



BAIL SLIP

The Revision Petitioner/Appellant/Accused Was directed to be released on bail made in CRL.MP(MD).No. 1861/17 in CRL.RC(MD).No. 211/17 dated 28/03/2017 Madurai Bench of Madras High Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 01.07.2021

ORDER PRONOUNCED : 03.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.R.C.(MD) No.211 of 2017

Sam Dennison ... Petitioner/Appellant/Accused

vs.

The State of Tamilnadu
represented by its Food Inspector,
Padmanabhapuram Municipality,
Kanyakumari District. ... respondents/Respondent/Complainant

PRAYER:- This Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records relating to the judgment passed by the learned Fast Track Mahila Court/Sessions Judge, Nagercoil dated 24.01.2017 in C.A.No.255 of 2004, confirming/modifying the judgment passed by the learned Judicial Magistrate, Padmanabhapuram in C.C.No.195 of 1994 dated 03.11.2004 and set aside the same.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

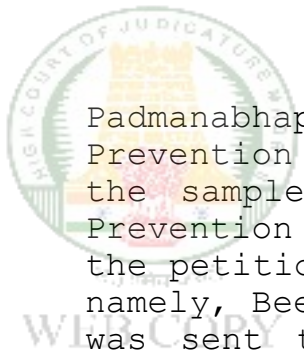
ORDER

This Criminal Revision Case is filed to set aside the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil in C.A.No.255 of 2004 dated 24.01.2017, confirming the judgment passed by the learned Judicial Magistrate, Padmanabhapuram in C.C.No.195 of 1994 dated 03.11.2004.

2.The facts, which are relevant to decide the case, are as follows:-

2.1.On 26.03.1993 at about 11.45 hours, Gingely Oil meant for sale to the public was purchased by the respondent from M/s.C.S. and Sons/Provisional Store run by the petitioner situated at D.No.17/75 in Takkalai Main Road.

2.2.After introducing himself as Food Inspector,
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Padmanabhapuram Municipality and following the provisions of Prevention of Food Adulteration Act, 1954, the respondent had packed the samples of Gingely Oil neatly and as per the provisions of Prevention of Food Adulteration Act, he had obtained signature from the petitioner/accused in the presence of the independent witnesses, namely, Beer Mohammed, P.W-2 and Veerapazham, P.W-3. The same was sent to the Food Analysis Laboratory. A report of the Food Analysis Laboratory was obtained, which was duly communicated to the accused.

2.3. The petitioner/accused was also informed about his right regarding reanalysis of the sample, if he so decides within a period of 30 days from the date of receipt of a copy of the report served on the accused. After granting opportunity, the respondent/Food Inspector, Padmanabhapuram Municipality had obtained sanction from the authority at Chennai and accordingly, he had filed a private complaint under Section 200 of the Cr.P.C., to prosecute the accused.

3. After taking sworn statement of the respondent/Food Inspector, Padmanabhapuram Municipality, the learned Judicial Magistrate, Padmanabhapuram, had taken cognizance of the offence under Section 7(i) and 16(1)(a)(i) r/w 2(ia)(a)(m) of Prevention of Food Adulteration Act, 1954. After taking cognizance of the offence, the learned Judicial Magistrate, Padmanabhapuram, had issued summons to the accused. On appearance of the accused, the learned Judicial Magistrate, Padmanabhapuram had furnished the copies under Section 207 of Cr.P.C., to the accused and when the accused was questioned regarding the aforesaid offences, he pleaded not guilty and claimed to be tried. Therefore, the trial was ordered.

4. During trial, the respondent/Food Inspector, Padmanabhapuram Municipality was examined himself as P.W-1 and he had deposed regarding the purchase of Gingely Oil and preparing the samples in the presence of the independent witnesses, P.W-2, Beer Mohammed and P.W-3, Veerapazham and marked the documents as Ex.P1 to Ex.P15.

5. Ex.P1 is the bill for purchase of the Gingely Oil. Ex.P2 is the copy of Form 6 of the Prevention of Food Adulteration Act, 1954. Ex.P3 is the acknowledgment from the Local Health Authority. Ex.P4 is the copy of Form 7 under the Prevention of Food Adulteration Act, 1954. Ex.P5 is the intimation of the Food Analysis, which was served on the petitioner/accused.

6. Ex.P6 is the extract for sending the food samples to the laboratory. Ex.P7 is the postal receipt for sending food samples by the respondent/Food Inspector, Padmanabhapuram Municipality through RPAD. Ex.P8 is the acknowledgments regarding the registered post under Ex.P7. Ex.P9 is the Form 3 under the Prevention of Food Adulteration Act, 1954. Ex.P10 is the memorandum of the Local Health Authority regarding the respondent/Food Inspector, Padmanabhapuram,



to prosecute the accused

7.Ex.P11 is the charge sheet laid by the respondent/Food Inspector, Padmanabhapuram. Ex.P12 is the receipt for service of the food analysis report on the accused. Ex.P13 is the acknowledgment card regarding the receipt of the food analysis report by the accused. Ex.P14 is the Form 13 (2) of the Prevention of Food Adulteration Act, 1954. Ex.P15 is a copy of Form 3 under the Prevention of Food Adulteration Act, 1954.

8.On the side of the accused 8 documents were marked as Ex.D1 to Ex.D8. Ex.D1 is the commercial tax receipt. Ex.D2 is the payment of arrears of rent. Ex.D3 is the receipt for payment of sales tax. Ex.D4 is the notice regarding arrears of sales tax. Ex.D5 and Ex.D6 are the receipts of payment of sales tax. Ex.D7 is the receipt regarding payment of tax to the Municipality. Ex.D8 is the copy of the judgment in C.C.No.50 of 1994.

9.On assessment of the evidence through P.W1 to P.W3, the documents marked as Ex.P1 to Ex.P15 and on assessment of the evidence of the accused through D.W1 and D.W2 and the documents relied on by the accused, which was marked as Ex.D1 to Ex.D8, the learned Judicial Magistrate, Padmanabhapuram, had rejected the evidence of D.W1 and D.W2 and the defence of the accused and convicted the accused to undergo simple imprisonment for a period of three months and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 7(i) and 16(1)(a)(i) r/w 2(ia)(a)(m) of Prevention of Food Adulteration Act, 1954.

10.Aggravated by the judgment of conviction and sentence of simple imprisonment of three months and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 7(i) and 16(1)(a)(i) r/w Section 2(ia)(a)(m) of Prevention of Food Adulteration Act, 1954, the accused had preferred an appeal in C.A.No.255 of 2014 before the learned District and Sessions Judge, Nagercoil, which was later transferred to the file of learned Sessions Judge, Fast Track Mahila Court, Nagercoil.

11.After hearing the arguments advanced on either side, the learned appellate Judge had dismissed the appeal, by judgment dated 24.01.2017. Aggravated by the same, this Criminal Revision Case has been filed.

12.The point for consideration is whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Nagercoil passed in C.A.No.255 of 2014 dated 24.01.2017 is to be set aside and the petitioner is to be acquitted?

<https://hcservices.courts.gov.in/hcservices> contention of the learned counsel for the



petitioner that the Food Analyst was not examined, which had caused prejudice to the petitioner. Therefore, the food analyst's report cannot at all be considered by the Court of the learned Judicial Magistrate, Padmanabhapuram, based on which, the conviction had been passed by the learned Judicial Magistrate, Padmanabhapuram, vide judgment dated 03.11.2004.

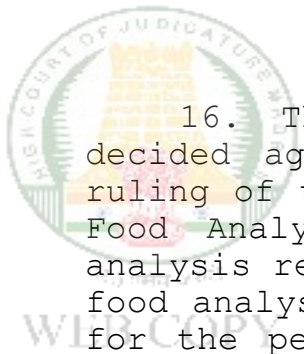
14.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent submitted that the report of Public Analyst is sufficient enough and it is not always necessary to summon him to depose in Court. In support of his contention, he relied on the ruling of the Hon'ble Supreme Court in the case of **Mangaldas Raghavji Ruparel and another Vs. The State of Maharashtra and another** reported in **AIR 1966 SC 128** and the order of this Court passed in **Crl.R.C. (MD) No.135 of 2017**, dated **20.06.2017**, wherein it has been held as under:

"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."

15.The main contention of the learned counsel for the petitioner petitioner/accused that the non-examination of the Food Analyst by the trial Court caused prejudice to the petitioner, cannot at all be accepted based on the order of this Court relied on by the learned Government Advocate (Crl.Side) for the State viz., **Crl.R.C. (MD) No.135 of 2017**, dated **20.06.2017**. The rest of the contentions raised by the petitioner/accused regarding assessment of the evidence was rejected by the learned Appellate Judge. Therefore, the same cannot be agitated in this Revision Case. The Revision Court/High Court cannot reassess the evidence as an appellate Court.

15-A. In the reported ruling of the Honourable Supreme Court in the case of **State represented by the Drugs Inspector vs Manimaran**, in **(2019) 13 SCC 670**, held that the Revision Court cannot go into the concurrent findings:

"D.Criminal Procedure Code, 1973 - S.401 - Revisional jurisdiction - Scope - Revisional Jurisdiction of High Court different from appellate jurisdiction - High Court, in revisional jurisdiction cannot interfere with concurrent findings of facts unless perverse or arrived at ignoring material evidence."



16. The point for consideration in this Revision Case is decided against the petitioner. This Court cannot go beyond the ruling of the Hon'le Supreme Court regarding the examination of the Food Analyst as an expert witness before the Court. The food analysis report can be considered by the Court without examining the food analyst. Therefore, the main contention of the learned counsel for the petitioner that the Food Analyst was not examined by the trial Court is rejected based on the ruling of the Hon'ble High Court relied on by the learned Government Advocate (Crl.Side).

17. In the result, this Criminal Revision Case is dismissed. The judgment and the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court at Nagercoil, dated 24.01.2017 in C.A.No.255 of 2004, confirming/modifying the judgment passed by the learned Judicial Magistrate, Padmanabhapuram in C.C.No.195 of 1994 dated 03.11.2004 is confirmed. **The learned Judicial Magistrate, Padmanabhapuram, is directed to issue warrant to secure the appellant/accused to undergo the remaining period of sentence and to collect the fine from the accused.** The period of detention already undergone by the appellant/accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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To

1. The Sessions Judge,
Mahila Fast Track Court,
Nagercoil.

2. The Judicial Magistrate,
Padmanabhapuram

3. do through,
The Chief judicial Magistrate,
Kanyakumari district.

4. The Food Inspector,
Padmanabhapuram Municipality,
Kanyakumari District.

5. The Additional Public prosecutor, Madurai Bench of Madras High Court, Madurai

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+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-28284[F] dated 06/09/2021)

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03.09.2021

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