

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.940 of 2008

JUDGMENT:

1. This revision is filed by the petitioners-accused against the Judgment dated 30.6.2008 passed in CrI.A.No.355 of 2006 by the III Additional Sessions Judge, Guntur.

2. Brief facts of the case are as follows:

The Food Inspector, Division III, Ranga Reddy District filed a complaint against the accused for the offence under Sections 2(ia)(j) 7(i_) and (v) of the Prevention of Food Adulteration Act and Rule 50 of PFA Rules, 1955 r/w Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 stating that on 31.5.2002 at about 3 p.m., under the supervision of Assistant Food Controller, Zone VI, the Food Inspector, Division III, Ranga Reddy District, along with Vigilance and Enforcement Officials visited Mamatha Sweets, Sri Sambaiah Mithai Shop, Lalapet Guntur for inspection and found A1 transacting the business. They Inspected various food articles and found 12 kgs of stock of Boondi Laddu kept in open aluminum tray of 15 kgs capacity. A1 disclosed that the same was kept for sale to public for human consumption. They suspected the stock to be adulterated. A2 is the proprietrix of the said shop. After following necessary formalities and after receiving the detailed report, the Director, Institute of Preventive Medicine and State Food (Health) Authority, A.P. Hyderabad accorded sanction for launching prosecution against A1 and A2 for selling adulterated Boondi Laddu. A1 being the sales incharge sold adulterated Boondi Laddu meant for human consumption and A2 being the proprietrix is responsible for conduct of the business.

3. The learned Special Judicial first Class Magistrate for Excise, Guntur took the complaint on file as C.C.No.102 of 2005 against A1 and A2 for the offence punishable under Sections 2(ia)(j), 7(i) & (v) of PFA Act and Rule 50 of PFA Rules and Section 16(i)(a) of Prevention of Food Adulteration Act.

4. When the learned Magistrate examined the accused regarding the accusation made against them, they denied the commission of offence and pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws.1 to 3 were examined and Exs.P1 to P32 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

6. On appreciation of oral and documentary evidence the trial Court found A1 and A2 guilty for the offence under Section 16(1)(a)(i) r/w 2(ia)(j) and Section 7(i) and (v) of Prevention of Food Adulteration Act and Rule 50 of PFA Rules, 1955, convicted and sentenced them to undergo rigorous imprisonment for a period of six months each and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for a period of one month each for the said offence. Aggrieved by the same, the accused filed appeal in Criminal Appeal No.355 of 2006 before the III Additional Sessions Judge, Guntur. The learned Additional Sessions Judge, Guntur dismissed the appeal confirming the judgment of the trial Court. Hence, the accused filed this revision.

7. Learned Counsel for the petitioners submitted that basing on the sold testimony of P.W.1, the Courts below convicted the accused and that the notice under Section 13(2) of the Act was sent by P.W.1 belatedly after receipt of the analysis report and that even the analyst report would not disclose that

the article of food was in any way injurious to health and that the trial Court has not considered all these aspects in a proper way.

8. Learned Additional Public prosecutor supported the Judgments of the Courts below.

9. The main contention of the learned Counsel for the petitioners is that the independent witnesses turned hostile and they have not supported the case of the prosecution. Further, the sample was lifted on 31.5.2002 and the analyst report was delivered on 19.6.2002 whereas the said report was served on the accused on 15.2.2003 and the petitioners lost the right to send the sample for second analysis and thereby, great prejudice was caused to the accused. The trial Court as well as the appellate has failed to appreciate the said aspect.

10. It is the case of the prosecution that after issuance of notice, the petitioners failed to take steps for sending the sample to the Central Food Laboratory for analysis.

11. Admittedly, the analyst report was delivered on 19.6.2002 and the same was received by the Food Inspector on 1.7.2002. But the said report along with notice under Section 13(2) of the Act was served on the accused on 15.2.2003, nearly after a period of about eight months from the date of receipt of the report. By that time, the sample, which is a food item, has become unfit for second analysis by the Central Food Laboratory and thereby, the petitioners lost their valuable right to get the sample examined by the Central Food Laboratory. The intention of the officials in servicing notice on 15.2.2003 appears to be very formal. It appears that they had no intention to give an

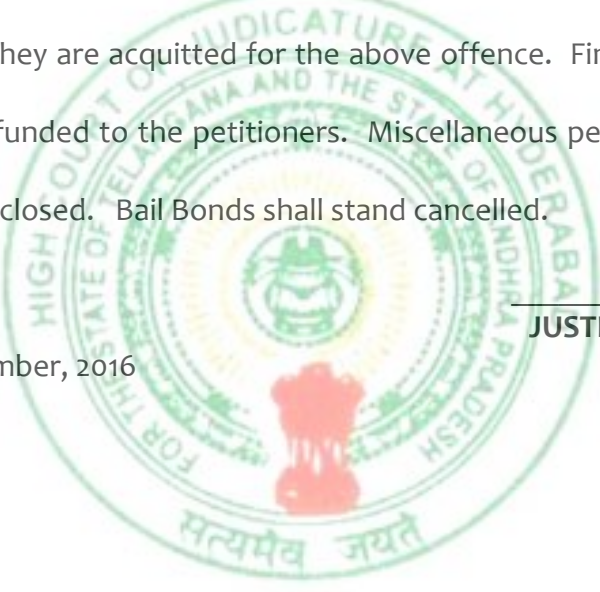
opportunity to the accused to avail their right in sending the sample for second analysis.

12. In the above circumstances and in view of the gross failure on the part of the prosecution in following the procedure contemplated under the Act, this Court is of the view that the accused are entitled to the benefit of doubt.

13. In the result, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by the Courts below against the petitioners-accused for the offence under Sections 16(1)(a)(i) r/w 2(ia)(j) and Section 7(i) and (v) of Prevention of Food Adulteration Act and Rule 50 of PFA Rules, 1955. Consequently, they are acquitted for the above offence. Fine amount paid, if any, shall be refunded to the petitioners. Miscellaneous petitions pending, if any, shall stand closed. Bail Bonds shall stand cancelled.

Dated:1st September, 2016

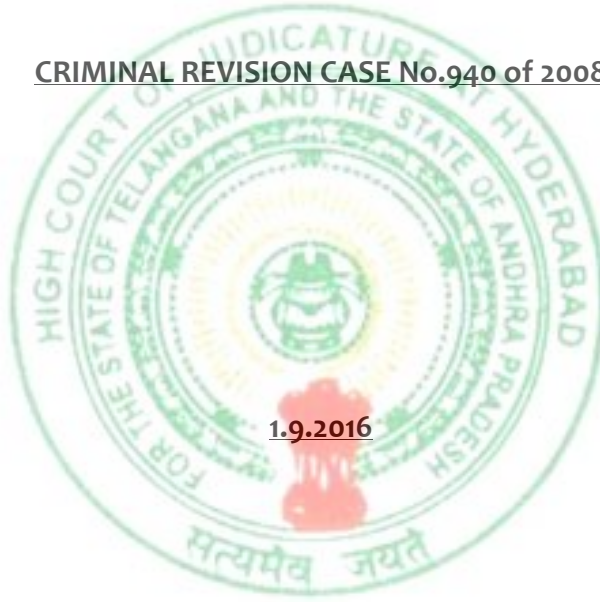
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