
(2002) 12 AP CK 0023

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 452 of 1999

Food Inspector, Warangal

APPELLANT

Vs

Alleni Tulsi Ram

RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(ii), 2(i)(ia), 2(ia), 2(ia)(b), 22A

Citation : (2012) 2 ALT(Cri) 36

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : C. Pattabhi Rama Rao, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—This appeal is directed against the judgment in C.C. No. 287 of 1998 dated 9-10-1998 on the file of IV Addl. Munsif Magistrate, Warangal, wherein the sole accused was acquitted for the offence punishable u/s 16(1)(a)(ii) r/w Section 7(i) for contravention of Section 2(ia)(b) of the Prevention of Food Adulteration Act, 1954 (for short the Act). The brief facts that are necessary for the disposal of the present appeal may be stated as follows:

The Food Inspector, Division-III of Warangal District file the complaint against the sole accused alleging that on 29-6-1996 at about 11.15 a.m. the Food Inspector, Warangal accompanied by two others visited M/s. Assam Tea and General Merchant in the house bearing door No. 4-10-124, Tailor Street, Hanamkonda, that after disclosing his identity he expressed his intention to draw the sample of tea dust which was kept in a polythene bag, as the same is suspected to be adulterated and that after serving Ex. P-7 notice he purchased 375 grams of tea dust and divided the samples of tea dust into three equal parts and poured in three clean, dry and empty bottles, and after observing the necessary procedure, one sample was sent to Public Analyst, Hyderabad, that the

Public Analyst after analysis of the tea dust opined that the sample contained iron filings and is, therefore, adulterated. After obtaining permission to launch the prosecution, the complaint is filed in the court below. On behalf of the complainant P.Ws. 1 and 2 were examined and Ex.P-1 to 27 were marked.

2. The lower Court after hearing both sides and considering the evidence on record, came to the conclusion, that the sample in question is not adulterated within the meaning of Section 2(i)(ia) and (b) of the Act and accordingly the accused was acquitted u/s 255(1) Cr.P.C. It is, as against the said acquittal, the State preferred the present appeal questioning the legality and correctness of the Judgment of the lower Court.

3. Now the point for determination is "Whether the Judgment of the lower Court is correct, legal and proper"?

4. The learned Public Prosecutor contended that the Central Government cannot issue circular orders contrary to the provisions of the Act and the orders so issued cannot have statutory force, and therefore, the lower Court erred in acquitting the accused. On the other hand, the learned counsel for the accused submitted that there are no standards that are prescribed in the Prevention of Food Adulteration Act respect of tea, and therefore, the Government can issue any directions to the State Governments u/s 22A of the Act and that the maximum limit prescribed for finding of iron filings is 250 parts per million, whereas the findings of the Public Analyst with regard to the iron filings is within the said limits, and therefore, the accused has not committed any offence and that the lower Court rightly acquitted the accused and there are no grounds to interfere with the order of acquittal.

5. The fact that P.W. 1 lifted the sample of tea from the shop of accused on 29-6-1996 at 11.15 a.m. is not denied or disputed, so also it is not denied or disputed about the manner in which dividing the sample into three parts and sending them to the concerned respectively. It is also not disputed about the analysis conducted by the Pubic Analyst. Almost all the facts of the case are not in dispute. The only contention raised by the learned advocate for the accused is that no complaint is maintainable in view of the directions given by the Central Government with regard to the limit of iron filings in respect of tea dust. It is no doubt true that the Central Government cannot issue any directions contrary to the provisions contained in the Act and the Rules made there under. Item No. A-14 in Appendix B of the Act does not reveal about the values to be present in respect of iron filings. Consequently, if the Central Government gives any direction to the state Governments u/s 22A of the Act not in contravention to Item No. A-14 in Appendix B of the Act, it cannot be said to be improper direction. As seen from the direction given by the Central Government, the maximum limit of 250 parts per million in respect of iron filings may not be injurious to the human system and therefore, the prosecution need not be launched within such prescribed limit. As seen from Ex.P-20, the values obtained in respect of tests done are within the prescribed limits in sofaras iron filings are

concerned, the value obtained is 217.69 PPM. But according to the Public Analyst it should be absent. There is no mention in Item No. A-14 of Appendix B that iron filings should be absent. In view of the directions of the Central Government the Values of iron filings are within the prescribed limits. The learned counsel relied upon two decisions which were also referred to by the Court below in *Brook Bond Tea India Ltd., v. State of Himachal Pradesh* (1) 1984 CLJ 1201 wherein His Lordship held that not only the prosecutions were launched in violation of the statutory directions of the Central Government but also without any foundation inasmuch as the samples of tea were not adulterated within the meaning of the Act. To the same effect is the decision in *Mis. Nisha Tea Company and others v. The State* (2) 1985 CLJ 1188, wherein it was held that it is abuse of the process of law that when the Central Government, on the one hand, is of the definite view that the person carrying on the trade of tea cannot be blamed on account of the existence of iron filings to the extent of tolerance limit, as specified in the latest letter dated 5th April 1984, yet complaint must be filed against them for punishing them for adulteration of tea. It is with a view to avoid that abuse of process of law that it is necessary that the inherent powers of this Court should be exercised.

6. In view of the above two ruling, the lower Court found that the sample is not adulterated within the meaning of Section 2(ia) and (b) of the Act. As the finding of iron filings in the sample are within the permissible limits, it cannot be said that the article of food is adulterated. There are absolutely no grounds to interfere with the order of acquittal passed by the Court below. In the result, the appeal is dismissed.