PW-3 obtained their signatures on Ex.P-6, PW-1 returned to his head quarters with sample bottles. On 14-12-1995, PW-1 sent one sample bottle to the public analyst along with Form VII under Ex.P-7 under the cover of Ex.P-8 postal receipt. On the same day, he sent Form VII to the public analyst under Ex.P-9 postal receipt after sending the specimen impression to the public analyst, and handed over the remaining two bottles to the Local Health Authority under Ex.P-10. On the same day, PW-1 issued notice to A3 along with Form VI about the lifting of sample under Exs. P-11 and P12 is the

office copy of the covering letter. Later PW-1 received Ex.P-13 reply on behalf of A3 and on the reply of A3, he issued notice to A4 and A3 submitted Ex.P-14 and after receipt of Ex.P-14 and Ex.P-13, PW-1 issued notice to A4 under Ex.P-16 and A4 issued Ex.P-15 to PW-1. On 31-1-1996 PW-1 received Exs. P-17 and P-18 and the contents of Ex.P-18 shows that the sample contains added synthetic colour and is therefore, adulterated and as such on 20-2-1996, the Local Health Authority received Ex.P-19 to launch prosecution against the accused. The Director, Institute of Preventive Medicine was empowered to accord prosecution orders under Ex.P-20 and the Government delegated the powers to the Director, Institute of Preventive Medicine for according prosecution under Ex.P-21. On the basis of Ex.P-19 on 13-3-1997, PW-1 filed charge sheet against the accused and on 15-3-1997, the said case was taken on file by the Court and on 17-3-1997, PW-1 intimated to the Local Health Authority about the taking cognizance of the case against A1 to A 4. On 17-3-1997, the Local Health Authority issued notices to A1 to A4 u/s 13(2) along with Public Analyst report and about the filing of the charge-sheet under Ex.P-22 and all of the accused received the said notice. After filing of the charge-sheet and after receipt of the notice, A1 filed Ex.P-27 for sending of a sample bottle for the analysis to Central Food Laboratory and after analysis the Director, Central Food Laboratory Gaziabad, issued Ex.P-28.

9. PW-2 is the mediator, who had not supported the case of the prosecution and he was declared hostile.

10. PW-3 in substance had deposed what had been deposed by PW-1 in relation to what happened on the day of inspection of Kirana shop of A1 and also purchase of 750 grams of green gram dhal. This witness also deposed about the procedural formalities, which had been followed by PW-1.

11. The evidence of PW-1 on the aspect of procedural formalities is very clear and categorical. Ex.P-28 is the analyst report issued by Central Food Laboratory, Gaziabad. Opinion expressed in Ex.P-28 is "the sample does not conform to the standard of split moong dal laid down in item No. A. 18/06.10 of PFA Rules, 1955 and that sample shows presence of water soluble coaltar colour identified as tartrazine. The sample is thus adulterated." Ex.P-18 only refers to the Public Analyst report No. 856/95, dated 24-1-1996. Even as per the evidence of PW-1, no fresh sanction order had been obtained subsequent to Ex.P-28. It is needless to say that Ex.P-28 had not been taken into consideration at all at any point of time and subsequent to Ex.P-28, no fresh sanction orders had been obtained for launching prosecution. This is the main ground of attack of the learned counsel representing the respondents-accused and this is the main ground on which acquittal also had been recorded, which had been assailed by the prosecution in this appeal. Reliance was placed on *Kaloo v. State of Uttar Pradesh* (1996) 1 AC 293 while dealing with the requirement of obtaining fresh sanction u/s 20 of the Act, Allahabad High Court held that :

"Sample of milk taken after analysis by Public Analyst 4.7% fat and 4% non-fatty solids found as per the report of the Director, Central Food Laboratory, fatty

solids were found to be 4.3% and non-fatty solids 6.9% held a fresh written consent of the sanctioning authority u/s 20 is required where the Public Analyst finds adulteration of one kind (species) and the Director, Central Food Laboratory, finds adulteration of different kind (species) it was incumbent on the prosecution to have obtained fresh written consent before proceeding with the case in the Court of law."

In *Kailash Pati Oil Mill v. D. L. Chatterjee* (1996) 2 FAC 154, the Calcutta High Court while considering the validity of sanction in a case of similar nature held that:

"Sanction accorded by the authority concerned on the basis of the report of the Public Analyst subsequently, one part of the sample was sent to the Central Food Laboratory at the instance of the defence in accordance with law and the subsequent analysis found the specification value well within the permissible limit but so far as Bellier Test is concerned, it was found that the sample did not conform with the prescribed standard being higher by 1.3 degree C. It is true that both the report terms the sample as adulterated but there being no subsequent sanction on the basis of the report of the Central Food Laboratory, the earlier sanction cannot be held to be good since its basis, namely, the report of the Public Analyst has been found to be incorrect when compared with the subsequent report from Central Food Laboratory. Therefore, there being no valid sanction, the very taking of cognizance by the learned Magistrate is not in accordance with law."

12. In the light of Exs. P-19 and P-28 coupled with clear admissions made by PW-1 in this regard, this Court is of the considered opinion that non-obtaining of fresh sanction in the light of Ex.P-28 definitely had caused prejudice to the respondents-accused and hence, the ground on which the acquittal had been recorded by the learned Magistrate is definitely a justifiable ground and hence, the findings need not be disturbed and the said findings recorded by the learned Magistrate are hereby confirmed.

The Criminal Appeal is devoid of merits and the same, shall stand dismissed.