THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Criminal Revision Case No.139 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC', for brevity) by the sole accused is directed against the judgment dated 30.01.2008 in Criminal Appeal No.55 of 2007 passed by the learned Metropolitan Sessions Judge, Hyderabad.

1. **(a)** By judgment dated 05.02.2007 passed in C.C.No.5 of 2005, the learned I Metropolitan Magistrate, at Hyderabad found the accused guilty of the contravention of the Section 2(ia)(i) read with 7(i) and (v) of the Prevention of Food Adulteration Act, 1954 ('the Act', for brevity) and Rule 29 of the Rules made there under and punishable under Section 16(1)(a)(i) and (ii) of the said Act and sentenced him to undergo simple imprisonment for a period of six months and pay a fine of Rs.3,000/- and suffer simple imprisonment for two months in default of payment of the said fine amount. While dismissing the aforementioned appeal of the accused, the learned Additional Metropolitan Sessions Judge had confirmed the conviction, but, had altered the substantive sentence of imprisonment from six months to three months while maintaining the fine amount.

2. I have heard the submissions of the learned counsel for the petitioner/acused and the learned Public Prosecutor appearing for the respondent-State. I have perused the material record.

3. The case of the prosecution including the gravemen of the charge, in brief, is this: 'On 13.09.2002 at about 3.15 PM, PW1, the Food Inspector along with PW2, who is his Assistant had inspected M/s. Sree Laxmi Kirana Stores, 3-4-771/3, Barkaptpura, Hyderabad. At that time, the accused was transacting the business in that shop as Proprietor. PW1 had secured the presence of an independent witness, Kashinath-LW2. In the presence of the said witness and PW2, the PW1 had purchased 750 grams of Moong dhal, which was kept for sale for human consumption, by paying its price and had obtained a cash receipt. He had divided the said 750 grams of the Moong Dhal into three equal parts of 250 grams each and had prepared three sample packets as per the procedure. PW1 had also prepared a panchanama at that shop and had obtained the signatures of PW2 and the witness on the said panchanama. He had sent one sample to the public analyst for analysis and report and the remaining two samples to the Local (Health) Authority for safe custody. The Public Analyst having analyzed the sample had furnished a report stating that the sample contains synthetic colour 'tatrazine' and is therefore, adulterated. PW1 had served a letter personally on the accused requiring him to furnish the business particulars. The accused did not give any reply. Therefore, PW1 had addressed a letter under the original of exhibit P16 to the Assistant Commercial Tax Officer concerned for obtaining the business particulars of the accused. Under exhibit P17, reply, the Assistant Commercial Tax Officer had informed that the accused is the Proprietor of M/s. Sree Laxmi Kirana & General Stores. A detailed report was submitted under exhibit P18 to the Director, Institute of Preventive Medicine for obtaining sanction. The said Director had accorded sanction under exhibit P19. Therefore, a complaint was filed before the court of the learned Magistrate against the accused.'

4. Before the trial court, PWs1 and 2 were examined and exhibits P1 to P23 were marked. Exhibit C1, CFL report was marked on the side of the defence. No material objects were marked. On merits, the trial court had convicted and sentenced the accused and the said conviction was confirmed by the court below by modifying the substantive sentence of imprisonment from six months to three months. Therefore, the accused is before this court.

5. I have heard the submissions of the learned counsel for the petitioners/accused and the learned Additional Public Prosecutor. I have perused the material record.

6. Now the points for determination are:

> **Whether the prosecution proved the guilt of the accused beyond reasonable doubt for the**

offence viz., contravention of Section 2 (ia)(i) read with 7(i) and (v) of the Prevention of Food Adulteration Act and Rule 29 of the Rules made there under and punishable under Section 16(1) (a)(i) and (ii) of **the Prevention of Food Adulteration Act?**
Whether the judgment impugned confirming the conviction of the petitioner/accused for the said offence/s is unsustainable under facts and in law? And, if so, whether the impugned judgment is liable to be set aside?

7. **<u>POINTS:</u>**

7. **(a)** The core facts which lead to the present stage of the matter are already stated supra, in detail. At the time of hearing, the learned counsel for the accused had contended as follows: 'Exhibits P5 and P7 clearly establish that a test was conducted even before the sample was collected. The independent witness though cited, was not examined. The prosecution had failed to produce the best evidence. The same, therefore, caused prejudice to the interests of the accused. The courts below ought to have seen that exhibit P14, the Public Analyst's report, is incomplete. The courts below ought to have seen that the Analyst did not conduct all the recommended tests on the sample. Under the provisions of law, there is no specific standard with regard to the synthetic test. This aspect was ignored and was not considered by the courts below. The testimonies of PWs 1 and 2 are discrepant regarding the collection of the samples. The prosecution had not complied with the mandatory stipulations under the Act, particularly the provisions of Sections 11(4) and 13(2) of the Act. The non-production of the seized material before the court of the learned Magistrate within the time prescribed under law caused serious prejudice to the accused. The analyst's report does not corroborate the oral testimony of PW1. The courts below erred in placing reliance on the evidence, which is not credible.'

7. **(b)** *Per contra*, the learned Public Prosecutor would submit that the prosecution had adduced sufficient evidence and that the non examination of the independent witness is of no consequence as the evidence of PW1 was well supported by PW2 and also the documentary evidence and that the courts below having properly appreciated the facts and the evidence on record had held concurrently that the evidence on record is sufficient to base a conviction and that therefore, there is no merit in the contentions of the accused and hence, there are no grounds calling for interference with the concurrent findings in the well reasoned judgments of the courts below. He, therefore, had submitted that the order impugned in the revision is sustainable and that the revision, which is devoid of merit, is liable to be dismissed.

8. **(a)** I have bestowed my attention and I have given earnest consideration to the facts and submissions. PW1 is the Food Inspector who had inspected M/s. Sri Laxmi Kirana Stores along with PW2 and in the presence of an independent witness-Kashinath (LW-2). He had deposed in line with the case of the prosecution, which is stated supra. He spoke about the inspection made in the presence of PW2 and LW2-Kashinath and the proceedings that had taken place during the course of inspection. The evidence of PW1 would also show that, he having purchased the alleged adulterated food article/Moong Dhal from M/s. Sri Laxmi Kirana Stores had prepared the samples, as per the procedure, and had also reduced into writing the details of the said procedure and the inspection in the form of a panchanama exhibit P7 in the presence of PW2, his Assistant, and the other independent witness-LW2-Kashinath, who was said to be present at that time and who is said to be a person of that locality. He had also deposed that he had later sent one of the three samples to the Public Analyst and that the Public Analyst gave his report, exhibit P1 opining that the sample contains synthetic colour 'tatrazine' and that therefore, the same was adulterated. Subsequently, PW1 had obtained sanction for prosecution and had filed complaint against the accused.

8. **(b)** Two contentions were mainly urged before this Court. Firstly, it is contended that non-examination of the independent witness, LW2-Kashinath is fatal to the case of the prosecution. In support of the said contention, reliance was placed on the decision in **P.Naidu v. State of A.P**[1]**.** Admittedly, in this case, LW2-Kashinath who was said to be an independent witness and who was of the locality and who was said to be present at the time of inspection made by PW1, was not examined. No reasons were forthcoming for non-examination of the said witness. However, the learned Public Prosecutor had contended that this contention was raised before the Courts below, and that the courts below did not give weight to this contention as the legal requirement of involving of an independent witness from the locality was satisfied. He had further contended that in fact, the said independent witness had also signed on exhibit P7-panchanama and that there is no requirement of law that the independent witness should be examined to prove the proceedings during the course of inspection including taking of the sample. In the cited case, the accused had taken a plea that he did not sell the milk at all. The prosecution had examined only PWs 1 and 2, i.e., the Food Inspector and his Maistry. The only other mediator who is an independent witness was also examined, but he was not tendered for cross-examination. Having regard to the above and other facts, this Court had held as follows:

> **"Now coming to the infraction of Sec. 10(7), I find considerable force in the submission of the learned counsel. Sec. 10(7) lays down that where the Food Inspector takes any action under clause (a) of Sub Sec (1), sub sec. (4) or sub. Sec (6), he shall call one or more persons to be present at the time when such action is taken and take his or their signatures. The 'one or more persons' contemplated to be called should be independent witnesses and in the instant case the accused has taken the plea that he did not sell the milk at all. Therefore, the very sale is in dispute. In such a situation, the evidence of the independent witnesses is of great value. However, the courts also have held that the evidence of official witnesses is entitled to weight. There cannot be any dispute about such a proposition, but in a given case the evidence of independent witnesses is very important. In the instant case as already mentioned, the accused has denied the very sale of the article of food, and the lower court also noticed that PWs 1 and 2 are interested witnesses. However, the court below relied on the same holding that they are reliable. The first part of sec. 16 makes a minimum sentence of six months compulsory. Therefore, it is a stringent provision and care should be taken to see prosecution should take necessary care to examine all the material witnesses. The non-examination of mediator, who**

> **is an independent witness, may not affect the prosecution version in every case, but as mentioned above where the very sale or the very incident of sale and the procedure followed are in issue, the evidence of independent witnesses becomes very important. In the instant case the non-examination of the independent witness has caused prejudice to the accused.”**

8. **(c)** In the case on hand also, the accused has taken a plea that he never sold the sample to the Food Inspector. The relevant cross-examination of PW1 reads as follows: ‘It is not true to say that the accused never sold the sample to me. The accused is not the manufacturer of the sample. It is not true to say that the cash bill exhibit P5 was not issued by the accused. It is true that I filed this case against the accused after two and half years after lifting of the sample. It is not true to say that I have (not) obtained the signature of the accused on exhibits P4 to P7 and that all the documents are fabricated by me. It is not true to say that I foisted this case against the accused for statistical purpose.’ Therefore, in the instant case also the accused had taken a specific plea that he did not sell the sample to the analyst. Therefore, the ratio in the cited decision squarely applies to the facts of the case on hand. Therefore, examination of the official witnesses alone and the non-examination of the independent witness has caused prejudice to the accused. Be that as it may.

8. **(d)** There is one more important fact, which supports the defence of the accused. According to the case of the prosecution, the PW1 had inspected M/s. Sri Laxmi Kirana Stores and had prepared exhibit P7-panchanama during the course of inspection. In column No.(15) of the said panchanama, he had noted that the licence was in the name of one Baburao Naik. Therefore, the accused is not the licence holder of the shop by name M/s. Sri Laxmi Kirana Stores. The further details of the shop as per the panchanama are: 3-4-771/3, Barkatpura. According to PW1, he had addressed a letter under the original of exhibit P16 to the Assistant Commercial Tax Officer concerned to furnish the available information in respect of M/s. Sri Laxmi Kirana & General Stores bearing Dr.No.3-4-771/3, Barkatpura, Hyderabad. Though the name of the inspected shop is M/s. Sri Laxmi Kirana Stores, PW1 had sought information in regard to M/s. Sri Laxmi Kirana & General Stores. Be that as it may. The Assistant Commercial Tax Officer has furnished information in respect of M/s. Sri Laxmi Kirana & General Stores, D.No.2-1-332, Near Fever Hospital, Hyderabad. The said reply letter is exhibit P17. In exhibit P7-panchanama, the residential address of the accused was shown as 2-1-338, Chappal Bazar. The PW1 had not collected and produced any credible evidence as to whether the accused was the proprietor of the shop, which he had inspected. Therefore, a genuine doubt arises as to whether the accused is the Proprietor of the shop said to have been inspected by PW1.

8. **(e)** In the light of the said discussion coupled with the important circumstance that the independent witness, though cited, was not examined, the benefit of doubt must go to the accused. In the facts and circumstances of the case and for the reasons assigned supra, this court is of the considered view that the courts below had failed to appreciate the evidence in proper perspective and had failed to give cogent and convincing reasons in support of the findings recorded while overruling the contentions of the accused. The indubitable legal position is that ordinarily it is not open for this Court to interfere with the concurrent findings of the Courts below specially by re-appreciating the evidence and that while exercising revisional jurisdiction this Court has to satisfy itself as to the correctness, legality or propriety of any finding recorded by the inferior Court and that this Court has to exercise the revisional power and supervisory jurisdiction so as to prevent the miscarriage of justice and to correct any irregularity. Further, even the concurrent findings of the Courts below can be interfered with when there are compelling and substantial reasons and when the findings recorded by the Courts below are clearly unreasonable. Viewed thus, this Court finds that there are compelling and substantial reasons for interfering with the concurrent findings of the Courts below which are clearly unreasonable. Accordingly, this Court finds that the evidence adduced on behalf of the prosecution was wholly insufficient to establish the charges levelled against the accused. The points are accordingly answered in favour of the accused and against the prosecution.

9. In the result, the Criminal Revision Case is allowed and the impugned judgment passed in Criminal Appeal No.55 of 2007 confirming the judgment of the trial court in C.C.No.5 of 2005 finding the accused guilty is set aside. The accused is acquitted of the offence with which he was charged. The bail bonds of the accused shall stand cancelled and the fine amount, if any, paid shall be refunded to the accused after the further appeal or revision time is over.

Miscellaneous petitions, pending if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

12th February 2015
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[1] 1987 APLJ (Crl.) 167