

**(2011) 11 AP CK 0135**  
**In the Andhra Pradesh High Court**  
**Case No : Criminal R.C. No. 1671 of 2005**

Jakkula Shankmukha Srinivas

APPELLANT

Vs

The State of A.P.

RESPONDENT

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**Date of Decision :** 01-11-2011

**Acts Referred:**

Constitution of India, 1950 — Article 142  
Prevention of Food Adulteration Act, 1954 — Section 10(4), 10(6), 11(4), 13(2), 13(2B)

**Citation :** (2011) 11 AP CK 0135

**Hon'ble Judges :** K.G. Shankar, J

**Bench :** Single Bench

**Advocate :** G. Vijaya Saradhi, for the Appellant;

**Final Decision :** Allowed

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## Judgement

K.G. Shankar

1. The provisions of Section 11 (4) and 13 (2) of the Prevention of Food Adulteration Act, 1954 (the Act, for short) coupled with the procedure adopted in lifting samples are challenged as grounds to acquit the accused, of the offence u/s 16 (1)(a)(i) of the Act.
2. The trial Court recorded the evidence of PWs.1 and 2 and convicted the sole accused for the offence u/s.16 (1)(a)(i) of the Act. The accused was sentenced to suffer Rigorous Imprisonment for a period of six months and to a fine of Rs. 1,000/-, in default of payment of which, to undergo Simple Imprisonment for a further period of two months. The sole accused was unsuccessful in the appeal. Hence, the revision.
3. The accused was running a groceries shop. PW.1 was the Food Inspector. PW.2 was the attender. On 28.02.2002, PW.1 along with PW.2 visited the groceries shop of the accused.
4. The accused was found to be selling groundnut oil from an open tin.

Suspecting that the oil was adulterated, PW.1 drew sample by purchasing 450 grams of oil from the tin, through Ex.P.1 cash receipt. Form-VI notice under Ex.P.2 was served upon the accused. On 02.03.2002, one of the three samples was sent along with Ex.P.6 Form VII to public analyst. The public analyst, Hyderabad furnished the report under Ex.P.9 on 22.03.2002 that the sample did not confirm to the standards, that it contained cottonseed oil and that the same therefore was adulterated.

5. The prosecution was lodged after obtaining written consent from the Director of Food (Health) Authority of Andhra Pradesh, Hyderabad. There is no dispute about these facts. There is dispute indeed regarding the violation of following procedure and drawing sample, which shall be referred at the appropriate place.

6. I may narrate the chronological sequence upon which the case of the learned counsel for the accused partly stands. The inspection was held on 28.02.2002 on which date the sample was drawn. On 02.03.2002 the sample was sent for analysis. The analyst submitted his report on 22.03.2002 under Ex.P.9. On 24.09.2002, PW.1 obtained sanction. On 12.11.2002 charge sheet was filed. On 21.11.2002 notice u/s.13 (2) was issued to the accused and was received by the accused on the same day.

7. It is the contention of Sri G. Vijaya Saradhi, learned counsel for the accused that the sample should be sent within seven days from the date of lifting of the sample for analysis. The learned counsel for the accused drew my attention to Section 11 (4) of the Act. Section 11 (4) reads:

An article of food seized under sub-section (4) of Section 10, unless destroyed under sub-section (4-A) of that section, and any adulterant seized under sub-section (6) of that section, shall be produced before a Magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst.

Provided that if an application is made to the Magistrate in this behalf by the person by whom any article of food has been seized, the Magistrate shall, by order in writing, direct the Food Inspector to produce such article before him within such time as may be specified in the order.

8. Section 11 (4) of the Act envisaged that the seized foodstuff shall be produced before the Court as soon as possible and that it should reach the Court not more than seven days after the receipt of the report of the public analyst.

9. Admittedly, the sample had not been submitted to the Court within seven days from 22.03.2002 on which date the public analyst report was issued. The sample was submitted to the Court along with the charge sheet only. At any rate, the sample was not submitted within seven days from the date of report of the public analyst. The learned counsel for the accused contended that the non-submission of the sample within seven days is in violation of Section 11 (4) of the Act and that the accused, consequently, should be entitled to be acquitted by the

operation of benefit of doubt.

10. In support of his contention, he placed reliance upon *Ruchi Infrastructure Ltd., Mumbai v. Food Inspector, Div.II, Nalgonda* 2008 (2) ALD (CrI.) 711 (AP). It was observed that any article of food seized u/s 10 (4) or/and any adulterant seized u/s 10 (6) of the Act should be produced before the Court not later than seven days from the date of receipt of the report of the public analyst, in view of Section 11(4) of the Act and that when the seized sample was not produced before the Court within seven days, as contemplated u/s.11 (4) of the Act, it would be violation of a mandatory requirement leading to the acquittal of the accused on technical grounds.

11. Sri Rudresh Deshpande, learned counsel representing the Additional Public Prosecutor, on the other hand, contended that Section 11 (4) of the Act would apply when the seizure was u/s.10 of the Act and not otherwise. Section 11 (4) adumbrates that article of food seized u/s.10 (4) or adulterant seized u/s.10 (6) are governed by 11 (4) of the Act. I, therefore, agree with the contention of the learned counsel representing the Additional Public Prosecutor that Section 11 (4) of the Act applies only to seizures under Sections 10 (4) and 10 (6) of the Act. U/s.10 (4), the Food Inspector may seize any article intended for use as food. Similarly, when adulterant is found in the possession of a manufacturer or distributor or a dealer of articles of food, the Food Inspector may seize the same.

12. For convenience, I quote section 10 (4) of the Act. It reads:

If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst.

Provided that where the Food Inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Inspector deems fit and the vendor shall execute the bond accordingly.

13. What was seized in this case was an article of food viz., groundnut oil. Section 10 (6), therefore, has no relevance for the purpose of the present case. Regarding the application of Section 10 (4), it is contention of the learned counsel for the Public Prosecutor that if the seizure was of the entire food article u/s.10 (4), the embargo created by Section 11 (4) would apply. "Food" has been defined in Section 2 (v) of the Act. Article of food, however, has not been defined. On the other hand, section 2 (v) includes any article used as food. The question, therefore, is whether "any article intended for food" as stated in Section 10 (4) would include the entire stock of the concerned article of food or mere sample. Section 10 (4) stipulates the words "a sample" in the section itself as distinct from any article intended for food. I, therefore, hold that Section 10 (4) operates in respect of the seizure of the whole of the foodstuff found and not

merely a sample thereof. Applying the same logic to Section 11 (4) of the Act, it is evident that the embargo contained in Section 11 (4) would operate only if the entire foodstuff in question is seized. In the present case, admittedly, 450 grams of ground oil alone was purchased by PW.1. Consequently, the delimitation provided by Section 11 (4) of the Act has no application.

14. Consequently, I agree with the contention of the learned counsel for the Additional Public Prosecutor that this is not a case of violation of Section 11 (4) of the Act, although the remaining samples were not submitted to the Court within seven days from the date of receipt of the report of the public analyst.

15. The next question raised by the learned counsel for the accused is that the prosecution violated the mandate of Section 13 (2) of the Act and that the accused consequently is entitled to the benefit of doubt. Section 13 (2) of the Act reads thus:

13. Report of Public Analyst:

(1) ...

(2). On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed u/s 14-A, forward in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of report to get the sample of the article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory.

(2-A)....

16. It is adumbrated that within 10 days from the date of the institution of the prosecution against the accused, a copy of the report of the public analyst should be furnished to the vendor/accused so as to enable the vendor/accused to seek for sending another sample to the Central Food Laboratory for analysis.

17. It was observed in Food Inspector, Guntur Vs. Bavirisetty Hanumantha Rao, that the failure to prove service of notice upon the accused is tantamount to non-compliance of the notice u/s.13 (2) of the Act. In State of Gujarat v. Kishore Kumar Laxmidas 2008 Cri. L.J. NOC 11 (Guj.) the allegedly adulterated chilly paneer was sent to public analyst. The Food Inspector retained the report of the public analyst with him till the date of expiry of the lifetime of the sample. The Food Inspector did not send any notice u/s.13 (2) of the Act to the accused. Holding that there was no scope to send another sample to the Central Food Laboratory after the expiry of the life of the sample, the Gujarat High Court considered that the shortfall seriously prejudiced the cause of the accused and

that the accused would be entitled to an order of acquittal. It was clarified even much earlier in *Jyotish Kumar v. State of West Bengal* 1981 CrL.J. 1334 . In that case, it was observed that the notice contemplated by Section 13 (2) of the Act should be issued after the institution of the prosecution and that it was pointed out that the prosecution was deemed to have been initiated the moment the complaint had been filed and that whether the Magistrate took cognizance or not was irrelevant. While the Gauhati High Court in *Ratanlal Agarwala Vs. State of Assam*, and the Madhya Pradesh High Court in *Mahesh v. State of M.P.* 1995 (1) FAC 234 (MP) took the view that Section 13 (2) of the Act was not mandatory, the Patna High Court *L.M. Batra v. State of Bihar* 1995 (1) FAC 209 (Pat.) took the view that Section 13 (2B) was mandatory in view of the language deployed by Section 13 (2) of the Act. The Andhra Pradesh High Court took the view in *Food Inspector v. P. Samudridh* (1978) 1 APLJ (HC) 136 that Section 13 (2) of the Act was mandatory. Similar view was expressed by the Madras High Court in *State Vs. C. Sambandam*, The language deployed by Sec. 13 (2) is that the Local (Health) Authority "shall" give notice to the person from whom the sample was lifted. I therefore respectfully agree with the view of the Andhra Pradesh High Court, Madras High Court and the Patna High Court that notice u/s.13 (2) is mandatory.

18. While so, in the present case, the charge sheet was filed on 12.11.2002 and the notice u/s.13 (2) was issued on 21.11.2002. The notice consequently was issued within 10 days from the date of the filing of the charge sheet. It is also not clear whether the sample of groundnut oil has indeed an expiry date and that the expiry date fell prior to 21.01.2002. Viewed in any angle, the prosecution has complied with the mandatory provision u/s.13 (2) of the Act. The trial Court and the appellate Court were justified in rejecting the claim of the accused in this regard.

19. Sri G. Vijaya Saradhi next contended that the very collection of the sample was not in accordance with the Rules and that the drawing of the sample itself attracts a benefit of doubt in favour of the accused. He drew my attention to the evidence of PW.2 that the sample was initially drawn into a vessel. I shall refer to the same in the context of the overall evidence.

20. PW.1 is a Gazetted Food Inspector. PW.2 was working under PW.1. PW.1 claimed that after purchasing 450 grams of groundnut oil as sample, he packed it in three clean dry empty bottles and sealed them properly. PW.2 initially stated that PW.1 took all precautions necessary in drawing the samples. However, PW.2 unwittingly admitted that the drawn/purchased samples were poured into a vessel where from it was collected into three sample bottles. Admittedly, there was no reference to the vessel in which the sample was collected initially in Ex.P.4 mediator's report. It is also not clear that the vessel in which the sample was initially collected was clean, dry and empty. The learned counsel for the accused placed reliance upon this important omission on the part of the prosecution and contended that where it is not even alleged let alone established

that the vessel in which the sample was initially drawn was clean and dry, the drawing of the sample was not in accordance with the Rules. Where the Act provides absolute liability, I am afraid that the prosecution should follow the procedure in drawing samples strictly in accordance with the Rules. It is surprised why the sample was initially drawn into a vessel. It is more surprised that there is no evidence that the vessel in which the sample was initially drawn was dry and clean. When the prosecution is silent in this regard, the benefit of doubt out of such failure would accrue in favour of the accused. Where it is not established by the prosecution that the samples were drawn into clean and dry bottles (indeed via the mediator of vessel), the prosecution failed in establishing that the sample was not contaminated while the sample was drawn.

21. There is another curious factor in favour of the accused. It is the adulteration of foodstuff, which is punishable under the provisions of the Act. While so, PW.1 himself admitted that the report of the analyst under Ex.P.9 did not state that the sample was injurious to health and that the same was not fit for human consumption. Once it is not established that the sample was injurious to health and was not fit for human consumption, the automatic assumption is that the sample was not adulterated to the extent of it being unfit for human consumption and that it was injurious to health.

22. However, the alleged adulteration was that the sample of groundnut oil contains cottonseed oil. Cottonseed oil is as much fit for human consumption as groundnut oil is and is equally not specially injurious to health. At the same time, Ex.P.9 is clear that the sample of oil is indeed adulterated, as it contained cottonseed oil. The question is not whether the sample is not fit for human consumption and is injurious to health. The relevant consideration is whether the sample was groundnut oil or not. From Ex.P.9, it is clear that the sample contained cottonseed oil. If the same is established, it would be tantamount to adulteration of foodstuff falling for punishment within Section 16 of the Act.

23. However, I already pointed out that the Food Inspector committed gross violation by drawing the samples into the vessel without making sure that the vessel was a clean and dry vessel. Consequently, the accused is found to be entitled to the benefit of doubt. Where the very sampling is not found to be in accordance with the Rules, all subsequent proceedings stand vitiated leading to the acquittal of the accused.

24. Inter alia, the learned counsel for the accused submitted that lenient view be taken against the accused in the event the accused is found guilty. Section 16 (1) envisages that a person found guilty under various sub-clauses of 16 (1) shall be sentenced to imprisonment for a period of not less than six months and shall also be sentenced to a fine not less than Rs. 1,000/-. Thus, Section 16 (1) of the Act provides for minimum sentence.

25. The learned counsel for the accused placed reliance upon Santosh Kumar Vs. Municipal Corporation and Another, In that case, the accused was convicted u/

s.16 (1)(A) of the Act, which again provides minimum sentence. The Supreme Court reduced the sentence to fine. Similarly, in C. Mohammed v. State of Kerala (2006) 13 SCC 290 where the accused was convicted for the offence u/s.16 (1) of the Act, having regard to the facts and circumstances of the case, the Supreme Court converted the imprisonment to fine of Rs. 1,000/-. On the strength of these two decisions, it is the case of the learned counsel for the accused that the sentence of imprisonment may be reduced in the event the accused is found not guilty.

26. It may be recalled that Article 142 of the Constitution of India provides ample power to the Supreme Court to pass any order as it deems just and proper. The limitations provided by various Acts do not apply to the Supreme Court. In the light of the minimum sentence provided by the Act, the High Court, however, has no power to reduce the same. The claim of the learned counsel for the petitioner consequently cannot be accepted.

27. Be that as it may, the question of reduction of sentence has no relevance in this case where the accused is found not guilty for the violation in drawing samples. I, therefore, hold that the judgment of the trial Court and appellate Court is erroneous in appreciating the evidence of PWs.1 and 2 regarding the drawing of sample and violation thereof. The prosecution failed to prove the guilt of the accused beyond reasonable doubt.

28. The Criminal Revision Case consequently is allowed. The accused is found not guilty of the offence u/s.16(1)(a)(i) of the Act and is acquitted of the same. His bail bonds stand discharged. The fine amount, if already paid by the accused, shall be refunded to him.