

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.837 of 2005

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C, is filed challenging the conviction and sentence in C.C.No.219 of 2002 passed by Judicial Magistrate of First Class, Kamareddy, which was affirmed in CrI.A.No.89 of 2004 by VI Additional District and Sessions Court (FTC), Nizamabad at Kamareddy.

Both the trial Court and Appellate Court recorded concurrent fact findings, while finding the accused guilty for the offence under Section 16(1) (a) (i) of Prevention of Food Adulteration Act and sentenced the accused to undergo SI for a period of six months and to pay a fine of Rs.2,000/- with default clause. The present revision is filed on various ground, mainly on the ground of non-compliance of Section 13(2) and Rule 4 of the Rules framed under the Act. In view of the limited jurisdiction of this Court under Sections 397 and 401 Cr.P.C., this Court cannot disturb the fact findings recorded by the Courts below unless this Court find manifest perversity or apparently error in the fact findings recorded by the Courts below.

Learned counsel for the petitioner mainly contended that in similar situations when the matter reached after 10 years for argument and when the analyst did not opine that the sample food product is injurious to the health of the public, the Court can enhance the fine amount, setting aside the conviction and sentence, and he relied upon the Judgments of the Apex Court in *Santhosh Kumar v.*

Municipal Corporation and another¹ and N. Sukumaran Nair v. Food Inspector, Mavelikara², in support of his contentions.

The principle laid down in both the judgments are identical, the facts in *N. Sukumaran Nair's* case (2 supra) are more nearer to the facts of the present case.

The petitioner herein/accused convicted for the offence under Section 16(1) (a) (I) of Prevention of Food Adulteration Act for contravention of Section 7(1), 2(1) (a) (m) of Prevention of Food Adulteration Act, it is relevant to advert to the report issued by the Public Analyst and the findings of the Analyst are as follows:

Tests done	Values obtained	Values permitted in Clause A.17.03 in Appendix B to the PFA Rules
Butyro-refractometer reading at 40° C	55.7	54.0 to 57.1
Bellier's Test (turbidity tempature-Acetic Acid method)	37.0° C	39.0° C to 41.0'C
Iodine value	91.39	85 to 99
Acid Value	1.02	Not more than 6.0
Saponification value	193.49	188 to 196
Unsaponifiable matter	0.86%	Not more than 1.0%
Other Tests		
Argemone Oil Test	Negative	Should be negative
Castor Oil Test	Negative	Should be negative
Synthetic Food Colour	Absent	Should be absent
Baudouin's test	Negative	
Halphen's test	Negative	

The opinion of the Analyst is that the sample does not conform to the standard of Bellier's test (Turbidity temperature-Acetic Acid Method) and is therefore adulterated.

¹ (2000) 9 SCC 151

² (1997) 9 SCC 101

The facts in *N. Sukumaran Nair's* case that the food product was ground nut oil and found only marginal variations. Therefore, following the Judgment in *Santosh Kumar's* case, when the matter is pending for years together, the Court directed to deposit in the trial Court a sum of Rs.10,000/- as fine in commutation of the sentence of six month's imprisonment within a period of six weeks from the date of intimation to the appropriate Government that such fine has been deposited. On such deposit of fine, the State Government may formalize the matter by passing appropriate order under Clause (d) of Section 433 of the Code of Criminal Procedure.

I, therefore, direct the appellant to deposit in the trial Court a sum of Rs.10,000/- as fine in commutation of the sentence of 6 month's imprisonment within a period of 6 weeks from today and intimate to the appropriate government that such fine has been deposited. On deposit of the fine, the State Government may formalize the matter by passing appropriate order under Clause (d) of Section 433 of the Code of Criminal Procedure. In the meanwhile, the appellant will remain on bail.

With the above modification, this Criminal Revision Case is disposed of confirming the conviction and sentence imposed by the Judicial Magistrate of First Class, Kamareddy in C.C.No.219 of 2002, affirmed by the Appellate Court in CrI.A.No.89 of 2004.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 14-09-2017.
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