

(2011) 12 AP CK 0012

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 2362 of 2004

The Food Inspector, Karimnagar District

APPELLANT

Vs

Kalluri Bhoomeshwar

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Evidence Act, 1872 — Section 10(4), 114

Prevention of Food Adulteration Act, 1954 — Section 16(1), 2, 7, 9

Prevention of Food Adulteration Rules, 1955 — Rule 16, 28, 29

Citation : (2012) 1 ALD(Cri) 931 : (2012) 2 ALT(Cri) 89

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : K. Venu Madhav, for the Respondent

Final Decision : Allowed

Judgement

Honourable Sri Justice Samudrala Govindarajulu

1. The State filed this appeal against acquittal of the accused recorded by the lower Court of the offence u/s 16(1)(a)(ii), 7(i), 2(ia)(b) of the Prevention of Food Adulteration Act, 1954 (in short, the Act). P.W-1/Food Inspector obtained sample of green gram dal from shop of the accused i.e., M/s.Rajashekar Kirana Stores, Ibrahim patnam and sent one of the samples to the public analyst for analysis. The public analyst after analysis sent Ex.P-16 report opining that the sample of green gram dal contains added synthetic food colour "Tartrazine" and is therefore adulterated. The lower Court found the accused not guilty on four grounds.

2. Firstly the lower Court came to the conclusion that P.W-1 who is working as junior analyst in the office of Civil Surgeon, Bacteriologist, Regional Laboratory, Warangal and who is functioning as Food Inspector on temporary basis does not possess the requisite qualification by way of undergoing three months training as required u/s 9 of the Act. This finding is baseless. P.W-1 denied the suggestion that he did not undergo three months training as required u/s 9 of the Act. He

filed Ex.P-2 notification in G.O.Ms.No.452, dated 07.09.1994 by which he was appointed as Food Inspector. The official act of the Government in appointing P.W-1 as Food Inspector and notifying the same pre-supposes that the person so appointed and notified as Food Inspector possesses requisite qualifications under law. It is for the person who disputes the same to prove contra. It has to be presumed that unless P.W-1 possessed the requisite legal qualification the official act of appointing and notifying him as Food Inspector, would not have been done by the Government. The presumption u/s 114(e) of the Evidence Act could not be rebutted in this case.

3. Secondly, the lower Court found that there is contravention of Rule 16 of the Prevention of Food Adulteration Rules, 1955 (in short, the Rules) in this case. This finding is also again a misreading of evidence of P.W-1. Rule 16 speaks about packing and sealing of the samples. When P.W-1 in cross-examination stated that he made packing of the sample for sending it by way of parcel in his office on 06.04.1998, the lower Court misread the same as if P.W-1 had sealed and packed the samples in his office and not at the shop. For the purpose of sending the sealed sample to the public analyst, P.W-1 did postal packing in his office. That is no violation of Rule 16 of the Rules.

4. Thirdly, the lower Court on reading of Rules 28 and 29 came to the conclusion that Tartrazine is a permitted food colour and that therefore there is no adulteration of the sample in this case. Rule 28 deals with synthetic food colours which may be used. Tartrazine is given as permitted synthetic food colour in Rule 28. Whereas Rule 29 prohibits use of permitted synthetic food colours in any food other than those mentioned in that Rule. Those permitted synthetic food colours can be used only in food items mentioned in items (a) to (h) therein. Green gram dal is not in that list. Therefore, use of Tartrazine for colouring green gram dal is prohibited under Rule 29 of the Rules. Finding of the lower Court on this aspect is also illegal and perverse.

5. Lastly it is contended by the respondent's counsel that there is violation of Section 11(4) of the Act in this case. He placed reliance on M. Eswaraiiah Vs. State of A.P., Food Inspector, Cuddapah, on this aspect. Section 11(4) of the Act contemplates production of article of food seized u/s 10(4) of the Act before the Magistrate as soon as possible and in any case not later than 7 days after receipt of report of the public analyst. Section 11(4) reads as follows:

11. Procedure to be followed by food inspectors:---

(4) An article of food seized under sub-section (4) of Section 10, unless destroyed under Sub-section (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.

6. It is contended by the respondent's counsel that report of the public analyst in this case was received by the Food Inspector on 20.05.1998 and that in pursuance of orders of the lower Court, the other two samples of green gram dal were produced before the Court on 22.06.2002. Sending of second sample or the third sample to Court is not contemplated u/s 11(4) of the Act. Section 11(4) of the Act pertains to production of the food article seized u/s 10(4) of the Act. At this stage, a reference to Section 10(4) becomes useful and it reads as follows:

10. Powers of food inspectors:--

(4) If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided: and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst:

Provided that where the food inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the food inspector deems fit and the vendor shall execute the bond accordingly.

7. Section 10 of the Act deals with powers of the Food Inspector. The said powers include power of seizure of any article of food by the Food Inspector when it appears to him to be adulterated or misbranded. Seizure of the entire suspected adulterated or misbranded food article from any shop is entirely different from obtaining sample of the suspected adulterated or misbranded food article. Sample of food article is obtained by the Food Inspector by paying its price and it is by way of purchase and not by way of seizure. Whereas the Food Inspector u/s 10(4) of the Act is empowered to seize the entire suspected adulterated or misbranded food article without payment its value. The said power u/s 10(4) of the Act is exercised by the Food Inspector with an intention to prevent the shopkeeper from selling the said suspected adulterated or misbranded food item to other customers in future. In the case on hand, P.W-1 did not seize any food article u/s 10(4) of the Act; and P.W-1 purchased only samples of green gram dal by paying the price to the accused. Therefore, finding of the lower Court on this aspect is again incorrect, contrary to law and perverse.

8. All the four grounds on which the lower Court recorded acquittal of the accused are found to be untenable and perverse. Therefore, the aid finding of acquittal has no legs to stand. I find that the accused/respondent guilty of the offence.

9. In the result, the appeal is allowed setting aside the judgment of the lower Court and convicting the accused/respondent u/s 16(1)(a)(i) of the Act and sentencing him to simple imprisonment of six months and fine of Rs.1,000/- and

in default to suffer simple imprisonment for further period of one month.