



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.10.2019
Pronounced on : 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.RC(MD)No.182 of 2014

M.T.Veeran ... Petitioner / Appellant / Accused No.1

Vs.

State through
The Food Inspector,
Kovilpatti Municipality,
Tuticorin District. ... Respondent / Respondent / Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the judgment passed by the learned I Additional Sessions Judge, Tuticorin, in C.A.No.85 of 2013, dated 09.12.2013 in confirming the Judgment of the Judicial Magistrate No.I, Kovilpatti, Tuticorin District in C.C.No.135/2009 dated 12.09.2013 and set aside the same.

For Petitioner : Mr.V.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu

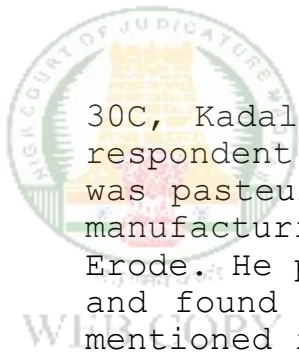
For Respondent : Ms.S.Bharathi,
Government Advocate (Cr1. Side)

O R D E R

The petitioner in this Criminal Revision Case is the first accused in C.C.No.135 of 2009, which was instituted by the Food Inspector, Kovilpatti Municipality / respondent herein, as against this petitioner and two others. He has filed this petition challenging the judgment passed by the learned I Additional Sessions Judge, Tuticorin, in C.A.No.85 of 2013, dated 09.12.2013, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Kovilpatti, Tuticorin, in C.C.No.135 of 2009, dated 12.09.2013.

2. The brief facts of the case, relevant for the purpose of disposal of this petition, are as follows:

2.1. The respondent / Food Inspector, Kovilpatti Municipality, on 22.07.2008 at about 04.00 pm, went to the petitioner's shop at
<https://hcservices.ecourts.gov.in/hcservices/>



30C, Kadalaiyur Road. After introducing him to the petitioner, the respondent enquired about the milk packets and found that the milk was pasteurized milk, belonging to Amirtha milk company, having its manufacturing unit at 34/84, Jeevananthan Street, Kollampalayam, Erode. He purchased six packets of Amirtha milk packets, 250 ml each and found that the date of manufacturing of the said milk was not mentioned in the packets. He took samples of the milk in three glass bottles and sealed the same in the presence of the witnesses and prepared the Form 7 and sent the samples for analysis.

2.2. The Food Analyst, on 24.07.2008, informed that there was a leakage on the sample and accordingly, on 30.07.2008, the respondent sent the second sample to the Food Analyst. Thereafter, the Food Analyst sent the final report that the sample was misbranded, since the date of manufacturing was not mentioned in the packets. After collecting the details of the manufacturer as well as nominee / accused 3 & 2, respectively, and after obtaining sanction, the respondent has lodged the prosecution as against this petitioner and two others for the offence under Sections 16(1)(a)(i) and 7(ii) r/w Section 2(ix)(k) of Prevention of Food Adulteration Act, 1954, contravention to Rules 32(f) and 50(1) of Prevention of Food Adulteration Rules, 1955.

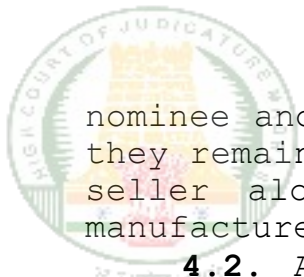
2.3. On behalf of the prosecution, the Food Inspector was examined as PW1 and 20 documents were marked through him. This petitioner / first accused alone entered appearance and contested the case. In conclusion of the trial, the trial Court, by order dated 12.09.2013, found this petitioner and other accused guilty and convicted the petitioner to undergo simple imprisonment for six months with a fine of Rs.1000/-, i/d to undergo simple imprisonment for one week. The 2nd accused, who represents the 3rd accused company was sentenced to undergo simple imprisonment for nine months with a fine of Rs.1000/-, i/d to undergo simple imprisonment for one week. Since the 3rd accused is a company, fine of Rs.1000/- was imposed.

2.4. As against this conviction and sentence imposed by the trial Court, namely, the learned Judicial Magistrate No.1, Kovilpatti, in C.C.No.135 of 2009, dated 12.09.2013, the petitioner alone has preferred an appeal before the I Additional Sessions Judge, Tuticorin, in C.A.No.85 of 2013 and the lower appellate Court, by judgment dated 09.12.2013, dismissed the appeal. Aggrieved, the petitioner has preferred the instant case.

3. Heard Mr.V.Kathirvelu, learned Senior Counsel for Mr.K.Prabhu, learned Counsel on record for the petitioner and Ms.S.Bharathi, learned Government Advocate (Cr1. Side) for the respondent / State.

4. The learned Senior Counsel appearing for the petitioner has made his submissions in the following lines:

4.1. The petitioner was only a seller and he was charged for misbranding along with the other accused. Though the 2nd accused /



nominee and the 3rd accused company were found guilty and convicted, they remained absent and have not preferred any appeal and this poor seller alone is held responsible for non-affixing the date of manufacture in the milk packets by the company.

4.2. As per Section 19(2) of Prevention of Food Adulteration Act, 1954, a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food when he purchased the food article from a duly licensed manufacturer, distributor or dealer, with a written warranty in the prescribed form and the food article, while in his possession, was property stored and he sold the same in the same state as he purchased it.

4.3. Moreover, the report of the Public Analyst was not furnished to him and he was not provided with an opportunity to refer the samples to the Central Laboratory. Therefore, the right of the petitioner to have the sample analysed by the Central Laboratory, as per Section 13(2) of the Prevention of Food Adulteration Act, 1954, has been deprived of.

4.4. In support of this contention, the learned Senior Counsel has also relied upon the decision of this Court reported in **2005 MLJ (Cr1) 460**, in the case of **Suresh, C v. State, represented by Food Inspector**; the decision of the High Court of Andhra Pradesh reported in **CDJ 2006 APHC 047**, in the case of **Gangaiahnaidu Ramakrishnan and Others v. The State of Andhra Pradesh and Others**; the unreported decision of this Court in **Cr1.O.P.(MD)No.5301 of 2010, decided on 15.12.2016, in the case of Ramachandran and another v. State, represented by Food Inspector**.

Therefore, the learned Senior Counsel prays for allowing the present petition.

5. Per contra, the learned Government Advocate (Cr1. Side) would submit that the prosecution has established the case beyond any reasonable doubt and the petitioner was not having any license to sell the milk on the date of occurrence. Though the accused nos.2 & 3 have not appeared and filed any appeal, it will not absolve the offence committed by this petitioner.

6. The learned Government Advocate strongly opposed that the provision under Section 13(2) is not applicable for this case since the prosecution instituted is not for adulteration and only for misbranding and therefore, the non-compliance of the provision under Section 13(2) is not fatal. Therefore, she prays for dismissal of this petition.

7. This Court has paid it's anxious consideration to the rival submissions and also to the available records.

8. Admittedly, the petitioner alone contested in this case. Though the prosecution was instituted as against the petitioner / 1st accused as well as the 2nd accused / the authorised agent and the 3rd accused company, they did not appear before the trial Court and



they were not available during the trial and though they have been found guilty, they have neither preferred any appeal nor suffered the sentence imposed by the trial Court. No steps were taken by the respondent to implement the orders of the trial Court as against the manufacturer and the authorised agent.

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9. The petitioner is a vendor and the 3rd accused is a company that process milk and sells the same in packets. The 3rd accused is a reputed branded company, still in the market as 'Amritha Milk'. It is not the case of the respondent / Food Inspector that the 3rd accused company is not a licensed one and there was no prosecution as against the 3rd accused company. The 2nd accused is the authorised agent and nominee of the 3rd accused company.

10. Admittedly, the petitioner / 1st accused sold the milk packets of the 3rd accused, which is a branded item, manufactured by a licensed manufacturer / 3rd accused company and distributed through the 2nd accused. Therefore, this Court is of the view that the provision under Section 19(2) of Prevention of Food Adulteration Act, 1954, would come to the rescue of the petitioner. For better appreciation, the same is extracted thus:

"19. Defence which may or may not be allowed in prosecutions under this Act.

... ..

2. A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -

(a) that he purchased the article of food -

(i) in a case where a license is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

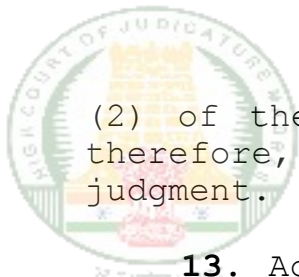
(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

... .."

11. The next contention raised by the learned Senior Counsel for the petitioner is the right guaranteed under Section 13(2) of the Act to get the samples analysed by the Central Laboratory. But, as rightly pointed out by the learned Government Advocate, the prosecution is for misbranding and not for adulteration, as such, the non-compliance thereof is not fatal to the case of the prosecution and therefore, the judgments relied on by the learned Senior Counsel in this regard is not applicable to the present case on hand.

12. Since the petitioner is only a vendor of the product produced by the 3rd accused company, the provision under Section 19



(2) of the Act would come to his rescue, as discussed supra and therefore, this Court is inclined to interfere with the impugned judgment.

13. Accordingly, the impugned judgment passed by the learned I Additional Sessions Judge, Tuticorin, in C.A.No.85 of 2013, dated 09.12.2013, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Kovilpatti, Tuticorin, in C.C.No.135 of 2009, dated 12.09.2013, is set aside insofar as the petitioner / 1st accused is concerned. The petitioner / 1st accused is acquitted of the charges framed against him. Fine amount, if any paid, shall be refunded and bail bonds, if any executed, shall stand terminated.

In fine, this Criminal Revision Case stands allowed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The I Additional Sessions Judge, Tuticorin.
- 2.The Judicial Magistrate No.I, Kovilpatti, Tuticorin.
- 3.The Food Inspector,
Kovilpatti Municipality, Tuticorin District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, Criminal Section, (2 - Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-496[F] dated 07/01/2020)

order made in
Cr1.RC(MD)No.182 of 2014
03.01.2020

gk

SDS (23.07.2020) 5P-8C

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