

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.135 of 2017
and
Crl.M.P.Nos.1465 and 1467 of 2017

Sivananthan

.. Petitioner

Vs

K.Mohan

.. Respondents

Prayer:- Criminal Revision filed under Sections 397 r/w Section 401 of Cr.P.C., to set aside the against the judgment dated 27.01.2017 passed in Crl.A.No.50 of 2016 on the file of the learned II Additional District and Sessions Judge, Tindivanam confirming the judgment dated 07.11.2016 passed in S.T.C.No.732 of 2015 on the file of the learned Judicial Magistrate No.I, Tindivanam and allow the criminal revision.

For Appellant

: Mr.V.Regunathan

For Respondents

: Mr.R.Ravichandran,
Government Advocate (Crl. Side)

ORDER

The accused in S.T.C.No.732 of 2015 on the file of the learned Judicial Magistrate No.I, Tindivanam, is the petitioner herein. He stood charged for the offence under Sections 52 and 59 (i) of the Food Safety and Standards Act, 2006 and Rules, 2011 (here-in-after, it may be referred to as "Act").

By judgment dated 07.11.2016, the trial Court convicted the petitioner for the offences under Section 52 and 59(1) of the Act and under Section 52 of the Act, sentenced him to pay fine of Rs.10,000/-, in default, to undergo two months Simple Imprisonment and for the offence under Section 59 (i) of the Act, sentenced him to undergo 15 days Simple Imprisonment and to pay fine of Rs.7,000/-, in default, to undergo, two months Simple Imprisonment.

Challenging the said conviction and sentence, the petitioner/accused filed Criminal Appeal No.50 of 2016 on the file of the learned II Additional District and Sessions Judge, Tindivanam. The lower appellate Court by its judgment dated 27.01.2017 confirmed the conviction and sentence imposed by the trial Court, against which, the present Criminal Revision has been filed by the petitioner/accused.

2. The case of the prosecution, in brief, is as follows:

P.W.1 - the Food Safety Officer has inspected a shop namely, Padmajothi Provision Store, situated at Vellimedupettai Bazaar Street, Tindivanam Taluk, Villupuram District on 18.03.2015 and purchased 20 packets of Gingelly oil (Sakthi) and in the presence of P.W.2 he had taken samples of 5 packets of Gingelly oil (Sakthi) and sent the same for chemical examination to the Food Laboratory, Chennai. He obtained a report dated 30.03.2015, wherein it is stated that the Gingelly oil (Sakthi) seized from the above shop is adulterated and against the standards prescribed for "Gingelly oil" under Reg 2.2.1(12) of FSS (FPS&FA) Reg, 2011. The "Kries Test" conducted on the same proved positive and it was found that the oil contains 42.6 meq/kg Peroxide and the value of the same is 42.6 meq/kg, which exceeded the normal value of "10 meq/kg". Further, the test proved that "B.R.R. value and the value of Iodine was very less. All these make the sample unsafe for use by virtue of its being sub-standard under Section 3(1) (zz) (xi) of Food Safe and Standards Act, 2006. The report further stated that the oil was in rancid nature.

3. The Analysis Report reads as follows:

Sl. No.	Analysis Done	Method of test used	Result of analysis is	Stds. prescribed for "Gingelly Oil" under Reg. 2.2.1.(12) of FSS (FPS & FA) Reg. 2011.
1.	B.R.R at 40°C	DGHS Manual methods of Analysis Lab. Manual - 2	53.4	58.0 - 61.0
2.	Acid Value	-do-	0.97	
3.	Kries Test	-do-	Positive	Shall be Negative
4.	Iodine Value	-do-	78.21	Shall be within 103-120
5.	Baudouin test	-do-	Negative	Shall be Positive
6.	Halphen's test	-do-	Positive (28RU)	Shall be Negative & not to exceed 10RU
7.	Holde's test	-do-	Negative	
8.	Test for Castor oil	-do-	Negative	
9.	Test for Argemone oil	-do-	Negative	
10.	Bellier Turbidity Temperature	-do-	26.5°C	Not more than 22°C
11.	Saponification value	-do-	191.68	
12.	Unsaponifiable matter	-do-	1.01%	
13.	Peroxide value	-do-	42.6meq/kg	Exceeds normal value of 10meq/kg

Sl. No.	Analysis Done	Method of test used	Result of analysis is	Stds. prescribed for "Gingelly Oil" under Reg. 2.2.1.(12) of FSS (FPS & FA) Reg. 2011.
14.	Test for Palmolein	-do-	Positive	

4. From the report, it is seen that there were 5 packets of Gingelly oil (Sakthi), is against the provisions contained under Section 3 (i) (zz) (xi) of the Food Safety and Standards Act, 2006. It is further seen that the said Gingelly oil (Sakthi) was a mixture of Palmolein oil and Cotton seed oil ["Test for Gingelly oil - Baudouin test - Negative", "Test for cotton seed oil - Halphens test - Positive within 28 RU & Palmolein test - Positive"], but labelled as "Gingelly oil" on the front panel and mixture of Rice Oil + Gingelly oil on the back panel of the label. Hence, it is Unsafe and misbranded under Sections 3 (1) (zz) (xi), Section 3 (1) (zf) (A) (i), Sec 3 (1) (zf) B(ii), Section 27(1) of the Food Safety and Standard Act 2006. P.W.1, after obtaining necessary sanction, filed a complaint against the petitioner for the offences under Sections 52 and 59(i) of the Food Safety and Standards Act 2006.

5. In order to prove its case, the prosecution examined Food Safety Officer as P.W.1 and P.W.2, the Magazor witness and also marked 14 documents.

6. P.W.1, who is the Food Safety Officer, deposed in his evidence that on 18.03.2015, while he was carrying out inspection in a shop namely, Padmajothi Provision Store, Vellimedupettai Bazaar Street, Tindivanam Taluk, Villupuram District, he purchased 20 packets of Gingelly oil for the purpose of taking samples for chemical examination. He forwarded the same for chemical examination and obtained a report dated 30.03.2015. The report is to the effect that the above Gingelly oil is unsafe and mis branded and it is a mixture of Palmolein oil and Cotton seed oil. He therefore, after obtaining necessary sanction, filed a complaint against the petitioner.

7. P.W.2, who is a mahazar witness, deposed in his examination that he is a neighbourhood shop owner and P.W.1 purchased Gingelly oil from the provision store and asked him to put his signature and he also signed in the receipt. P.W.2 in his cross examination has deposed that P.W.1 has obtained signatures from him in four papers, but P.W.2 did not know the contents.

8. When the above incriminating materials were put to the accused under Section 313 (1) Cr.P.C., he denied the same as false. However, he had not chosen to examine any witness or mark any documents on his side.

9. Having considered all the above materials, the trial Court convicted the accused. As against the same, the accused preferred an appeal in CrI.A.No.50 of 2016 and the appellate Court dismissed the appeal confirming the conviction and sentence passed by the trial Court. Challenging the same, the present criminal revision has been filed by the accused.

10. Heard Mr.V.Regunathan, learned counsel appearing for the petitioner and Mr. R.Ravichandran, learned Government Advocate (Criminal side) appearing for the respondent.

11. The learned counsel for the petitioner submitted that the petitioner is only a vendor. As per the prosecution case, the petitioner is said to have packed and marketed the Gingelly oil (Sakthi) and the person, who sold the oil as well as the manufacturer were not made as

accused, but, only the petitioner was made an accused. Apart from that, it has not been shown that the petitioner alone has packed and marketed the Gingelly oil at the provision store and in order to prove the same, the prosecution has not examined any witnesses on their side and in the cross examination itself, P.W.1 had admitted the fact that he had not chosen to find out as to who is the manufacturer and the person, who sold the Gingelly oil and he had not taken steps to add them as accused.

12. The learned counsel for the petitioner further submitted that even though chemical examination report has been marked, the Public Analyst was not examined as witness before the trial Court on the side of the prosecution. Hence, the prosecution has failed to prove the case beyond any reasonable doubt. Therefore, the learned counsel requested this Court to allow the criminal revision by setting aside the conviction and sentence imposed by both the Courts below.

13. The learned Government Advocate (Criminal side) appearing for the respondent submitted that there is no necessity to examine the Public Analyst as a witness under Section 293 of the Code of Criminal Procedure and the report submitted under the hand of a Government,

expert may be used as evidence in any inquiry, trial or other proceedings. He further submitted that having considered all the material facts, both the Courts below convicted the accused and sentenced him accordingly and hence, he sought for dismissal of the criminal revision.

14. I have carefully considered the above submissions and perused the materials available on record.

15. The contention of the learned counsel for the petitioner is that even though report of the Public Analyst has been marked as evidence, the Public Analyst was not examined for which, the learned Government Advocate (Criminal Side) relied on the decision of the Supreme Court in MANGALDAS RAGHAVJI RUPAREL AND ANOTHER Vs. THE STATE OF MAHARASHTRA AND ANOTHER (AIR 1966 SC 128) wherein, relevant portion reads as follows:

"As regards the failure to examine the Public Analyst as a witness in the case no blame can be laid on the prosecution. The report of the Public

Analyst was there and if either the Court or the appellant wanted him to be examined as a witness appropriate steps would have been taken. The prosecution cannot fail solely on the ground that the Public Analyst had not been called in the case."

16. As rightly pointed out by the learned Government Advocate (Criminal side) under Section 293 of the Code of Criminal Procedure and in view of the decision cited supra, the report of the Public Analyst is sufficient enough and it is not always necessary to summon him to depose in Court. The Court may, if it thinks fit, summon and examine him as to the subject matter of report.

17. Insofar as other contention of the petitioner that though the packets seized from the Provision Store contain the name of the petitioner as a manufacturing agent and hence, the petitioner was made an accused, is concerned, absolutely there is no evidence to show that the petitioner alone manufactured and packed the adulterated Gingelly oil except the evidence of P.W.1, who is the Food Safety

Officer, Villupuram District.

18. On a perusal of the evidence of P.W.1, it could be seen that only 20 packets of Gingelly oil (Sakthi) were seized from the Provision Store and the owner of the shop was not examined as a witness to show that he purchased the Gingelly oil (Sakthi) from the petitioner. Apart from that, P.W.1, merely because the name has been printed in the packet, made a complaint on the presumption that the petitioner only packed and marketed the Gingelly oil (Sakthi) and there is no evidence to support the prosecution case that the petitioner only had packed and marketed the Gingelly oil (Sakthi).

19. In the above circumstances, it is seen that the complaint has been filed without any material to show that the petitioner alone packed and marketed. Apart from that, the prosecution has not properly established that 20 packets of Gingelly oil, which were allegedly seized from the provision store have been manufactured and marketed only by the petitioner and P.W.2 in his evidence has categorically stated that he was asked to stand as a witness and therefore, he signed in some blank papers, as requested by P.W.1. Therefore, this Court comes to the conclusion that the prosecution has

failed to prove the case beyond any reasonable doubt and the trial

Court as well as the appellate Court were not right in convicting the petitioner on the basis of the insufficient materials placed by the proceeding party. Hence, this Court is inclined to set aside the conviction and sentence passed by the trial Court as well as confirmed by the appellate Court.

20. In the result, Criminal Revision is allowed. The conviction and sentence imposed by the trial Court and confirmed by the appellate Court are set aside and the petitioner is acquitted from both the charges. Consequently, connected criminal miscellaneous petitions are closed.

20.06.2017

Index: yes/no

Internet : yes/no

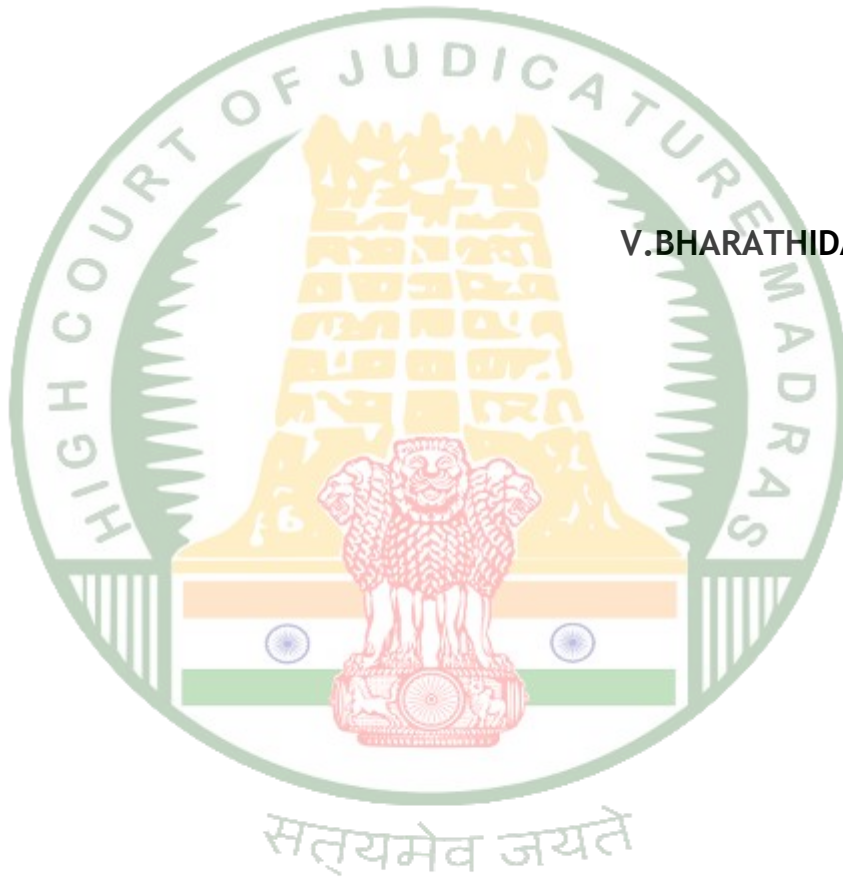
Speaking order/non speaking order

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To

1. The Additional District and Sessions Judge,
Tindivanam.
2. The Judicial Magistrate No.I,
Tindivanam.
3. The Public Prosecutor,

High Court, Madras.

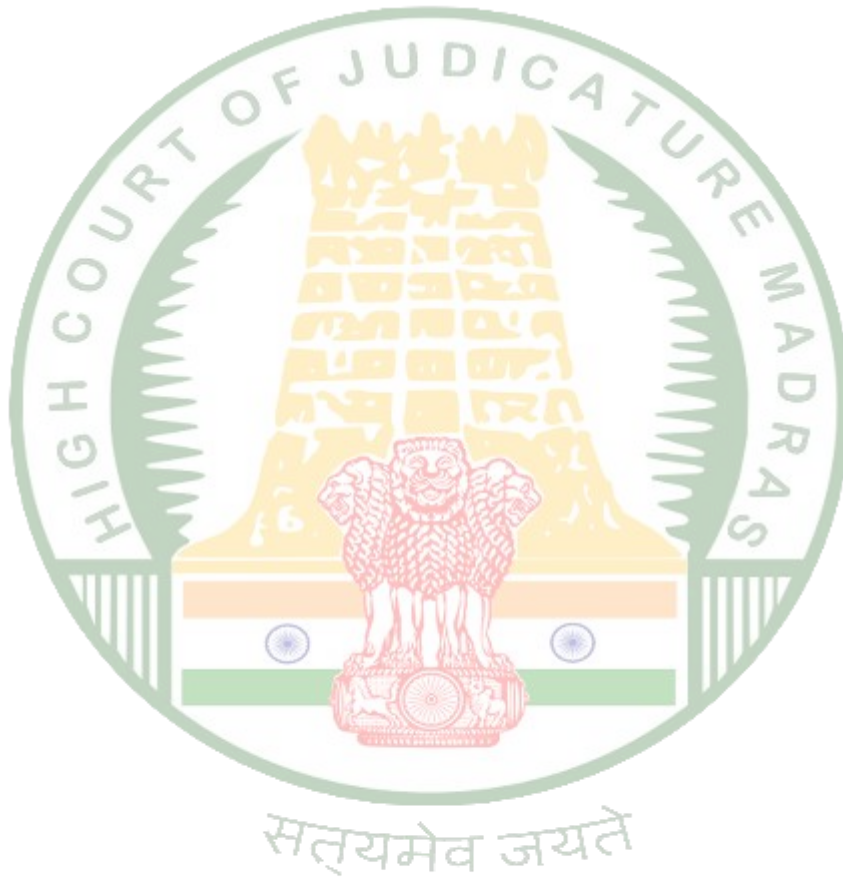


V.BHARATHIDASAN.J.,

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