

(2006) 11 AP CK 0069

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5701 of 2002

Nimmagadda Gangadhara Rao and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233, 234, 235, 236, 237
Prevention of Food Adulteration Act, 1954 — Section 14, 14A, 16, 19, 19(2)
Prevention of Food Adulteration Rules, 1955 — Rule 32
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 36, 6

Citation : (2007) 1 ALD(Cri) 164 : (2007) 1 ALT(Cri) 412 : (2007) CriLJ 2469

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : E.V. Bhagiratha Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—The petitioners seek to invoke the extraordinary jurisdiction of this Court u/s 482 of the Code of Criminal Procedure to quash the criminal case launched against them in C.C.No.188 of 2002 on the file of the IX Metropolitan Magistrate, Bheemunipatnam.

2. The petitioners are A4 and A5 in the said case, filed by the Food Inspector, Visakhapatnam District, on 19-06-2002.

3. Briefly stated the facts are that on 18-05-2001 at about 1.10 PM the Food Inspector, Division-I, Visakhapatnam District, visited P.M.P. Stores, situate at MIG-I-518, Main Road, Pothina Mallaiahpalem, accompanied by his attender. A1 was found transacting business at that time. He then called, one, Vaddada Raveendra Kumar, in whose presence he inspected the stores and found four packets of three mangoes, special standard grade cycle brand chilli powder which were kept for sale for human consumption along with other food articles. Each

packet contained a label printed thereon with the information as under, "Three mangoes, special standard grade cycle brand chilli powder 100 grams, sealed agmark AP/SCR/GS/2/2001, manufactured by Balaji Traders, Railpet, Duggirala Market by Sri Sai Lakshmi Agencies R.R.V. Puram, Visakhapatnam, Lot No. NIL- Max price Rs. 10-00 (inclusive of all taxes). Net weight 100 grams, date of packing 2/2001 expiry date (after nine months)." On enquiry, A1 disclosed that the said chilli powder packets were delivered at the door by R.R.V. Puram person and he had no purchase bill.

4. The Food Inspector purchased three sealed packets by paying its cost of Rs. 30-00 to the first accused under a cash receipt. Raveendra Kumar, the mediator, attested it and the Food Inspector served Form VI notice on A1 expressing his intention to send the samples for analysis and obtained an acknowledgment from A1 which was attested by the mediator. The Food Inspector divided the three sealed packets into three parts without meddling its original seals and placed them in a clean, dry and empty plastic jars and sealed the jars in accordance with the procedure laid down in the Prevention of Food Adulteration Rules. A label containing the signature, code number and serial number 139/VSP/DI/02039/2001 of the Local (Health) Authority was pasted on each sample and obtained the signatures of the first accused thereon. A1 disclosed A2 as the proprietrix of the said stores. The Food Inspector then prepared a panchanama in Telugu, read over its contents to A1 and the mediator and A1 after having admitted the contents as true, signed on panchanama. On 19-05-2001, the Food Inspector sent Form VI notice to the manufacturer, Balaji Traders, Railpet, Duggirala, Guntur District, basing on the address found on the label of the packet, by registered post with acknowledgment due. Notice was received under an acknowledgment by A4, the proprietor of Balaji Taders- A5. On the same day, Food Inspector sent one part of the samples along with Form VII in a sealed packet by registered parcel under intimation to the Local (Health) Authority. He then handed over the remaining containers and the two copies of Form VII in sealed packet to Local (Health) Authority, Visakhapatnam. Simultaneously, he sent a copy of memorandum and specimen impression of the seal used to seal the packet separately in a sealed cover to the public analyst. The public analyst, after having analyzed the sample, by his report No. 462/2001, dated 18-06-2001, opined that the sample does not conform to the labeling Rule 32 (e) and was, therefore, misbranded. On 25-05-2001, the Food Inspector approached Sri Sai Lakshmi Agencies, R.R.V. Puram, Pendurthi Mandal and ascertained the particulars of A3 by lifting corresponding sample of the said mirchi powder. On 22-06-2001, the Food Inspector addressed a letter to Sri N. Purnachandra Rao, Food Inspector, Guntur, requesting him to ascertain the partnership or nominee of Balaji Traders, Railpet, Duggirala and received information from him in turn by his reply, dated 01-02-2002, that, one, Nimmagadda Gangadhara Rao, A4, is proprietor of Balaji Traders. On 31-08-2001, the Food Inspector sent details of this case to the Food (Health) Authority, A.P. Hyderabad, who, after perusing the details, accorded written consent authorizing him to launch prosecution against

the accused. Thus, A1, who was the vendor, A2, the proprietrix of P.M.P. Stores, A3, the supplier, who marketed the product, A4, proprietor of M/s. Balaji Traders, which is A5, are liable for prosecution.

5. Pursuant to the summonses issued, all the accused appeared before the Court. As aforesaid, A4 and A5 filed the instant application.

6. The contention of the learned Counsel for the petitioners is two-fold, namely, that Rule 32 (e) of the Prevention of Food Adulteration Rules (for short, "the Rules") was held to be ultra virus and was struck down by the Apex Court and secondly in the absence of any purchase bill from the vendor, the petitioners cannot be prosecuted having regard to Section 14 of the Prevention of Food Adulteration Act.

7. A propos the first contention, Rule 32 (e) of the Rules as it originally stood was held to be ultra virus by the Apex Court vide Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, . However, the said rule after the decision of the Apex Court was suitably amended by incorporating there under the additional s (f) to (h). The amended provision reads as under:

32. Package of food to carry a label.-Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label:

(e) A distinctive batch number or lot number or code number, either in numerals or alphabets or in combination, the numerals or alphabets of their combination, presenting the batch number or lot number or lot or any distinguishing prefix:

Provided that in case of canned food, the batch number may be given at the bottom, or on the lid of the container, but the words "batch number" given at the bottom or on the lid, shall appear on the body of the container.

(f) the month and year in which the commodity is manufactured or prepacked:

Provided that in case of package weighing 20 g. less and liquid products marketed in bottles which are recycled for refilling, particulars under Clause (b) need not be specified:

Provided also that such declarations shall be given on the label of multipiece package either on the label of multipiece package or in a separate slip inside the multipiece package in such a manner that the same is readable even without opening the package:

Provided further that in case of carbonated water containers and the packages of biscuits, confectionery and sweets, containing more than 60 g. but not more than 120 g. and food packages weighing not more than 560 g. particulars under Clauses (d) and (e) need not be specified:

Provided also that in case of package containing bread and milk including

sterilized milk, particulars under Cluase (e) need not be specified: Provided also that no declaration as to the month and year in which the commodity is manufactured or prepacked shall be required to be made on:

(i) any bottle or package containing liquid milk, liquid beverage having milk as an ingredient, soft, drink, ready to serve fruit beverages or the like which is returnable by the consumers for refilling except in case of sterilized or "UHT" milk, where date and month of packing shall be mentioned.

(ii) any package, containing bread and any uncanned package of (a) vegetables. (b) fruits, (c) ice cream, (d) butter, (e) cheese, (f) fish, (g) meat or (h) any other like commodity.

(iii) any package of food where the net weight or measure of the commodity is 20 g. or 20 ml. or less if sold by weight or measure.

Explanation I.-The term label means a display of written marked, graphic, printed, perforated, stenciled, embossed or stamped matter upon the container, cover lid or crown of any food package.

Explanation II.-"Complete address" means in the case of a company, the address at which its registered office is situated and, in any other case, the name of the street number (if any) assigned to the premises of the manufacturer or packer and either the name of the city and State where the business is carried on by the manufacturer or packer or the pin code. For the purpose of the this explanation, shorter address registered under Rule 36 of the Standards of Weights and Measures (packaged Commodities) Rules, 1977, shall also be treated as complete address.

Explanation III.-For the purpose of declaration of month and year of manufacture, the provision under Rule 6 (B) of the Standards of Weights and Measures (packaged commodities) Rule, 1977, shall apply.

Explanation IV.-A batch Number or Code Number of Lot is a mark of identification by which the food can be treated in the manufacture and identified in distribution.

Explanation V.-"Multipiece package" means a package containing pieces two or more individually packaged or labeled pieces of the same commodity of identical quantity, intended for retain either in individual places or packages as whole.

(g) the date of expiry in case of packages of aspartame which shall not be more than three years from the date of packing.

(h) The purpose of irradiation and licence number in case of irradiated food.

8. As per the Rule 32 of the Rules, every package of food shall carry a label and label shall contain the name, trade name or description of food, the names of ingredients used in the product, the name and complete address of the manufacturer or importer or vendor or packer, the net weight or number or measure of volume of content, a distinctive batch number or lot number or code

number, either in numerals or alphabets or in combination, presenting the batch number or lot number or lot or any distinguishing prefix, the month and year in which the commodity is manufactured or pre-packed, the date of expiry in case of packages as per time which shall not be more than three years from the date of package and the purpose of irradiation and licence number in case of irradiated food.

9. Rule 32 of the Rules was amended suitably from time to time on number of occasions. The rule that had been in vogue and came up for consideration before it was struck down by the Apex Court in the judgment referred to herein above may be extracted hereunder for brevity and better understanding of the matter thus:

32. Contents of the label.-Unless otherwise provided in these rules there shall be specified on every label:

(e) a batch number or code number either in Hindi or English numerals or alphabets or in combination:

Provided that in the case of food package weighing not more than 60 grams particulars including the statement under any clause need not be specified. Explanation.--The term label means a display of written, printed, perforated, stencilled, embossed or stamped matter upon the container, cover lid and/or crown cork of any food package.

10. A perusal of the rule as it was in vogue and as it stands now keeping them in the juxtaposition, shows the changes that were incorporated into the rule after the Apex Court had struck down the then existing Rule 32 (e) of the Rules. The earlier rule mandates the specification of batch number or code number, either in Hindi or English numerals, whereas amended provisions mandate that every package shall carry a label specifying inter alia the distinctive batch number or lot number or code number, either in numerals or alphabets, the month and year in which the commodity is manufactured or packed, the date of expiry in case of packages of aspartame, which shall not be more than three years from the date of packing and the purpose of irradiation and licence number in case of irradiated food. The additional details which are required to be mentioned in the label are meant to inform the consumer the necessary data before he chooses to purchase the food article. Obviously, that was not the position earlier. By merely mentioning the batch number or code number, the purchaser would not get any necessary information as to the contents of the article, its ingredients, date of manufacture, date of expiry, the other particulars of the manufacturer and his licence number. It is obvious, therefore, that necessary changes have been incorporated into the rule in accordance with the decision of the Apex Court. Therefore, the contention that 32 (e) of the Rules is ultra virus cannot be countenanced and merits no consideration. Coming to the second contention of the learned Counsel, it is appropriate at the outset to consider Section 14 of the Prevention of Food Adulteration Act (for short, "the Act") and then Section 14-A

of the Act, Section 20-A of the Act and the provisions of Section 2 of the Act. The expression "misbranded" is defined under Clause (ix) of Section 2 of the Act. Clause (ix) contains as many as 11 clauses again. As per the said provision, an article of food shall be deemed to be misbranded, if it is sold in packages, which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under the Act and when a package containing it or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular or package is otherwise deceptive with respect to its contents or if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or the producer of the article etc., If the necessary particulars, as enjoined under Rule 32 of the Rules, are lacking on the label affixed to the package as per Section 2(ix) of the Act, it is a misbranded food item. It may be reiterated that the allegation against the petitioners and others is that label is conspicuously absent in the necessary particulars as enjoined under Rule 32 (e) of the Rules and is, therefore, misbranded as opined by the public analyst.

11. Here in the instant case, the vendor, the marketeer and the manufacturer have been impleaded as accused simultaneously. Section 7 of the Act prohibits expressly that no person shall manufacture for sale or store, sell or distribute any adulterated food or any misbranded food. It is obvious in the said provision that the prohibitions equally apply to the manufacturer, seller, the person who stores or distributes any adulterated food or misbranded food. Infraction of Section 7 of the Act is punishable u/s 16 of the penal provision of the Act. u/s 14 of the Act, the manufacturer, distributor or dealer is obliged to give the vendor a warrant in writing in the prescribed form about the nature and quality of the article sold to the vendor. Under 14-A of the Act, every vendor is obliged to disclose to the Food Inspector, the name, address and other particulars of the person from whom he purchased the article of food. While Section 14 of the Act is meant to protect the ultimate vendors before the food reaches a consumer, 14-A of the Act mandates the vendor to furnish the particulars of the person from whom he purchased the article of food. Section 14 of the Act, which protects the interest of the ultimate vendor, is obviously not in the nature of excluding the dealer or the manufacturer from the purview of the Act, nor it is in the nature of carving out an exception in favour of the manufacturer or the dealer. Vide *Bhagwan Das Jagdish Chander Vs. Delhi Administration*, . It was held in paras 12 and 13 thus:

12. We are not impressed by the argument that a distributor could only be prosecuted for selling without giving a warranty to a vendor which is a separate offence u/s 14 of the Act. It is clear from Section 14 itself that a manufacturer as well as a distributor can sell. The definition of Sale, given in Sub-section (xiii) of the Act, is wide enough to include every kind of seller. Every seller can be

prosecuted of an offence created by Section 7 of the Act which prohibits a sale as well as distribution of an adulterated article of food. The mere fact that, for the purposes of Section 14, the person who could be the last seller, in the sense that he sells to the actual consumer, is described as the vendor, could not affect a liability for an offence u/s 7 of the Act of a sale of an article of food which is found to be adulterated. A sale of an article of food by a manufacturer, distributor, or dealer is a distinct and separable offence. Section 14 was not meant to carve out an exemption in favour of a distributor or a manufacturer who sells articles of food, found to be adulterated, irrespective of the question whether any warranty was given for them. It is true that the manufacture of an adulterated article of food for sale is also an offence u/s 7 of the Act. But, neither Section 7 nor Section 14 of the Act bars trial of several offences by the same accused person, be he a manufacturer, a distributor, or a last seller, referred to as the vendor in Section 14 of the Act.

13. We are also unable to accept as correct a line of reasoning found in *Dwarka Nath and Another Vs. The Municipal Corporation of Delhi*, ; and in *P.B. Kurup v. Food Inspector, Malappuram Panchayat*⁵, that, in every case under the Act, there has to be initially a prosecution of a particular seller only, but those who may have passed on or sold the adulterated article of food to the vendor, who is being prosecuted, could only be brought in subsequently after a warranty set up u/s 19(2) has been pleaded and shown to be substantiated. Support was sought for such a view by referring to the special provisions of Section 20-A and Section 19(2) and Section 20 of the Act. A reason for Section 20-A seems to be that the prosecution of a person impleaded as an accused u/s 20-A in the course of a trial does not require a separate sanction. Section 20-A itself lays down that, where the Court trying the offence is itself satisfied that a manufacturer, distributor, or dealer is also concerned with an offence, for which an accused is being tried, the necessary sanction to prosecute will be deemed to have been given. Another reason seems to be that such a power enables speedy trial of the really guilty parties. We are in agreement with the view of the Delhi High Court that these special provisions do not take away or derogate from the effect of the ordinary provisions of the law which enable separate as well as joint trials of accused persons in accordance with the provisions of the old Sections 233 - 239 of Criminal Procedure Code. On the other hand, there seems no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded, u/s 20-A of the Act, he cannot be joined as a co-accused initially in a joint trial if the allegations made justify such a course.

12. Section 14 of the Act, therefore, shall have to be understood in proper perspective. Section 19 of the Act enumerates the defences that can be taken validly by an accused. No defence can be taken by the vendor about his ignorance of the nature, substance or quality of the food sold by him. However, it also simultaneously takes care of the ultimate vendor, who innocently purchases the food item from a dealer or manufacturer. Therefore, it is open to him to take the defence under a written warranty from the manufacturer, distributor or a

dealer in the prescribed form that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. Such a defence is proved, would absolve him from the penal consequences of the Act. Thus, Sections 14 and 19 of the Act, if read together, would amply disclose that they are meant to protect the interests of the ultimate vendor, who in turn purchased innocently the article of food, which eventually found to be adulterated or misbranded from any manufacturer, distributor or dealer. At the same time, the provisions tell us that they are not in the nature of allowing the manufacturer, distributor or a dealer to escape from the liability with impunity. Section 20-A of the Act is the provision which enables the Court to implead, during the course of the trial of any offences under the Act, the alleged manufacturer, distributor or dealer of any article of food, which is eventually found to be adulterated or misbranded. The stage for such impleading is laid down under the Act specifically, which is obviously the stage of evidence during the course of trial. That does not mean that always and at all times the manufacturer, distributor or dealer shall be impleaded only at a later point of time, but not simultaneously along with the ultimate vendor. Section 20-A of the Act can be invoked only when the manufacturer, distributor or dealer has not been impleaded initially and it has come to light in the evidence during the course of trial, the details about such manufacturer, distributor or dealer of the food article, which is eventually found to be adulterated or misbranded. An overview of these provisions and the scheme of the Act clearly tell us that the vendor, the manufacturer or the distributor or the dealer can simultaneously be prosecuted. When that be the clear legal position discernable from a combined reading of the provisions and the scheme of the Act, it requires to be seen what is the material that warrants the inclusion of the manufacturer or distributor or dealer or all of them together along with the vendor in a complaint filed by the Food Inspector alleging either adulteration or misbranding of the article in question. In the absence of the warranty, which is obliged to be given by the manufacturer, distributor or dealer to the vendor, it does not mean that no such person can be legitimately prosecuted. What is required is the evidence, which links or connects the manufacturer, distributor or dealer with the food article, which has been eventually purchased by the Food Inspector from the vendor in his shop. In the instant case, as can be seen from its matrix, a label is affixed on the packet containing chilli powder. That label is obliged to be affixed on the packet in accordance with Rule 32 of the Rules. That label contains the address particulars of the manufacturer and other particulars as are required under Rule 32 (e) of the Rules. Prima facie those particulars constitute the necessary material to connect the manufacturer to the offence along with the vendor. If there is any written warranty with the vendor and if he is able to show before the Court that he stored the food article purchased under that warranty in a good condition and kept it in the same condition before it was purchased by the Food Inspector, he would be exonerated from the liability. In the absence of any such warranty, he cannot take any such valid defence as is allowable u/s 19 of the Act. But, insofar as the manufacturer or distributor or dealer is concerned, once the

article of food is shown to be adulterated, they cannot escape the liability until they are able to show before the Court that the food article which has been sold by them, or anyone of them has not been kept in the same condition when it was sold to the vendor and therefore the adulteration or misbranding must be at the point of the vendor. Thus, the defences to be taken by the vendor, the manufacturer, the distributor or dealer, as the case may be, would ultimately fix the liability on either one of them. This is obvious from the provisions of the Act, as discussed hereinabove. Therefore, the contention that inasmuch as the first accused represented before the Food Inspector that the product was delivered at his doorstep and he had no purchase bill would not warrant any exoneration of A4 and A5 on that premise. Till such time it is shown before the Court that the container which contains the label and the particulars mentioned on the label are not accurate or false and that the food article found therein is not the article manufactured, distributed or sold to the vendor, the manufacturer, distributor and dealer, cannot legitimately contend before the Court that they cannot be prosecuted along with the vendor. It may be mentioned here that the question whether there can be a joint trial of all the persons or not is not germane for consideration in the instant case, since it has not been raised.

13. For the above reasons, the Criminal Petition must fail and is dismissed.