

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.R.C. No. 736 of 2010

1.V.Ganesh

2.V.Selvaraghavan

.. Petitioners

Versus

State

represented by
Food Inspector
Karamadai Circle
Coimbatore-641 104.

... Respondent

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the judgment dated 13.04.2009 passed in C.A.No.86 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Court No.II at Coimbatore, confirming the judgment dated 07.07.2009 passed in S.T.C.No. 356 of 2008 on the file of the Judicial Magistrate, Mettupalayam and acquit the petitioners.

For Petitioners : Mr.A.S.Chakravarthy

For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

ORDER

The petitioners/accused Nos.1 and 2 have come forward with this Criminal Revision Case seeking to set aside the judgment dated 13.04.2009 passed in C.A.No.86 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Court No.II at Coimbatore, confirming the judgment dated 07.07.2009 passed in S.T.C.No. 356 of 2008 on the file of the Judicial Magistrate, Mettupalayam and acquit the petitioners.

2. The case of the prosecution is that the complainant/Food Inspector has been duly approved to lift food samples for sampling within his jurisdiction. On 16.06.2007 at about 3.00 p.m. he had visited "Shenbaga Stores" situated at Thayanoor within Karamadai Panchayat Union, with the intention of lifting food samples. There the complainant found the first accused doing business. On enquiry, the first accused has stated that his brother viz., second accused is the Proprietor of the shop. On inspection, the complainant found 10

packets of Three Star Brand Tea Dust each weighing 250 grams were kept for sale. Doubting adulteration in the said tea dust, the complainant had lifted samples of the same after following the procedures as enumerated in law. The Analytical Report revealed the food sample was adulterated and misbranded and hence, after obtaining due permission from the Directorate of Public Health and Preventive Medicine, Chennai, the complainant had initiated legal proceedings against the petitioners. The case is taken on file in S.T.C.No.356 of 2008 on the file of the Additional District & Sessions Judge, Fast Track Court No.II, Coimbatore. After trial, the Trial Court has found the petitioners/accused Nos.1 and 2 guilty under Sections 7(i) and 7(ii) r/w. Rule 32(f) of Prevention of Food Adulteration Act and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for a period of one week for the offence under Section 7(i) of Prevention of Food Adulteration Act and sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for a period of one week for the offence under Section 7(ii) r/w. Rule 32(f) of Prevention of Food Adulteration Act. The sentences were ordered to run concurrently. Aggrieved against the said judgment of conviction and sentence, the accused Nos.1 and 2 have preferred Crl.A.No.86 of 2009 before the Additional District and Sessions Judge, Fast Track Court No.II at Coimbatore. The Appellate Court by judgment dated 13.04.2010 has confirmed the judgment passed by the Trial Court. Aggrieved against the same, the present Criminal Revision Case is filed by the accused Nos.1 and 2.

3. The main ground raised by Mr.A.S.Chakravarthy, learned counsel appearing for the petitioners is that they are only dealers and they have got the bill for the purchase of sealed tea dust packet with the label. He would further submit that taking into consideration that as per Section 19(2) along with Rule 12A what is necessary for the accused to show is that they have purchased the article from any manufacturer, distributor or dealer with a written warranty in the prescribed form. In the instant case, admittedly, the petitioners have got the bill and therefore, the requirements of Section 19(2) read with Rule 12A are satisfied in the instant case and therefore, the accused Nos. 1 and 2 are entitled to the benefit under Section 19(2) of the Prevention of Food Adulteration Act. The learned counsel would further contend that the complainant has not taken any steps to trace out the manufacturer and the non-impleading of the manufacturer to be prosecuted along with the accused is fatal and therefore, the conviction of the Trial Court cannot be sustained. To substantiate his contention, he would rely on the decision of the Hon'ble Supreme Court reported in 2004 STPL (LE) 33026 SC, Mohinder Kumar vs. State of Haryana.

4. Mr.V.Arul, learned Government Advocate (Criminal Side) would contend that the complainant made all efforts to implead the manufacturer, and in fact, the Appellate Court, in its judgment has pointed out that the complainant has taken necessary steps to implead

the manufacturer, but, he could not do so and therefore, the non-impleading of the manufacturer and prosecute the manufacturer along with the accused, is not fatal.

5. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. Though many grounds have been raised in the revision, a vital point which has been raised is that the petitioner is only a dealer and he has purchased the sealed tea packet with the label and therefore, if at all any defect has been pointed out, only the manufacturer should be held responsible. The manufacturer was not at all impleaded at any point of time. Merely because, the Appellate Court in its judgment has pointed out that the complainant has taken necessary steps to implead the manufacturer, but, he could not do so, it will not absolve the liability of the manufacturer. As per the judgment of the Hon'ble Apex Court reported in (2004) STPL (LE) 33026 SC, Mohinder Kumar vs. State of Haryana, since, the complainant has not taken any steps to trace out the manufacturer and prosecute the manufacturer along with the accused, it is fatal to the prosecution case and the conviction and sentence of the Trial Court cannot be sustained.

7. At this juncture it is relevant to refer to Section 19(2) of the Prevention of Food Adulteration Act, 1954, which reads as under:-

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

(a) that the 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".

8. Rule 12A of the Prevention of Food Adulteration Rules reads thus:-

"12A. Warranty-Every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or label, a warranty in Form VIA".

9. It is relevant to refer to the judgment of the Hon'ble Apex Court reported in 1995 STPL (LE) 20298 SC, P.Unnikrishnan vs. Food Inspector, Palghat Municipality, Palghat, Kerala State, wherein, the Apex Court has referred to Section 19(2) read with Rule 12A and has held in paragraph No.6 as under:-

"6. As rightly contended by the learned counsel for the appellant, the High Court has not correctly appreciated the scope of Section 19(2) and Rule 12A and the necessary burden to be discharged by the accused. From the facts of the case it is clear that the representative of M/s.Tajus Production, Cannnore came to the medical shop of the accused and sold the article to the accused and also gave a bill Ex.D1 which contained the warranty signed by somebody on behalf of the firm. Admittedly the article was in sealed tins which were not tampered with a label to the effect that it was a product of M/s. Tajus Productions. The accused sold it in the same manner and condition in which it was purchased by him. The further proof that the manufacturer from whom the accused purchased the article has been duly licensed, depends on the facts of each case. In every case the accused cannot be expected to verify further whether the contents of the label on the tin and those in the bill containing the warranty are correct or not. In the instant case a representative of the firm situated at Cannanore, 200 km.away, came to the shop of the accused, sold the tins with the label and also issued a bill having the warranty. The accused in turn sold the article in the same form to PW3. At that juncture no knowledge about the non-existence of the firm could be attributed to the accused and he could not be expected to verify as to what the actual position was regarding the existence of the firm at a place which was 200 kms.away. It may be that the firm was in existence and if for any reason subsequently the firm does not exist, the accused cannot be deprived of the defence to which he is entitled to under Section 19(2). Therefore, in the facts of the case it must be held that the accused has duly discharged the burden to the extent necessary under the above mentioned provisions."

10. In the instant case, the petitioners/accused Nos.1 and 2 have purchased the sealed tea packet with the label for which they have the bill. The petitioners in turn sold the sealed tea packet in the same form to the complainant in which they have purchased. As per Section 19(2) along with Rule 12A what is necessary for the accused to show is that he has purchased the article from any manufacturer or dealer with a written warranty in the prescribed form. In the instant case, admittedly, the petitioners have got the bill. It is also the admitted case that the sealed tea packet obtained from the manufacturer was sold to the complainant/Food Inspector, in the same form and in the same condition, therefore, the requirements of Section 19(2) read with Rule 12A are satisfied. Thus, in my considered opinion also, the petitioners/accused Nos.1 and 2 cannot be deprived of the defence to which they are entitled to under Section 19(2) of the Prevention of Food Adulteration Act. Therefore, in the facts and circumstances of the case, it must be held that the accused Nos. 1 and 2 have duly discharged the burden to the extent necessary under the above mentioned provisions and hence, the

judgment of conviction and sentence imposed on the petitioners/accused Nos.1 and 2 by the Appellate Court is set aside. This Criminal Revision Case is allowed. The fine amount, if any, paid by the petitioners/accused Nos.1 and 2 is directed to be returned to them.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

paa

To

1.The Food Inspector
Karamadai Circle
Coimbatore-641 104.

2.The Additional District and Sessions Judge,
Fast Track Court No.II
Coimbatore.

3.The Judicial Magistrate,
Mettupalayam.

+1 cc to M/s. A.S.Chakravarthy, Advocate, sr.36449.

Crl.R.C. No. 736 of 2010

vsn(co)
kra(10/08)

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