

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.140 OF 2008

J U D G M E N T:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 01.02.2008, passed by the Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.224 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section Section 2(ia)(m) read with 16(1) (a)(i) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') vide the judgment dated 14.06.2007 in C.C.No.36 of 2006 by the I Metropolitan Magistrate, Hyderabad, is confirmed.

2. The case of prosecution in brief is that on 23.06.2004, the complainant-Food Inspector along with his attender inspected the shop of accused No.1 and purchased three Chanda Vanaspathi packets of 500 ml each under a cash receipt for the price of Rs.93/-. When the complainant questioned accused No.1 with regard to the purchase bills of the oil, he revealed that he purchased the same from an unknown purchaser of Proddatoor town without bill. Thereafter, the complainant served Form-VI notice-Ex.P3 on accused No.1 expressing his intention to send the sample for analysis, taken three clean empty and dry corrugated boxes and placed each oil packet in each corrugated box, tied with twine and then sealed them. The complainant also affixed a label bearing No.Z-IV/KDP/D1/ 1230/2004 on each of the samples with the aid of gum, wrapped each of the packets with a fairly thick brown paper, affixed around each of the packets a paper slip having the seal and signature of the Local Health Authority around each of the sample packets from top to bottom, and obtained the signatures of accused No.1 and panch witnesses. After drafting the panchanama covering the above proceedings, he obtained the signature of accused No.1 and panch witnesses. On 24.06.2004, the complainant sent one of the samples along with Form-VII to the Public Analyst by way of registered parcel in the postal service. Another copy of Form-VII with specimen impression seal of the complainant was sent to the Public Analyst in a separate cover by way of registered post. On the same day, the complainant deposited the remaining two samples with Form-VII memoranda with the Local Health

Authority of Kadapa District under a covering letter dated 23.06.2004. The complainant has issued Form-VI notice to accused No.3 for its business particulars. Accused No.3 has informed that accused No.2 is the nominee and responsible person to conduct the business on its behalf. On 02.08.2004, the complainant has received Public Analyst Report vide No.376 of 2004 through the Local Health Authority, Zone IV, Kadapa. In the said report, the Public Analyst opined that the sample of food does not conform to the standards of Red Units in respect of Sesame oil and it is therefore, adulterated. On 22.09.2004, the complainant has sent detailed report along with copies of the file to the Director, Food (Health), Authority, Hyderabad for sanction orders and the said Authority has accorded sanction in R.C.No.10624/F4/2004 dated 11.01.2005 to prosecute the accused for the offence punishable under Section 16(1)(a)(i) of the Act.

3. The learned Judicial Magistrate of First Class, Kamalapuram, Kadapa District, taken the case on file and transferred it to I Metropolitan Magistrate, Hyderabad, for disposal along with other cases. Thereafter, the learned I Metropolitan Magistrate, Hyderabad, took cognizance of the offence and framed a charge for the offence punishable under Section 16(1)(a)(i) of the Act against the accused. During trial, on behalf of prosecution, PW.1 was examined and Exs.P1 to P25 were got marked.

4. After closure of the prosecution evidence, accused (A.1 & A.2) were examined under Section 313 Cr.P.C, putting the incriminatory material deposed against them. The accused denied the same and reported no oral or documentary evidence on their behalf. After hearing the arguments and after perusing the record, the learned Magistrate convicted the accused for the offence punishable under Section 16(1)(a)(i) of the Act and sentenced them to undergo Simple Imprisonment for a period of six months and to pay a fine of Rs.2,000/- each and in default of payment to undergo Simple Imprisonment for two months each.

5. Aggrieved by the conviction and sentence passed by the trial Court, accused No.1 preferred Criminal Appeal No.224 of 2007 before the Metropolitan Sessions Judge, Hyderabad, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the

findings of the trial Court, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

6. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.224 of 2007 and C.C.No.36 of 2006, accused No.1 preferred the present revision case.

7. The learned counsel appearing for the revision petitioner/ accused No.1 argued that as per Section 16(a) of the Act, the case shall be tried summarily and that the present case was not tried summarily, but was tried as a calendar case and therefore, the entire proceedings have to be vitiated. The learned counsel also argued that after lapse of fifteen months, the sample was sent to Central Food Laboratory for analysis. Thus, the learned trial Court failed to appreciate the variations and because of the difference of opinion expressed by two experts i.e., State Public Analyst and Central Food Laboratory, prejudice is caused to the accused and basing on the inconsistent opinion of the experts, conviction cannot be sustained, and he relied upon the case law reported in ***Food Inspector v. Kailash Chand***, wherein it is held at paras 2 & 3 as follows:

“2. The Food Inspector purchased a sample of dal arhar of 1500 gms at around 3:30 p.m on 20th February, 2004. the sample when sent to the Public Analyst, was found to be adulterated as it contained tartrazine. The second sample sent to Central Forensic Laboratory, Pune was also found not conforming to the standards of split puse (Dal) as per the PFA Rules 1955.

3. The learned trail Court, inter alia, noticed the variations in the two test reports, which were beyond the permissible limit of 0.3%. In the report of the PA, the moisture was found to be 9.86%, whereas in the report of the CFL, it was found to be 14.4%. The damaged grain in the report of the PA was found to be 0.44% and weevilled grains was found to be nil, whereas in the report of the CFL, damaged grain was found to be 03.1% and weevilled grains was found to be 02.2%. While in the report of the PA, the uric acid content was not detected in the sample, in the report of the CFL, it was found to be 54.45 ppm”.

and finally prayed the Court to set aside the judgment passed in CrI.A.No.224 of 2007 dated 01.02.2008 on the fie of the Metropolitan Sessions Judge, Hyderabad and acquit the revision petitioner/accused No.1.

8. On the other hand, the learned Public Prosecutor appearing for the State of Telangana argued that the trial Court as well as the appellate Court after considering the evidence on record convicted the accused. Further, the appellate Court rightly dealt with the matter and finding of the appellate Court as

well as the trial Court needs no interference and prayed the Court to dismiss the revision case.

9. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the concurrent finding given by both the courts below for the offence punishable under Section 16(1)(a)(i) of the Act, as prayed for or not?

10. **POINT:** A perusal of the evidence of PW.1 shows that he was working as Gazetted Food Inspector in Kadapa District during the relevant point of time and Ex.P1 is his appointment order. According to PW.1, on 23.06.2004, he visited the shop of accused No.1 situated at Yarraguntla town and purchased three Vanaspathi oil packets weighing 500 ml each. Ex.P2 is the cash receipt for Rs.93/-. PW.1 issued Form-VI notice on accused No.1 by expressing his intention to send the samples for analysis under Ex.P3. PW.1 divided the purchased food into three samples and placed each of the packets of 500 ml in separate carton boxes, closed the caps, and sealed the ends with gum. After making proper seal, he affixed the label Ex.P4 and obtained signature of accused No.1 and witnesses. PW.1 drafted panchanmaa under Ex.P5 in the presence of mediators. On 24.06.2004 he sent one of the samples to the Public Analyst by a registered parcel, deposited the remaining two parts of samples with the Local Health Authorities at Kadapa and obtained Ex.P9 acknowledgment. Meanwhile, PW.1 received the business particulars of accused No.3-Company. As per Ex.P4, accused No.2 is the nominee of accused No.3-Company. PW.1 also stated that on 02.08.2004 he received Ex.P16 from Public Analyst, who gave an opinion that the sample food does not conform to the standards of Red Units in respect of the Sesame oil and thus adulterated. After obtaining sanction from the authority, he filed the complaint before the Court on 20th May, 2005. In the cross-examination of PW.1, nothing has been elicited to disprove the evidence.

11. The learned counsel for the revision petitioner argued that there was a delay of more than 1½ years in sending the samples for re-analysis of food. Thus, he lost valuable right. A perusal of the record shows that the accused made an application for re-analysis with delay of more than 1½ years. Therefore, I am of the view that question of losing the valuable right and

question of purchase does not arise.

12. The next contention of the revision petitioner is that as per Sec.16(a) of the Act, the case shall be tried summarily and that as per Section 261 Cr.P.C, in case there is a change of presiding officer of the trial Court during the course of trial, the new officer has to conduct de-novo trial and should not pronounce judgment. In this regard, the appellate Court already considered the submissions of accused No.1 and held the said defect is curable under Section 465 Cr.P.C as no prejudice will be caused to the accused. Therefore, the said finding of the appellate Court needs no interference. Thus, the prosecution is able to prove the guilt of the revision petitioner for the offence punishable under Section 16(1)(a)(1) of the Act for selling adulterated Chanda Vanaspathi packets and therefore, the findings of the appellate Court in Criminal Appeal No.224 of 2007 and the trial Court in C.C.No.36 of 2006 need no interference and the criminal revision is liable to be dismissed.

13. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 01.02.2008, passed by the Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.224 of 2007.

14. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 11.03.2015

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