

(2023) 03 TEL CK 0091

In the Telangana High Court

Case No : Criminal Revision Case No. 395 Of 2009

Maridu Sreenivas

APPELLANT

Vs

State Of A.P.

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Prevention of Food Adulteration Rules, 1993 — Rule 50

Code Of Criminal Procedure, 1973 — Section 397, 401

Prevention of Food Adulteration Act, 1954 — Section 2(ia)(i), 7(i), 10(4), 10(6), 11(4), 13(2), 16A, 16(1)(a)(i), 16(1)(a)(ii), 20(1)

Citation : (2023) 03 TEL CK 0091

Hon'ble Judges : Juvvadi Sridevi, J

Bench : Single Bench

Advocate : Palle Sriharinath

Final Decision : Allowed

Judgement

1. This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is filed by the petitioner/accused, challenging the judgment, dated 09.03.2009, passed in Criminal Appeal No.77 of 2007 by the Special Judge for Trial of Offences under ST/ST (POA) Act-cum-V Additional Sessions Judge Medak at Sangareddy, whereby, the Court below, while setting aside the conviction and sentence imposed against the petitioner/accused of the offence under Section 16(1)(a)(ii) of Prevention of Food Adulteration Act, 1954 (for short, 'PFA Act'), vide order, dated 18.10.2007, passed in C.C.No.206 of 2006 by the Judicial Magistrate of First Class (Special Mobile Court) at Sangareddy, reduced the sentence of simple imprisonment for one year imposed by the trial Court to rigorous imprisonment for six months for the offence under Section 16(1)(a)(i) of PFA Act, while maintaining the fine and the default sentence for the said offence.

2. I have heard Mr.Palle Sriharinath, learned counsel for the petitioner/accused, the learned Assistant Public Prosecutor appearing for the respondent/State and perused the record.

3. The case of the prosecution, in brief, is that on 26.11.2004, PW.1/Food Inspector visited M/s.Sri Sairam Milk, Fancy, Kirana and General Stores situated at D.No.23-16, Vinayak Nagar, Ramachandrapuram, Medak District, along with his attender. The petitioner/accused was transacting business at that time. On enquiry, the petitioner/accused disclosed that he is the proprietor of the said shop and he is dealing with selling of all varieties of milk sachets and kirana items to the public for human consumption. PW.1 disclosed his identify, secured the presence of PW.2/Arepally Murali to act as mediator for inspection and sampling work, inspected the shop in the presence of PW.2 and noticed 30 Kgs of redgram dhal stocked in an open gunny bag. The petitioner/accused disclosed that the said redgram dhal was purchased from Hyderabad and kept in the shop premises for sale to public for human consumption and failed to furnish the purchase particulars of redgram dhal. Then, PW.1 examined redgram dhal and did not find any insect or infestation and suspecting as adulterated for having excess weevilled grains, purchased 1500 grams of redgram dhal for the purpose of sending it for analysis and paid its cost of Rs.48/- to the petitioner/accused and obtained cash receipt from him and served Form VI notice on the petitioner/accused informing that the purchased sample will be sent to public analyst for analysis and obtained acknowledgement on the office copy of Form VI notice which was attested by PW.2. PW.1 divided the purchased 1500 grams of redgram dhal into three equal parts and each part was poured into three clean, dry and empty plastic tins and closed the mouths of tins with caps tightly and tied with thread and sealed. Then, label bearing Code No.MDK/DI/15539/2004 was pasted on each sample tin and again, each sample container separately wrapped in a thick brown paper and the ends were neatly folded inside and pasted with gum. Then a paper slip bearing Code No.MDK/DI and Sl.No.15539/2004 was pasted to each sample and finally, each sample tin was separately tied with strong thread both above and across and put wax seals. PW.1 drafted a mediator report for the entire procedure of lifting of sample at the place of inspection in the presence of the petitioner/accused and PW.2 and the same was read over and explained and obtained their attestation on the report. On 27.11.2004, one part of the sample along with a copy of Form VII having specimen impression seal of PW.1 was sent to Public Analyst, State Food Laboratory, Nacharam, Hyderabad, under registered parcel vide postal receipt No.5752, dated 27.11.2004. Two other parts of sample along with two copies of Form VII having specimen impression seal of PW.1 was sent to the Assistant Food Controller, Zone VI and Local (Health) Authority, Hyderabad. The sample sent to the public analyst has been analyzed and the Public Analyst issued report in Form III, vide Analyst Report No.864/2004 along with covering letter addressed to Assistant Food Controller, Z VI & Local (Health) Authority, Hyderabad, and the same has been forwarded to the office of PW.1. The Public Analyst opined that the sample contains synthetic colour Tartrazine and as such, it is adulterated. A detailed report was submitted to the State Food (Health) Authority in exercise of powers conferred under Section 20(1) of PFA Act read with G.O.Ms.No.62, M & H, dated 30.01.1985, and in the public interest, accorded written consent for institution of prosecution for the offence committed

by the petitioner/accused under PFA Act and Rules, for sale of adulterated redgram dhal.

4. After filing of charge-sheet, the case was taken on file for the offence punishable under Section 7(i) and 2(ia)(i) read with Section 16A of PF Act and Section 7(i) read with Rule 50 of PF Act read with 16(1)(a)(i) read with Rule 50 of PF Act against the petitioner/ accused. To prove the guilt of the petitioner/ accused, the prosecution examined P.Ws.1 to 3 and got marked Exs.P1 to P20. On behalf of the accused, no evidence, either oral or documentary, has been adduced.

5. The trial Court, after analysing the entire evidence on record, found the petitioner/accused guilty of the offence under Section 7(i) and 2(ia)(i) and 16(1-A)(i) of PFA Act and 7(v) read with Rule 50 of Prevention of Food Adulteration Rules, 1993 and punishable under Section 16(1)(a)(ii) and sentenced him as stated supra. Aggrieved thereby, the petitioner/accused preferred the subject Criminal Appeal No.77 of 2007 before the Court below. The Court below, after re-appreciating the entire material available on record, partly allowed the appeal by setting aside the conviction and sentence imposed against the petitioner/accused of the offence under Section 16(1)(a)(ii) of PFA Act and reduced the sentence of simple imprisonment for one year imposed by the trial Court to rigorous imprisonment for six months for the offence under Section 16(1)(a)(i) of PFA Act, while maintaining the fine and default sentence. Aggrieved by the same, the petitioner/accused preferred this Criminal Revision Case.

6. Learned counsel for the petitioner/accused would submit that the Court below erred in properly appreciating the evidence on record. PW.2, an independent witness, turned hostile and the evidence of PWs.1 and 3, who are interested witnesses, would not have been relied upon by the Court below. Further, there are material omissions and contradictions in the evidence of prosecution witnesses and on this sole ground, the petitioner/accused ought to have been acquitted. The Court below ought to have noted that it is very much within the knowledge of PW.1/Food Inspector that the redgram dhal cannot be adulterated with synthetic colour by a petty vendor like the petitioner/accused. Service of notice under Section 13(2) of PF Act is mandatory, but in the instant case, no such notice was served on the petitioner/accused. Further, there was clear violation of the mandatory stipulation contained in Section 11(4) of the Act regarding production of the remaining sample before the Court. There was inordinate delay in launching prosecution against the petitioner/accused, which deprived his valuable right under the PFA Act to seek permission to send the sample to the Central Food Laboratory for second analysis. Further, the prosecution failed to show as to how synthetic colour Tartrazine is harmful to human consumption, as in the report of the analyst, it is not at all mentioned that Tartrazine is injurious to health. Further, the very collection of sample was not in accordance with the relevant Rules and drawing of sample itself was wrong. The action against the petitioner/accused stands vitiated on account of

inordinate and deliberate delay in launching prosecution against him, thereby depriving his valuable rights conferred under the PFA Act. The Court below, while rightly acquitting the petitioner/accused of the offence under Section 16(1)(a)(ii) of PFA Act, erred in convicting him of the offence under Section 16(1)(a)(i) of PFA Act. It is a fit case to extend benefit of doubt to the petitioner/accused and acquit him of the offence under Section 16(1)(a)(i) of PFA Act and ultimately prayed to allow the Criminal Revision Case as prayed for.

7. On the other hand, the learned Assistant Public Prosecutor supported the judgment impugned in this Criminal Revision Case and contended that there are no circumstances to interfere with the impugned judgment. Taking this Court through the contents of the complaint lodged by PW.1 and the evidence of PWs.1 and 3, learned Assistant Public Prosecutor submitted that merely because of delay in launching prosecution, no prejudice has been caused to the petitioner/accused. There are no procedural irregularities in launching prosecution against the petitioner/accused. The evidence placed on record clinchingly proves the guilt of the petitioner/accused beyond all reasonable doubt for the offences alleged against him. Though the trial Court convicted the petitioner/accused of the offences under Sections 16(1)(a)(i) and 16(1)(a)(ii) of PFA Act, the Court below acquitted the petitioner/accused of the offence under Section 16(1)(a)(ii) of PFA Act and also reduced the sentence of imprisonment imposed by the trial Court. There are no circumstances to interfere with the judgment impugned in this Criminal Revision Case and ultimately prayed to dismiss the Criminal Revision Cases.

8. In view of the above submissions, the point that arises for determination in this Criminal Revision Case is as follows:

"Whether the impugned judgment, dated 09.03.2009, passed in Criminal Appeal No.77 of 2007 by the Special Judge for Trial of Offences under ST/ST (POA) Act-cum-V Additional Sessions Judge Medak at Sangareddy, is legally sustainable?"

POINT:-

9. I have given thoughtful consideration to the above rival submissions and meticulously gone through entire material on record. This Court is aware of the settled legal position that this Court, in exercise of its Revisional jurisdiction under Sections 397 & 401 of Cr.P.C., cannot interfere with the concurrent findings of fact recorded by the Courts below, unless they are perverse or arrived at ignoring material evidence. Further, the Revisional power of this Court under Sections 397 and 401 of Cr.P.C., is not to be equated with that of an appeal. But however, when the decision of the Court below is perverse or untenable in law or grossly erroneous or glaringly unreasonable or based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, this Court can interfere with the said decision in exercise of its Revisional jurisdiction. Section 401 of Cr.P.C. enables the High Court to exercise all powers of appellate Court, if necessary, in aid of power of

superintendence or supervision, as a part of Revisional power. Section 397 of Cr.P.C. confers power on the High Court or Sessions Court, as the case may be, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court. Thus, a duty rests on the High Court under Sections 397 and 401 of Cr.P.C. to correct manifest illegality resulting in gross miscarriage of justice.

10. In the above context in regard to the scope and limitation imposed on Revisional court, I deem it proper to evaluate the evidence on record, in order to find out as to whether the prosecution has established that the petitioner/accused is guilty of the offence under Section 16(1)(a)(i) of PFA Act, and if not, whether the petitioner/accused is entitled for acquittal at the hands of Revisional court.

11. In the instant case, the trial Court convicted the petitioner/accused of the offences under Sections 16(1)(a)(i) and 16(1)(a)(ii) of PFA Act. However, on appeal, the Court below, while acquitting the petitioner/accused of the offence under Section 16(1)(a)(ii) of the PFA Act, convicted him of the offence under Section 16(1)(a)(i) of the PFA Act and sentenced him to undergo minimum sentence of rigorous imprisonment for six months, while retaining the fine and default sentence. The Court below acquitted the petitioner/accused of the offence under Section 16(1)(a)(ii) of PF Act, holding that PW.1 stated in his evidence that weevilled grains are few but he did not say anything about the percentage and also that a few means it is more than 3% as prescribed standards; it would also have been stated definitely in Ex.P12-Public Analyst Report if 'few' means more than prescribed standard of 3%; therefore, it is clear that the learned Magistrate erred in holding that a 'few' means more than 3% to the prescribed standards; therefore, it can be taken that the weevilled present in the redgram dhal are a few, means less than 3% as the standard prescribed; as such, the petitioner/accused is not liable under this count, as he has not committed this offence. Thus, the only remaining charge against the petitioner/accused is the offence under Section 16(1)(a)(i) of the PFA Act, which is a penal provision for sale of adulterated article or food. While the petitioner/accused would contend that due to deliberate and inordinate delay in launching prosecution against him, he had lost his valuable right of sending the second sample to the Analyst under Section 13(2) of the PFA Act and that there was clear violation of the mandatory stipulation contained in Section 11(4) of the Act regarding production of the remaining sample before the Court, the prosecution contends that merely because there was delay in filing the complaint, no prejudice has been caused to the petitioner/accused, inasmuch as after receipt of notice under Section 13(2) of the PFA Act, he did not choose to get the sample analysed by the Central Food Laboratory and the same would not, in any event, vitiate the whole prosecution case.

12. The relevant events and dates, which are crucial for determining the present

lis, are as under:

Date of lifting the samples

26.11.2004

Date of sending the samples to the Analyst

27.11.2004

Date on which the Public Analyst sent his report

01.01.2005

Date of filing of the complaint

17.10.2005

Date of issuance of notice under Section 13(2) of the Act

26.10.2005

13. Here, it is apt to extract Section 11 (4) of the Act, which reads as follows:

11. Procedure to be followed by food inspectors —

(1) xxxx

(2) xxxx

(3) xxxx

(4) An article of food seized under sub-section (4) of section 10, unless destroyed under subsection (4A) 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 from 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.

(5) xxxx

(6) xxxx

14. A plain reading of the above extracted sub-section (4) of Section 11 of the Act makes it clear that an article of food seized under Sub-section 4 of Section 10 and any adulterant seized under Sub-section (6) of Section 10 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. In the instant case, the seized sample, admittedly, was not produced before the Court within seven days as required under Sub-section 4 of Section 11 of the Act. Thus, there

is clear violation of the mandatory stipulation contained under Section 11(4) of the Act regarding production of the sample before the Court. There is inordinate delay in producing the sample before the Court from the date of lifting the sample and also from the date of receipt of the Public Analyst Report would certainly cause prejudice to the petitioner/accused, which is detrimental to his defence. There is absolutely no explanation offered by the prosecution for the abnormal delay in production of the sample before the Court. The Court below, while discussing the said aspect, held that since the petitioner/accused had not availed remedy under Section 13(2) of PF Act to send the sample for analysis to the Central Food Laboratory, it cannot be held that the petitioner/accused suffered any prejudice on account of delay in laying the prosecution. The said observation, in my view, is erroneous because merely on the ground that the petitioner/accused did not choose to get the sample analysed by the Central Food Laboratory after receipt of notice under Section 13(2) of the Act, he cannot be deprived of his valuable right conferred upon him/her under a statute because of the delay in securing sanction of prosecution against a person.

15. Further, Section 13(2) of the Act reads as follows:

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 persons 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 under section 14A, 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 the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

16. In the instant case, the Public Analyst Report was obtained on 01.01.2005 and the complaint was filed only on 17.10.2005, i.e., after about nine months. There is no explanation for lodging the subject complaint belatedly after about nine months, when the Public Analyst Report was very much available with the complainant as on 01.01.2005. Though the Public Analyst submitted his report on 01.01.2005, the Prosecution could not file the complaint till 17.10.2005. After filing of complaint, notice under Section 13(2) of the PFA Act was issued to the petitioner/accused on 26.10.2005, which is evident from the material placed on record. Thus, there was delay of about nine months in affording opportunity to the petitioner/accused for getting the sample analyzed through the Central Food Laboratory. Therefore, it can unhesitatingly be held that the petitioner/accused had lost their valuable opportunity of getting the sample analyzed through Central Food Laboratory. The inordinate delay on the part of the prosecution is not attributable to the petitioner/accused and, therefore, the consequences thereof cannot work adversely to the interest of the petitioner/accused. As the

valuable right of the petitioner/accused for reanalysis provided under the PFA Act appears to have been violated, his prosecution, if allowed to continue, would be a lame prosecution. No convincing reason is given as to why the complaint could not be lodged for such a long period.

17. A meticulous examination of the entire material placed on record reveals that the statutory rights under Sections 11(4) and 13(2) of the Act have been virtually denied to the petitioner/accused, owing the fault on the part of the prosecution. The said statutory rights are valuable and indefeasible. They cannot be taken away in any circumstance. By launching the prosecution after an unexplained delay of about nine months from the date of receipt of report of the Public Analyst, the rights of the petitioner/accused have been smothered in this case. Therefore, the prosecution launched against the petitioner/accused cannot be sustained in the eye of law, it being violative of his indefeasible rights under Sections 11(4) and 13(2) of the Act. By deprivation of these rights, the petitioner/accused has been denied an opportunity to prove his defence and hence, the prosecution was only one sided, which is against the well settled principles of Criminal Jurisprudence. Further, there are several material omissions and contradictions in the evidence of PW.1, which goes to the root of the matter. Further, as rightly contended by the learned counsel for the petitioner/accused, though sale of adulterated article/food is an offence under Section 16(1)(a)(i) of PF Act, adulteration with synthetic colour is not a manual process, but it is a mechanised process which cannot be undertaken by a petty vendor like the petitioner/accused, that too for a small quantity of 30 Kgs found by PW.1 in his shop. Further, the PW.1 collected the samples from the shop of the accused having found excess of weevilled grains in redgram dhal, but not suspecting that the redgram dhal was adulterated with synthetic colour Tartrazine. The Public Analyst opined that the sample contained synthetic food colour Tartrazine. The prosecution failed to show as to how synthetic colour Tartrazine is harmful for human consumption. The report of the Analyst must state as to whether the article of food, i.e., redgram dhal analysed by him is injurious to the health, which is patently absent in this case. Viewed thus, the impugned judgment of the Court below to the extent of convicting and sentencing the petitioner/accused of the offence under Section 16(1)(a)(i) of PFA Act is improper, manifestly illegal which resulted in miscarriage of justice, entitling the petitioner/accused for acquittal of the said offence by exercising revisional jurisdiction of this Court under Sections 397 and 401 of Cr.P.C.

18. For these reasons, the Criminal Revision Case is allowed. The conviction and sentence recorded against the petitioner/accused for the offence under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, by the Special Judge for Trial of Offences under ST/ST (POA) Act-cum-V Additional Sessions Judge Medak at Sangareddy, vide judgment, dated 09.03.2009, passed in Criminal Appeal No.77 of 2007 is set aside. Consequently, the petitioner/accused is acquitted of the offence under Section 16(1)(a)(i) of PFA Act. The bail bonds of the petitioner/accused shall stand discharged and the fine amount, if any, paid by him shall be

refunded to him.

Miscellaneous applications, if any, pending in this Criminal Revision Case, shall stand closed.