
(2003) 03 AP CK 0156

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 1044 of 2001 and Cri. Revision Petition
No. 1039 of 2001

Kantheti Bhogeswara Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 7

Citation : (2003) 2 ALD(Cri) 41 : (2003) 2 ALT(Cri) 261 : (2003) CriLJ 3651

Hon'ble Judges : Dalava Subrahmanyam, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Dalava Subrahmanyam, J.—The revision petitioner-accused filed the revision against the judgment of conviction and sentence in STC 130 of 1995 on the file of the Judicial Magistrate of First Class, Kaikulur in convicting the revision petitioner-accused for the offence under Sections 16(1)(a) (ii), 7(v) and 2(ia) (b) and sentencing him to suffer R.I. for a period of six months and to pay a fine of Rs. 1000/- in default to suffer R.I. for two months which was confirmed in Crl. Appeal No. 158 of 1997 on the file of the I Addl. District and Sessions Judge (Fast Track Court), Krishna at Machilipatnam.

2. The brief facts of the case are as follows;

The Food Inspector, Division II, Krishna District, Machilipatnam laid the complaint against the accused alleging that the accused was the proprietor of Shri Subrahmanyeswara Enterprises, Singarayapalem village, Mudinepalli Mandal, Krishna District and that on 4-10-1994 at about 2.30 p.m. the Food Inspector along with his staff inspected the shop and found that the accused was transacting the business and that he kept green gram dall for human

consumption and suspecting the same to be adulterated, the Food Inspector took samples as per the procedure contemplated under the Act and Rules and sent one of the samples to the Public Analyst, State Food Laboratory. On receipt of the said report, the Food Inspector after obtaining the sanction laid the charge sheet. The accused appeared before the Court. He filed the application to send the second sample to the Central Food Laboratory and after obtaining the report, the trial commenced. On behalf of the complainant PWs. 1 to 3 were examined and Exs. P1 to P20 were marked. After appreciating the entire evidence, the learned Magistrate, Kaikulur came to the conclusion that the accused was guilty of the offence alleged against him and accordingly he was convicted and sentenced. Aggrieved against the judgment of conviction and sentence, the revision petitioner filed appeal before the District and Sessions Judge and the learned Sessions Judge after hearing dismissing the appeal confirming the conviction and sentence.

3. Aggrieved against the judgment of conviction and sentence, the revision petitioner accused filed the revision contending that the Judgment of conviction and sentence is illegal, improper and incorrect. The Courts below erred in coming to the conclusion that the prosecution proved the ingredients of the offence under the Act. The Courts below erred in relying on the evidence of PWs. 1 to 3 which is interested and discrepant. The Courts below failed to appreciate the report of the Central Food Laboratory as against the report of the State Laboratory. The Courts below failed to appreciate that the prosecution failed to obtain fresh sanction order on the basis of the Central Food Laboratory report. For the above said reasons, the judgment of conviction and sentence may be set aside.

4. Now the point for consideration is whether the Courts below committed error in convicting the revision petitioner accused for the offence under the Food Adulteration Act and if so whether the revision, is liable to be allowed ?

5. The revision petitioner-accused was found transacting business on 4-10-1994 at about 2.30 p.m. The Food Inspector took samples of green gram dall which was kept for human consumption and when one of the samples were sent to the State Public Analyst, the report revealed that the food article was adulterated and therefore he was prosecuted. PWs. 1 to 3 were examined on behalf of the prosecution and both the Courts relying on the evidence of PWs. 1 to 3 convicted the revision petitioner-accused. P.W. 1 P. China Reddy was the Food Inspector who took samples from the shop of the accused. K. Venkateshwarlu is an independent witness, who was present at the time of taking of the samples by the Food Inspector. However, he did not support the case of the prosecution. He was treated as hostile,. R. Srinivas Rao, attender working under P.W. 1 is examined as P.W. 3. It is in the evidence of PWs. 1 and 3 that they took samples of green gram, as per the procedure contemplated, under the panchanama. The same was divided into three equal parts which was kept in three separate bottles duly sealed and one of the samples was sent to the State public analyst, who

sent his report which is marked as Ex.P13. Subsequently, when the accused appeared before the Court, he filed an application to send another sample to the Central Food Laboratory and the said report is marked as Ex.P20. PWs. 1 and 3 deposed with regard to taking of samples from the samples from the shop of the accused.

6. The learned Advocate appearing for the revision petitioner, accused contended that the report of the State public analyst is contrary to the report of the Central Food Laboratory and the said reports are marked as Exs. P13 and P20. The State public analyst opined that the sample contained synthetic colour and is therefore adulterated. As seen from Ex. P13 the synthetic colour is tetrazine. When the second sample was sent to the Central Food Laboratory, the analyst opined that no extraneous colour was found. However, it was opined that the sample does not conform to the standards of split pulses as per the Prevention of Food Adulteration Rules, 1955.

7. The sanction was obtained on the basis of the report of the State Food Laboratory that the food article contained added synthetic colour, whereas the Central Food Laboratory found no extraneous colour in the sample. However, it was opined that the 9 per cent of weevilled grains were present as against the permissible count of 3 per cent and therefore, the analyst of the Central Food Laboratory was of the view that the sample did not conform to the standards of the split pulses. Neither the public analyst of the State Laboratory nor the Central Laboratory in their reports opined that the food article was injurious to public health and unfit for human consumption. The learned Public Prosecutor contended that even as per the Central Food Laboratory report the food article is adulterated since it does not conform to the standards specified.

8. I have gone through the evidence of PWs. 1 to 3. There is no dispute with regard to the taking of samples from the shop of the accused. The basis for prosecution is that the sample contained synthetic colour as per the opinion of the State public analyst, but the analyst of the Central Food Laboratory opined that there was no extraneous colour in the food article. The report of the Central Food Laboratory would prevail over the report of the State public analyst. Therefore, there is contradiction in the opinion of the State Public Analyst and the Central Public Analyst. Further, none of the analysts opined that the food article is injurious to health and unfit for human consumption. In view of the conflicting opinions, the accused is entitled for benefit of doubt. The Courts below ignored the report of the Central Public Analyst and based conviction on the basis of the report of the State Public Analyst. For the abovesaid reasons, the accused is entitled for benefit of doubt and the revision is liable to be allowed.

9. In the result the revision is allowed and the accused is found not guilty of the offence alleged against him and he is acquitted. The fine amount paid by the accused shall be refunded to him.