

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.843 OF 2016

JUDGMENT:

1. This appeal is filed by the State challenging the Judgment dated 8.12.2008 passed by the Judicial Magistrate of First Class, Armour, in C.C.No.366 of 2005.

2. The case of the prosecution is as follows:

On 19.1.2004 at about 4 p.m., the Food Inspector, Nizamabad Division-I along with M. Narayana, attender visited the shop of the accused viz., M/s Sri Sai Kirana and General Merchant, situated at Pochambad X Roads, Doodgaon village and disclosed the identity and suspected B.G. Dal to be adulterated. Then, the Food Inspector has purchased 1500 grams of B.G. Dal and paid Rs.30/- and also obtained receipt and served Form VI notice to the accused person. The Food Inspector has lifted three samples of B.G. Dal which was kept in gunny bag in three empty dried clean plastic containers separately and sealed each tin containing 500 grams by pasting label on each sample and then, obtained signature of the vendor and panchas on the sample tins and prepared panchanama to that effect. On the same day, one of the samples was dispatched to the Public Analyst, Hyderabad by registered parcel vide postal receipt No.24979 dated 21.1.2004 and also kept two samples before Local Health Authority and Assistant Food Controller Zone IV Hyderabad for safe custody. After receipt of the report of public analyst and after completion of formalities, the Food Inspector filed the complaint. The learned Judicial Magistrate of First Class, Armour took cognizance of the offence punishable under Sections 16(1)(i)(a)(i), 7(i) & 2(ia)(m) of Prevention of Food Adulteration

Act. When the accused was examined under Section 251 Cr.P.C. for the above said offence, he pleaded not guilty and claimed to be tried.

3. During the course of trial, P.Ws.1 to 3 were examined and Exs.P1 to P22 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

4. On appreciation of oral and documentary evidence, the trial Court having found the respondent-accused not guilty for the above offence, acquitted him. Aggrieved by the same, the State filed the present appeal.

5. Learned Additional Public Prosecutor submitted that the prosecution has proved its case by examining the witnesses and that the trial Court has not appreciated the evidence in a proper perspective.

6. From the material on record and the evidence, it is evident that the shop of the accused was inspected on 19.1.2004 and the complaint was lodged on 9.6.2005. Even according to P.W.1, the report of public analyst was received on 11.2.2004. But there was inordinate delay in lodging the complaint and there was no proper explanation for such delay. In this regard, the trial Court observed that Section 11(4) of the Act mandates that an article of food seized under Sub-Section 4 of Section 10 and any adulterated article seized under Sub-Section 6 of Section 10 shall be produced before the Magistrate concerned as soon as possible and in any case not later than seven days after receipt of the report of the public analyst. The delay in filing the complaint before the Court will deprive the valuable right of the accused to challenge the sample as enumerated under Section 13(2) of the Act. Therefore, the delay in the instant case is fatal to the case of the prosecution.

7. Further, it is evident that in Ex.P15 report, there was no mention that the food item seized in the instant case is injurious to health and unfit for human consumption. The prosecution has not clearly stated as to what type of sample was found with adulteration. The samples were kept at Local Health Authority for a period of more than one year without filing the complaint. Further, P.W.3 who is an independent witness did not support the version of P.Ws.1 and 2 about lifting of samples from the shop of the accused. Considering the above aspects, the trial Court came to conclusion that the prosecution miserably failed to prove the guilt of the accused for the above offence.

8. All the observations made by the trial Court are in accordance with law. Therefore, this Court is of the view that the judgment of the trial Court does not warrant any interference by this Court and hence, the appeal is liable to be dismissed.

9. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE RAJA ELANGO

Date : 1.9.2016

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HONOURABLE SRI JUSTICE RAJA ELANGO



DATED 1.9.2016

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