
(1975) 02 AP CK 0004
In the Andhra Pradesh High Court

Suriseti Appa Rao

APPELLANT

Vs

The State of Andh. Pra.

RESPONDENT

Date of Decision : 20-02-1975

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 14, 16, 19, 2, 7

Citation : (1975) CriLJ 1292

Hon'ble Judges : Ramachandra Raju, J;Madusudan Rao, J

Bench : Division Bench

Judgement

Ramachandra Raju, J.—The petitioner was convicted under Sections 16(1) and 7 read with Section 2(ix)(j), of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act"), and Rule 29 of the Rules framed thereunder, and sentenced to undergo rigorous imprisonment for a period of six months which is the minimum sentence provided u/s 16(1) of the Act. It is not in dispute that the petitioner sold the sample dhal to the Food Inspector and when it was sent to the Public Analyst it was found to be misbranded.

2. The only point argued by Sri K. Kolanda Reddy learned Counsel for the petitioner, is that the petitioner purchased the dhal in question under bill Ex. D-1 from D. W. 1 and therefore the petitioner is entitled to the benefit given u/s 19 of the Act. Section 19 of the Act reads as follows:

19. Defences which may or may not be allowed in prosecution under this Act:

(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated, or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or mis-branded article of food if he proves-

(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer; with a written warranty in the prescribed form; and

(b) 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.

(3) Any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence.

3. From a reading of the above provision it is clear that the petitioner can have the benefit of Section 19 only if he purchased the article of food, with a written warranty from the supplier and by showing 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. Apart from there being no written warranty in the prescribed form Ex. D-1 cash bill also does not contain any such warranty. No doubt D. W. 1 came to the box and stated that he sold the food article to the petitioner. The petitioner by placing reliance on a judgment of our learned brother Justice Chennakesav Reddy, (Cr. P. C. Nos. 699 and 617 of 1973, D/- 13-9-1974 (Andh Pra)), argued before our learned brother Justice Muktdar when this matter came up before him in the first instance for hearing, that the petitioner is entitled to acquittal on the basis of Ex. D-1 cash bill and the evidence of D. W. 1. In the case before Justice Chennakesav Reddy, the Food Article was green-gram dhal, The Analyst found it to be misbranded. The brother of the accused gave evidence in that case that the accused purchased the green-gram dhal from the shop of one Uppala Satyanarayana Murty that the same was put in a tin and sold in the same condition without adding anything and that Uppala Satyanarayana Murthy did not give any bill for the Dhal purchased. On the basis of this evidence Chennakesav Reddy, J, observed that:

It is a matter of common knowledge that particularly in small places when small quantities like 1 Kg. or 2 Kgs. of dhal or other articles of food are purchased by customers or retailers, no cash memo or warranty is given. It is not even suggested to the witness that there is no one by name Uppala Satyanarayana Murty who is a wholesale dealer in green-gram dhal. The Food Inspector, P. W. 1, admitted that he could not say on looking at the dhal in the petitioner's shop whether it was adulterated or misbranded. It will be equally not possible for a retailer to know whether the article of food was adulterated or misbranded on mere look at it. Therefore, having regard to the fact that the petitioner himself is a petty dealer and that the green-gram dhal found in his shop was only about 2 kgs. I think the evidence of D. W. 1 is sufficient to establish that the petitioner purchased the green-gram dhal from another whole-saler viz. Uppala Satyanarayana Murty and sold it in the same form. Therefore, he is entitled to the protection of Section 19(2) of the Act.

4. Justice Muktadar, when the matter was argued before him, was unable to agree with the view expressed thus by Justice Chennakesav Reddy and accordingly he referred the case to a Bench. That is how this Criminal Revision Case happened to have come before us.

5. For the purpose of offences under the Prevention of Food Adulteration Act, we do not think that whether the accused is aware that the Food article was adulterated or misbranded, or whether, without himself adulterating or misbranding it he sold is relevant. In Section 19(1) of the Act it is mentioned, that it shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale. It is only a vendor can escape liability with regard to the sale of any adulterated or mis-branded article of food if he establishes that he purchased the food article with a written warranty from the supplier and 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. Admittedly in the present case there was no written warranty. In the present case neither the petitioner has examined himself, nor he examined anybody to prove that after he purchased the dhal in question he properly stored it and he sold it in the same state as he purchased it. We entirely agreed with the view expressed by Muktadar, J. that the two conditions mentioned in Section 19 should be fulfilled before an accused can get the benefit of Section 19. It is true that D. W. 1 came forward to say that he sold the dhal to the petitioner, but from his evidence it does not appear that he sold the dhal when it was in the same condition in which it was found when the Food Inspector purchased the sample from the petitioner for the purpose of analysis. Therefore, his merely giving evidence that he sold the dhal to the petitioner does not serve the purpose.

6. Sri Kolanda Reddy in this connection placed reliance on the decision of the Supreme Court in K. Ranganatha Reddiar Vs. The State of Kerala, . In the case before the Supreme Court the cash memo issued to the accused contained a warranty to conform to the rule framed under the Prevention of Food Adulteration Act, though it was not given separately in the prescribed form. Under those circumstances the Supreme Court said that the object underlying the Act having been achieved by the cash memo containing in the warranty the accused was entitled to the benefit of Section 19 of the Act. In the present case there is no warranty at all, much less in any written form, Under these circumstances we have no doubt that the petitioner is not entitled to the benefit of Section 19 of the Act and claim immunity for the mis-branding of the food article.

7. Next it is argued by the learned Counsel that having regard to the circumstances of the case the punishment of six months imprisonment is too severe and therefore a lenient view may be taken in awarding sentence. But as

provided u/s 16(1) of the Act the sentence of six months imprisonment is the minimum sentence that has to be awarded. The proviso to Section 16(1) has no application because this case does not come under the clauses mentioned in the Proviso to Section 16(1) of the Act, In this connection the learned Counsel brought to our notice, a judgment of one of us (Ramachandra Raju, J.) allowing an appeal filed by the State against the acquittal, and convicting the accused and sentencing him only to pay a fine of Rs. 100/- where the minimum sentence is six months imprisonment like in the present case. But that sentence of fine was awarded without considering the provision in the Act with regard to the minimum sentence,

8. Lastly the learned Counsel has argued that the petitioner being a first offender it is a fit case to grant the petitioner the benefit of the Probation of Offenders Act and the benefit can be granted to accused like the petitioner. He placed reliance on a decision of the Supreme Court in Ishar Das Vs. The State of Punjab, where the Supreme Court said that

adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring parity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of Rupees One thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act.

The petitioner in the present case was aged nearly 50 years when the offence was committed. Therefore, we do not think it is a fit case where the provisions of the Probation of Offenders Act can be applied to the petitioner.

9. Accordingly the revision case is dismissed.