

HON' BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1144 OF 2007

ORDER:

This criminal appeal is preferred by the State by invoking provision under Section 378 (4)(5) & (1) of the Code of Criminal Procedure being aggrieved by the judgment, dated 22.07.2004, rendered in C.C. No.4 of 2000, by the Judicial Magistrate of First Class, Armoor, whereby and whereunder the learned Judge found the respondent – accused not guilty of the offences under Sections 16(1) (a) (i) r/w.7(1) 2 (ia) & (b) of Prevention of Food Adulteration Act and Rule 44 (e) of the Rules, and accordingly, acquitted him of the said offences.

The brief facts of the case are that the on 26.07.1998 about 12.15 p.m., PW.1 visited M/s.Ravi Kirana Shop, Siramsagar and found the accused conducting business. PW.1 secured his own attender PW.3 and another PW.2 as mediators and inspected the shop and bought 450 grams of refined sunflower oil for Rs.24-50 ps. He divided the said commodity into three equal parts and placed them into three dry and empty bottles and corked the mouth tightly and sealed them. He pasted label on each sample and then wrapped each sample bottle with a strong thick brown paper ends neatly folded inside and pasted with gum. He then pasted a paper slip of the said State Local Health Authority over each sample and obtained the signatures of the mediators and the accused, along with his signatures. He sent one sample to public analyst on 27.07.1998. Analyst's report was received stating that the oil was adulterated. After receipt of the analyst's report, charge sheet was filed.

The Judicial Magistrate of First Class, Armoor, took cognizance of the case and on appearance of the accused the documents were furnished and the accused pleaded not guilty and claimed to be tried.

To prove its case, the prosecution examined PWs.1 to 3 and marked Exs.P.1 to P.22. No oral or documentary evidence was adduced on behalf of the accused.

After evaluating the oral and documentary evidence adduced by the prosecution witnesses, the trial Court found the respondent – accused not guilty of the offence under Section 16(1)(a)(i) r/ w.7(1) 2(ia) & (b) of Prevention of Food Adulteration Act and Rule 44 (e) of the Rules and accordingly acquitted him. Aggrieved by the same, State preferred the present appeal.

Heard the learned Public Prosecutor and the learned counsel for the respondent and perused the material available on record.

While acquitting the appellant-accused, the trial Court observed as follows:

“The relevant dates in the present case are as follows. The incident occurred on 17-08-1998. The public analysis report was dated 2-9-1998. The complaint was instituted in the Court on 12-1-2000. Section 13(2) notice was issued on 20-1-2000. There is delay of one year four months between the receipt of analyst report and institution of the complaint whereupon Section 13(2) notice was issued on 20-1-2000. The accused is denied an opportunity of having the sample re-analysed by the Central Laboratory at the earliest and the huge delay would have allowed the sample to lose its qualities. The said delay is therefore, fatal to the case of the prosecution. Further, the independent witness PW.2 has not supported the charge. The prosecution has sought to rely on its own official PW.3 who has acted as second mediator. In the cross examination, PW.3 stated that he has been working in the office of PW.1 for the last 15 to 16 years and he does not remember the number of cases in which he figured as a mediator. PW.3 thus become an interested witness being the permanent assistant to any Food Inspector who proceeds on raid. PWs.1 and 3 stated that about three customers arrived in the shop. PW1 added that none of them came forward, but admitted that he did not mention the said fact in Ex.P1 panchanama. The failure of PW.1 not to have taken independent mediators available at the shop therefore, clouds the case with suspicion.”

In a case of acquittal, if the trial Court considered two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally this Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. Hence, as rightly pointed out by the learned trial Judge, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and this Court is of the view that the trial Court has rightly acquitted the accused disbelieving the case of the prosecution. This Court is not inclined to interfere with the judgment of the trial Court and hence, the appeal is liable to be dismissed.

Accordingly, the Criminal Appeal is dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

October 14, 2016.
KTL

RAJA ELANGO, J

