

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Crl.A.No.1246 of 2014

JUDGMENT :

This appeal is filed challenging the judgment dt.10.11.2011 in C.C.No.42 of 2008 of the Judicial First Class Magistrate, Mydukur, Kadapa, acquitting respondent of offences under Section 7(i) and 2(ia) (m) of the Prevention of Food Adulteration Act, 1954 read with Section 16 (1) (a) (i) of the said Act, (for short, 'the Act').

2. The case of prosecution is that accused is a vendor and proprietor of a kirana shop and he stored and sold adulterated sample of *Uddidal* in the shop situated at Badvel Road, Mydukur Village and Mandal, Kadapa District. It is alleged that at 02:30 p.m., PW.1, the Food Inspector, Kadapa along with her attender visited the shop of accused; at that time, the accused was transacting business; she called PW.2 to act as a mediator at the time of inspection and during the course of inspection, the Food Inspector found 40 kgs. of the said dal in an open gunny bag kept for sale. It is contended that she suspected the quality of the said dal as adulterated and purchased 1,500 gms for Rs.45/- and obtained signatures of accused and PW.2. When she enquired the accused about the purchase bill, the accused failed to produce the same. She then sent the sample of dal for sending it for analysis to the State F.S.L. Laboratory, Hyderabad. The quantity purchased was divided into three equal parts of

500 gms. each, poured into dry empty plastic bottles. She closed the lid and obtained signatures of the accused and mediator on the sample bottle after preparing a panchanama. On 19.12.2005, one sample was sent to Public Analyst, State F.S.L. by registered parcel and the remaining two samples were deposited with Local Health (Authority), Kadapa on the same day. On 28.01.2006, the report of Public Analyst was received along with covering letter and in the said report, the Public Analyst opined that the sample did not conform to the standards prescribed and it was adulterated. Therefore, on 17.02.2006, PW.1 sent detailed report to Director, Food (Health) Authority, Hyderabad for further orders and on 18.04.2006, she received a written consent from Director, Food (Health) Authority for institution of prosecution against accused for offences under the above provisions of law.

3. When the accused was examined under Section 251 Cr.P.C., he denied the substance of the accusation, pleaded not guilty, and claimed to be tried.

4. PWs.1 and 2 were examined and Exs.P.1 to 19 were marked by the prosecution.

5. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C., explaining the incriminating evidence of the prosecution witnesses, but he denied the same.

6. By judgment dt.10.11.2011, the Court below

acquitted the accused.

7. Questioning the same, this appeal is filed.

8. The learned Public Prosecutor contended that the judgment of the court below is contrary to law, weight of evidence and probabilities of the case; that the court below should have seen that the ingredients to constitute offences punishable under Section 16(1)(a)(i) of the Act were made out; and the court below ought not to have acquitted the accused.

9. PW.1, the Food Inspector, no doubt, testified about the visit to shop of accused and taking of sample of 1500 gms of *Uddidal* and sending one portion of the sample to the FSL, Hyderabad.

10. Section 13(2) of the Act states :

“13. Report of public analyst :

(1)

(2) *On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the*

sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

11. It is settled law that the said provision is mandatory in nature. But PW.1 has admitted in her evidence that after institution of complaint, she has not served Section 13(2) notice within (10) days from the date of institution of complaint. Ex.P.15-Notice under Section 13(2), contains number of corrections and over-writings on the date of its issuance. This has not been explained by PW.1 or by any other witness by prosecution. This creates a doubt in the mind of the court as to whether the said notice was issued within time or not. Moreover, PW.1 had stated that she purchased the *Uddidal*, divided it into three parts and kept it in a clean, dry and empty plastic bottle, closed its mouth with lid and tied it, but the FSL report-Ex.P.10 indicated that the sample was received in a polythene cover. PW.2, the other panch witness, in whose presence the sample is collected turned hostile, and stated that the accused was not present at the time of obtaining the signatures and that no property was seized from the accused.

12. In this view of the matter, the Court below, in my opinion, had not erred in acquitting the accused of offences alleged against him. Therefore, I do not find any merit in the appeal and the same is accordingly dismissed.

13. Miscellaneous applications, pending if any in this

Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-02-2015

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