THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRIMINAL APPEAL No.478 of 2014

JUDGMENT:

Heard learned Public Prosecutor for the State of Andhra Pradesh and Sri M. Yashwanth Kumar, learned counsel appearing for the first respondent and Sri P.V. Ramana, learned counsel appearing for respondents 2 and 3.

This appeal is filed challenging the judgment, dated 18.04.2012, in C.C. No.125 of 2000 on the file of IV Additional Judicial Magistrate of First Class, convicting the A.1 for the committing the offence under Section 417 of the Indian Penal Code, 1860, (for short, 'I.P.C.') but acquitting A.2 to A.4/ respondents herein for the charges under Sections 120-B, 420 read with 511, 468 and 471 I.P.C. Only A-2 to A-4 are shown as respondents in the appeal. A-1 is not arrayed as a party respondent. So it is clear that in the appeal, no relief is claimed against A-1.

The case of the prosecution is that A.2 is the Managing Director of M/s.Ravi Raja Spices and A.1 is the Proprietor of Sri Srinivasa Traders, KV Palle having business at Tirupati. A.3 and A.4 were working as Junior Chemist and Chief Chemist in State Ghee and Oil Grading Laboratory at Guntur. The Tirumala Tirupati Devasthanam (for short, 'TTD') invited tenders from traders for the supply of Bengal Gram Dhal to it. A.1 submitted his tender and entered into an agreement on 19.08.1996 with TTD to supply Bengal Gram Dhal with Agmark special grade quality about 9000 quintals with some conditions. The said agreement stipulated that the Bengal Gram Dhal to be supplied was to be of a good quality and if he does not comply with the conditions, the TTD authorities had right to reject the Dhal supplied by the tenderer.

The case of the prosecution is that A.1 to A.4 all acted to enable A.1 to supply Bengal Gram Dhal to TTD of bad quality using forged Agmark labels.

It is alleged by the prosecution that on 17.09.1996 A.1 supplied 200 bags of Bengal Gram Dhal through lorries bearing No.AP 16 V 4155 and 4349 to the Marketing Godown No.2 of Tirupati and the bags contained the descriptions M/s.Sri Rani Sathi Industries, Wardha, Maharashtra to Tirupati directly in the name of Sri Srinivasa Traders, KV Palle, Chittoor and the Agmark labels showed the stock was packed on 24.08.1996 at Guntur. PW1, the Vigilance and Security Officer, TTD, Tirupati, went to Guntur on 25.09.1996 to the office of Deputy Agricultural Marketing Adviser to know about the Agmark labels found stitched to the bags and he got a reply that in total 2,000 Agmark labels were issued to A.4 on 22.08.1996. He then visited the State Ghee and Oil Grading Laboratory, Guntur, gave a requisition to A.4 regarding the issuance of the labels and he got a reply that 2000 labels were issued in favour of A.2 on 24.08.1996. Then he visited the factory premises of A.2 and came to know from A.2 that A.1 has brought 2000 bags of Bengal Gram Dhal in 20 lorries on 21.08.1996; they were examined by A.3 and stitched 2000 Agmark labels to the bags. He also noticed that A.1 was unloading 130 bags of Bengal Gram Dhal on 27.09.1996 at

TTD godown No.2 and found the bags contained descriptions as if it was dispatched by M/s.Ram Gopal Bapu Lal, Kabra, Mandusar, Madhya Pradesh, on 23.09.1996 directly to Tirupati. He, therefore, concluded that A.1 in collusion with A.4 cheated the TTD authorities by supplying ordinary Bengal Gram Dhal with bogus Agmark labels and that A.1 in collusion with A.2 played fraud in supplying Bengal Gram Dhal contrary to the conditions of the agreement and cheated the TTD authorities, Tirupati.

The prosecution further alleged that A.2 to A.4, without proper scrutiny and examination in order to give advantage to A.1, have issued 2,000 Agmark labels in favour of A.1 indicating as if the Bengal Gram Dhal has been scrutinized and issued at Guntur even though the Bengal Gram Dhal was sent by different tenders from Mandasur, Madhya Pradesh, and A.1 played fraud on TTD authorities at Tirupati with guilty intention by making false descriptions on the labels knowing it to be false; that marketing godown authorities checked the Dhal and rejected 1245 bags as adulterated and returned them to A1; A1 them maneuvered to take back some labels and again used the same labels to the freshly purchased bags and then supplied to TTD; A3 and A4 did not check the gradation of the Dhal when A.1 and A2 approach them; A.1 supplied Bengal Gram Dhal from 06.09.1996 and up to 15.10.1996 making false representation that the Bengal Gram Dhal conforms the description on the labels while in fact it was not so; that A.1 to A.4 in conspiracy with each other have cheated the TTD authorities and A3 and A4 , without inspection issued 2000 Agmark labels on 24.8.1996 to A1 by getting wrongful gain from A1; A1 used the labels on various dates between 6.9.1996 to 15.10.1996; A1 had also fabricated 2000 Agmark labels on 24.8.1996 even before purchase of stock in other States; they used false Agmark labels with false description as if A3 and A4 had graded them; and A.3 and A.4 without inspection have issued 2000 Agmark labels under date 24.08.1996 to A.1 by getting wrongful gain from TTD; and A.1 and A.2 used the labels on various dates in between 06.09.1996 to 15.10.1996. Therefore, the accused have fabricated false records for cheating the TTD authorities.

The accused denied the charge and pleaded not guilty before the Court below. The Prosecution examined 28 witnesses and marked Exs.P.1 to P.54 and M.Os.1 to 5. The accused marked Ex.D.1.

After considering the evidence on record by judgment, dated 18.04.2012, the Court below acquitted the accused.

Questioning the acquittal of A.2 to A.4, the State has preferred this appeal. Learned Public Prosecutor for the State o f Andhra Pradesh contended that the evidence on record amply established the commission of offence by A.2 to A.4 in conspiracy with A.1 and that the Court below erred in not holding that the commission of the offence alleged against them.

Learned counsel for the respondents contended that the prosecution had failed to establish the guilt of the accused beyond all reasonable doubt in the court below and there are no compelling reasons to set aside the same.

I have noted the submissions of both sides.

The offence under Section 471 I.P.C. would be committed if the accused have used the forged Agmark labels as genuine ones, but the evidence of P.W.1 indicates that the bunch of Agmark labels supplied at Guntur were not forged documents; P.W.22, who was the then in charge for issuing Agmark labels for entire State of Andhra Pradesh, deposed that on the request of A.4 Agmark labels were issued by the Regional office, Guntur, on the basis of application of A.2 on 04.07.1996; that on 10.07.1996 after inspection of the premises A.4 recommended the case and basing on his recommendations, on 20.08.1996 the certificate of registration was issued to A.2; that A.2 then applied for 2000 Agmark labels on 20.08.1996 to A.4 and accordingly 2000 Agmark labels bearing Nos.G 31/20 and 743862 to 745861 were issued. He stated that Ex.P.19 contains 70 labels and Ex.P.20 contains 58 labels which were issued by them to A.4. It was also elicited from the cross-examination of P.W.17 that the stock supplied by the contractor was received at the godown at Tirupati and once the Agmark labels are removed from the bags they cannot be used again and the same will be destroyed.

Since Agmark labels which were seized are not forged documents, there is no question of use of false Agmark labels or tampered Agmark labels for supplying of Bengal Gram Dhal. Therefore, the charges under Section 468 and 471 I.P.C. are not established against A.2 to A.4. Even against A.1, the charge under Section 471 I.P.C. is not established beyond all reasonable doubt. Except the oral evidence of P.W.14, there is no basis to establish that A.3 and A.4 connived with A.1 and A.2 and created a false record, since no false record is filed in the court and the Agmark labels which were issued were genuine.

Even if the said labels were misused by A.1 to cheat TTD, the question of A.2 to A.4 conspiring with A.1 and issuing Agmark labels is not established.

P.W.1 himself did not depose that A.2 to A.4 have conspired with A.1 and issued Agmark labels without verifying stocks in the premises of A.2.

A.3 and A.4 are only instrumental in giving 2000 Agmark labels by collecting commission of Rs.6,000/- and they have granted the said 2000 Agmark labels in the premises of A.2 and since A.1 had godown at many places including Tirupati and Guntur, it is possible for the stock of A.1 getting graded in the premises of A.2 and affixing the Agmark labels on the said stock.

The prosecution did not contend that A.3 and A.4 have stitched the Agmark labels to the stock and their role is only confined to issuance of Agmark labels in the premises of A.2 and A.4.

So A.2 to A.4 were rightly not found guilty for the offences alleged, by trial court.

Although, A.1 was held not guilty for the offence under Section 120-B I.P.C., he was found guilty of the offence under Section 417 I.P.C. since the evidence on record established he used Agmark labels which were already issued on 24.08.1986 and the same were affixed to Bengal Gram Dhal bags to create an impression that the said material had undergone grading at Guntur and that act of A.1 is itself cheating the TTD authorities. It is also held that A.1 failed to send the Bengal Gram Dhal for grading at Guntur and instead stitched the Agmark labels which were given to him on 24.08.1996 and delivered the consignment to TTD by using the said Agmark and thus committed an offence under Section 415 I.P.C. which comes under cheating punishable under Section 417 I.P.C.

Having regard to the evidence of P.Ws.22 and 17, I am of the opinion that the Court below has rightly come to the said conclusion and in this view of the matter, the charges under Sections 468 and 471 I.P.C. were rightly held to have been not established against A.2 to A.4. P.W.1 who conducted a detailed enquiry in the issue did not depose in his evidence that A.2 to A.4 conspired with A.1 and issued Agmark labels without actually verifying the premises of A.2. Therefore, the charge under Section 120-B read with Section 471 I.P.C. is also rightly held to be not proved by the Court below.

It is settled law that the scope of interference with the judgment of the acquittal rendered by the Court below in an appeal filed by the prosecution agency is limited. The scope of interference in appeal under Section 378 Cr.P.C. is laid down succinctly in **Chandrappa and others Vs. State of Karnataka**[1]**,** as under :

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

The above principle was reiterated in **State of Rajasthan v. Mohan Lal**[2] and recently in **Satvir Singh v. State of Delhi**[3]

Keeping in the view of the above legal position, I am of the opinion that the prosecution had failed to establish that the respondents were guilty and having committed the offence under Section 468 and 471 I.P.C., since P.Ws.22 and 17 admitted that the Agmark labels found on the bags were genuine and since P.W.1 himself did not depose about the alleged conspiracy between A.1 to A.4. Merely because A.3 and A.4 had issued the Agmark labels without any proof that they stitched the labels on the stock in premises of A2, they cannot be said to have conspired with A.1 and A.2. So, Section 120-B I.P.C. is also not attracted.

I am of the opinion that the Court below had rightly held that the respondents are not guilty for the offence alleged against them and they were rightly acquitted. I do not find any merit in the appeal and the same is liable to be dismissed.

In the result, the appeal is dismissed.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

M.S.RAMACHANDRA RAO, J

28th January, 2015
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[1] (2007) 4 SCC 415

[2] (2009) 12 SCC 515

[3] (2014) 13 SCC 143