
(2011) 04 AP CK 0071

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 193 of 2005

Potta Butchi Venkata Raju Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 23, 29, 50

Citation : (2011) 04 AP CK 0071

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : T.S. Sri Devi, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Rao Nalla, J.—The sole accused in S.T.C. No. 3 of 2002 on the file of the Judicial Magistrate of First Class, Salur, Vizianagaram District was found guilty by the said court by its judgment dated 28-2-2004 for the offence u/s 16(1)(a)(ii) r/w Section 7(i)(v) and Section 2(ia)(b)(f) of Prevention of Food Adulteration Act, 1954 ("for short the Act") read with Rules 23, 29 and 50 of the Rules framed thereunder and were accordingly convicted and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-, in default to suffer simple imprisonment for a further period of two months.

2. Aggrieved by the said impugned judgment of conviction, the accused preferred Criminal Appeal No. 49 of 2004 on the file of the Court of the learned II Additional Sessions Judge (F.T.C.), Parvathipuram. However, the said first appellate Court after hearing both sides and after considering the material available on record dismissed the appeal confirming the conviction and sentence passed by the trial Court. Aggrieved by the same, the present revision has been preferred by the revision Petitioner-accused.

3. The facts of the case in brief are:

4. The revision Petitioner/accused was proprietor of a retail kirana shop at Jeegiram village, Salur, Vizianagaram District. That on 13-3-2001 at about 1.45 P.M., P.W.1-Food Inspector along with P.W.3 attender visited the said shop after securing the presence of P.W.2 mediator from the said village. That suspecting that the redgram dall was adulterated, P.W.1 purchased 750 grams of the said dall for Rs. 15/- and obtained cash receipt from the accused in the presence of P.Ws.2 and 3 under Ex.P.9 mediators" report. That thereafter, P.W.1 served notice in Form VII on the accused. That the said dall was divided into three equal parts after complying with the required procedure as laid down under the rules and sent one of them to the public analyst and the remaining two parts to local (Health) Authority. That the public analyst report dated 4-4-2001 is to the effect that the sample did not conform to the standards of Weevilled grains and uric acid content and that it contains an added synthetic colour Tar trazine and therefore, it was found to be adulterated. That P.W.1 Food Inspector after obtaining the sanction orders from the Food (Health) authority, Andhra Pradesh to prosecute the accused, launched prosecution against the accused in the court of the learned Judicial Magistrate of First Class, Salur.

5. That on the accused not pleading guilty of the charges leveled against him, he was prosecuted and tried for the offences under Sections 16(1)(a)(ii) r/w Section 7(i)(v) and Section 2(ia)(b)(f) of the Act read with Rules 23, 29 and 50 of the Rules.

6. In support of its case, the prosecution has got examined P.Ws.1 to 3 and got marked Exs.P.2 to P.22, on its behalf. No witnesses were examined and no documents were marked on behalf of the accused.

7. The trial Court after considering and appreciating the evidence of the prosecution witnesses and other material on record found the revision Petitioner-accused guilty for the offences charged with as has been already stated supra. Aggrieved by the said judgment of conviction passed by the trial Court, the accused preferred an appeal in Criminal Appeal No. 49 of 2004 on the file of the II Additional Sessions Judge, (FTC), at Parvathipuram which was dismissed by its judgment dated 3-2-2005 and assailing the same, the accused preferred the present revision case on the following grounds inter alia that both the courts below failed to appreciate the evidence of prosecution witnesses and the material on record in proper perspective and as such they came to a wrong conclusion in convicting the accused, that both the courts below should have seen that P.W.1 is the Food Inspector and that P.W.3 who is the attender working under P.W.1 whereas P.W.2 is one of the villager examined as a mediator, that the mediator, who was an independent witness, did not support the case of the prosecution as he turned hostile, that both the courts below failed to see that Ex.B.6 cash receipt did not contain the address of the shop of the accused, as admitted by P.W.1 himself. That both the courts below failed to see that it is a settled law that the prosecution should be launched as early as possible, however, there was a delay of 15 months in launching prosecution in this case, therefore, both the

courts below should have held that the same is fatal to the case of the prosecution. Both the courts below erred in not disbelieving the evidence of P.Ws. 1 and 3 since P.W. 1 is none other than the Investigating Officer himself and P.W.3 is an attender working under PW.1, that both the courts below also erred in not considering the fact that the only independent witness examined in this case is P.W.2- mediator, who did not support the case of prosecution at all. Therefore, both the courts below ought not to have relied upon the evidence of P.Ws.1 and 3 since they were official and interested witnesses.

8. Learned counsel for the revision Petitioner-accused raised self same grounds as mentioned in his revision petition. In addition thereto, he contends that P.W. 1 the Food Inspector himself had admitted in his cross-examination that in Ex.P.6 cash receipt, the accused was not shown as owner of the shop and it did not contain the door number or general sales tax number etc., Therefore, he contends that it cannot be said that the Petitioner-accused is the owner of the said kirana shop and that the food grains were purchased from him under Ex.P.6. He also stated in his cross-examination that the preamble of Ex.P.9 mediators report contains that it was scribed through P.W.2 mediator. However, the evidence of P.W.2 is to the effect that he never acted as a mediator in the case that somebody obtained his signature on Ex. P.9. Therefore, learned Counsel contends that when P.W.2 did not act as a mediator, the question of his scribing Ex.P.9 mediators' report does not arise.

9. Learned counsel for the revision Petitioner-accused also contends that in Ex. P. 14 public analyst report, it is not stated that the sample is injurious to health and unfit for human consumption. Therefore, he contends that both the courts below had lost sight of the fact that the sample drawn by P.W.1 was very much fit for human consumption and as such, the contravention of the Act does not arise. It is the last contention of the learned Counsel for the Petitioner-accused that both the courts below ought to have acquitted the Petitioner-accused at least by extending the benefit of doubt.

10. On the other hand, the learned public prosecutor submits that P.W.3 has corroborated the evidence of P.W.1 and as such turning of P.W.2 hostile does not affect the veracity of their evidence. Therefore, he contends that both the courts below after considering, assessing and appreciating the material on record came to a right conclusion in convicting the Petitioner-accused by trial Court and the same being confirmed by the first appellate court and as such, he contends that there is no scope for interference by this Court.

11. Having regard to the evidence on record and the submissions made by both sides, it is to be seen that Ex.P.14-Public Analyst Report dated 4.4.2001 indicates that the red gram dal sample does not conform to the standards of weevilled grains and uric acid content and that it contains added synthetic colour tartrazine and it is adulterated. So far as the contention of the accused that the public analyst did not mention that the sample is injurious to health, is concerned, it is for the accused to establish that the adulteration was solely due to natural

causes and beyond the control of human agency. So far as Ex.P.6-cash receipt is concerned, though it does not indicate that the accused is the owner of the shop, the evidence of PW. 1 and the events that took place clearly reveal that the accused is doing the business in the shop from which PW.1 lifted the sample. So far as the delay in launching prosecution is concerned, it is to be seen that pursuant to Ex.P.17- report dated 16.04.2001 given by PW.1-Food Inspector, Ex.P.16 dated 13.05.2002 was issued by the Director, Institute of Preventive Medicine and Food Health Authority, authorizing PW.1-Food Inspector to launch prosecution against the accused and that the period between Ex.P.17 dated 16.04.2001 and Ex.P.16 dated 14.05.2002 has to be excluded. As such, it cannot be said that there was a delay in launching the prosecution. Further, PWs 1 and 3 hail from district headquarters and the accused hails from the remote village and they have no axe to grind against the accused. As such, the evidence of PWs 1 and 3 cannot be brushed aside though PW.2 turned hostile. In the circumstances, this court of the view that the courts below have not committed any error warranting interference from this revisional court and the criminal revision case is liable to be dismissed.

12. In the result, the Criminal Revision Case is dismissed.