APHC010551882010

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3560]
(Special Original Jurisdiction)

THURSDAY, THE 8th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1400/2010

Between:

1. CHEDULURI GAVARAYYA AND ANOTHER,, S/O. NOOKARAJU, GUDIMETIVARI STREET, JAGANNATHAPURAM , KAKINADA
2. JEELAKARRA SRINIVASA RAO,, S/O. SATYANARAYANA, GUDIMETIVARI STREET, JAGANNATHAPURAM , KAKINADA

...PETITIONER(S)

AND

1. THE STATE OF A P REP BY PP, rep. by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad. through Food Inspector , Kakinada Municipality, Kakinda,

...RESPONDENT

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to set aside the Judgment dt.29th July, 2010 passed by the IV Addl. Sessions Judge, E.G.District, Kakinada in Crl.Appeal No.216/2007

IA NO: 1 OF 2010(CRLRCMP 2038 OF 2010

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of the sentence passed against the petitioner and enlarge the petitioners on bail on such terms and conditions deem fit and proper in the interest of justice

Counsel for the Petitioners:

1. SASANKA BHUVANAGIRI

Counsel for the Respondent:

1. PUBLIC PROSECUTOR

The Court made the following order:

1. Instant criminal revision case has been preferred against judgment, dated 29.07.2010, passed in Criminal Appeal No.216 of 2007 on the file of the IV Additional Sessions Judge, East Godavari, Kakinada, confirming the conviction of the petitioners recorded by learned IV Additional Judicial First Class Magistrate, Kakinada, in C.C. No.112 of 2002, dated 26.07.2007.

2. **FACTS OF PROSECUTION CASE, IN BRIEF, ARE AS FOLLOWS:**

2.1 The complainant/ P.W.1 was working as Food Inspector, Kakinada Municipality from 1996 August. On 10.10.2001 at about 8.00 a.m. along with Sanitary Inspector (P.W.2) went to Vallabai street and secured a mediator (P.W.3) and went to the shop namely Kesava Milk Supply Depot belonging to A.1. At the time of visiting the shop, A.2 was in the shop running the business. On query, A.2 said that A.1 is the owner of the shop and he is the salesman of the depot. A.2 further stated that mixed milk is being sold for human consumption in that depot and that the milk was procured from Villages and brought to depot for sale.

2.2 P.W.1 inspected the milk depot, found four milk cans contained mixed milk which were exposed for sale. P.W.1 suspected the mixed milk is adulterated and issued Form-VI notice to A.2. Thereafter, P.W.1 purchased 750 ml of mixed milk for Rs.9.75 and obtained the receipt. Later, P.W.1 thoroughly churned the mixed milk of one of the milk cans

to make it homogenous and taken 750 ml of milk into three equal parts into three clean, dry and empty plastic bottles and added 2 ml of formaline in each bottle, lids were tightened and tied with twisted cotton thread and sealed them. P.W.1 pasted the labels bearing sample No.292 and Code No.VI/F/110 to the three sample bottles by means of gum and sealed them. P.W.1 wrapped each sample bottle with thick cover paper and closed the ends by means of gum. He also wrapped the three samples bottles separately with papers slips bearing the code No.VI/F/110 and obtained the signature of A.2, P.Ws.2 and 3 on the three bottles. The entire process of seizure under mediatornama, was signed by P.W.2 and 3.

2.3 Thereafter one of the sample bottle along with Form-VII memorandum bearing the specimen seal of the complainant was sent to the Public Analyst, State Food Laboratory, Hyderabad, by registered parcel under postal receipt No.AD 247, dated.10.10.2001 under intimation to the Local (Health) Authority and one of the Form-VII memorandum bearing the Specimen seal of P.W.1 was sent to the Public Analyst, State Food Laboratory, Hyderabad, in a separate cover by registered post on 10.10.2001 under postal receipt No.4966 dt.10.10.2001. The remaining two sample bottles along with Form VII memorandum packed with one packet handed over to the Local (Health) Authority under acknowledgment dated 10.10.2001.

2.4 The Public Analyst after analyzing the said part of the sample has issued analysis report in Form-III to the Local (Health) Authority, Kakinada Municipality under certificate No.1063//01 dt.7.11.2001, with a covering letter 1778/SFL/2001 dated 19.11.2001 stating that the sample is deficient in milk fat by about 53.0% and is therefore adulterated.

2.5 P.W.1 submitted a detailed report to the Local (Health) Authority, Kakinada Municipality, in turn it was sent to Director, State Food (Health) Authority, Hyderabad, seeking for further orders. Subsequently the Director accorded written consent to launch prosecution against the accused. In pursuance of such direction, P.W.1 filed a complaint against the accused. Upon which, learned Magistrate has taken cognizance of the offence under Section 16(1)(a)(i), 7(i) and 2(ia)(m) of Prevention of Food Adulteration Act, 1954 and Rule 50 of Prevention of Food Adulteration Rules, 1955.

2.6 During trial, the prosecution has only examined Food Inspector as P.W.1, Sanitary Inspector of the concerned ward as P.W.2 and the mediator as P.W.3. On behalf the defence, none were examined. Several documents were marked as Exs.P.1 to P.21. After hearing the parties and after recording the evidence, learned trial court found the petitioners/A.1 and A.2 to be guilty for the offence punishable under Section 16(1)(a)(i), 7(i) and 2 (ia) (m) of Prevention of Food Adulteration Act, 1954 and Rule 50 of Prevention of Food Adulteration Rules, 1955. They are sentenced to undergo rigorous imprisonment for a period of 6 months each and also to

pay a fine of Rs.1000/- (Rupees one thousand only) each. In default of payment of fine amount, they have to suffer simple imprisonment for a period of two months each.

2.7 The order of conviction was under challenge before learned appellate court. After thorough scanning of the evidence, learned appellate court is of the view that there is no merit to entertain the appeal and the same was dismissed confirming the conviction and sentence passed by learned trial court. Hence, instant revision case.

3. <u>SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS:</u>

3.1 It is contended that the impugned orders passed by learned trial court and learned appellate court are illegal and improper. Both the Courts below have failed to appreciate the facts and circumstances of the case, thereby resulting in miscarriage of justice. It is specifically contended that both the Courts below have failed to act upon the evidence properly. Ex.P.8, i.e., mediatornama, is forged and antedated, on the basis of which recording of conviction of the petitioner is illegal.

3.2 During the course of argument, learned counsel for the petitioner has placed reliance on Ex.P.8, wherein it has been noted in telugu vernacular, at the first page of mediatornama, which discloses a challan No.10204, dated 11.10.2001, amounting to Rs.500/- towards licence fee, that was received by the concerned authority from A.1.

3.3 Learned counsel for the petitioner has also placed reliance on evidence of P.W.2, wherein during cross-examination, P.W.2 has admitted that in

Ex.P.8 there is a recital that licence fee of Rs.500/- was paid under challan No.10204, dated 11.10.2001. P.W.2 also admitted that the licence fee was paid to him on 11.10.2001 at the shop of A.1. On showing the evidence of P.W.2 as well as Ex.P.8, learned counsel for the petitioner heavily argued that the entire proceedings are falsified and concocted, a document could not have been prepared on 10.10.2001 containing a challan o.10204, dated 11.10.2001.

3.4 Learned counsel also submits that the prosecution has miserably failed to prove that A.1 is the owner of the shop in question. Only the version of A.2 was taken note by learned trial court and the learned appellate court decided the issue under a wrong notion. The prosecution has a duty to prove beyond reasonable doubt regarding ownership of Kesava Milk Supply Depot, without which a case against A.1 cannot be booked for the offence.

3.5 Learned counsel further submits that no samples were taken from the shop of the accused and the entire procedure was foisted by the investigating agency only to lodge instant prosecution. So, he prayed for necessary orders of acquittal.

4. **SUBMISSIONS OF LEARNED ASSISTANT PUBLIC PROSECUTOR:**

4.1 Learned Assistant Public Prosecutor submits that the prosecution has sufficiently bring home the charge against the petitioner. He further submits that P.W.1, being the Food Inspector, has conducted the search and seizure by following the formalities enumerated in the Act and Rules

made thereunder. Further, it is pointed out that the evidence of P.Ws.1 and 2 is sufficient to record conviction. Further argued, petitioners were selling adulterated milk from the said depot. It has been proved from the report of Analyst that the milk contained adulteration. Accordingly, conviction is justified.

4.2 Further, it is pointed out that the issue relating to the evidence of P.W.2 as well as Ex.P.8, which was raised by learned counsel for the petitioners, was never raised before learned trial court or learned appellate court. Now, at this stage, this Court, being a revisional Court, cannot interfere with the findings of the trial court on an issue which was not decided at all.

5. Heard learned counsel for the petitioners and learned Assistant Public Prosecutor appearing for the State. Perused the impugned orders passed by the Courts below. I have also perused Ex.P.8 as well as the evidence of P.W.2.

6. **OBSERVATIONS OF THIS COURT:**

6.1 It is true that there is no finding or observation of learned trial court or appellate court in respect of cross-examination of P.W.2 or in respect of recitals at the first page of Ex.P.8, which mentioned challan No.10204, dated 11.10.2001. It is argued by learned counsel for the petitioners that though it was argued before both the courts below, they have not considered this point.

6.2 It is a settled law that this Court, while exercising revisional jurisdiction, has to look into only the legality or propriety of an order in question, the evidences which was assessed by learned trial court or appellate court cannot be interfered with or cannot substitute own view. However, learned counsel has heavily argued that if the document, i.e., Ex.P.8, is taken into consideration correctly, it would be proved that the mediatornama was an antedated and forged document. Thereby seizure on that date was also false.

6.3 Considering the submissions of learned counsel for the petitioners, this Court perused the evidence of P.W.2 vis-à-vis Ex.P.8. Ex.P.8 is a document, namely mediatornama, which was drafted by P.W.1. The entire document mentioned the date as 10.10.2001. It was signed by P.W.1 and the date was written as 10.10.2001. All the signatures of the witnesses mentioned the date as 10.10.2001. However, at the first page, in the last but third line of the said Ex.P.8, a challan number was mentioned with the date 11.10.2001.

6.4 It is argued that the so-called sample of milk was never lifted from the shop of the petitioners on 10.10.2001, thereby mediatornama is false and fictitious. On thorough consideration of the document, it appears that the document was prepared by P.W.1, who deposed that he prepared and signed the document, thereby the evidence of P.W.1 appears to be correct. P.W.1 being maker of the document deposed before court, thus correctness of document *prima facie* proved.

6.5 Further, on thorough and deep scrutiny of the evidence on record, it appears that after lifting the said adulterated milk sample on 10.10.2001, P.W.1 had sent the milk samples, after proper sealing, to the concerned Public Analyst at Hyderabad through registered post along with memorandum. The memorandum was marked as Ex.P.9. The said memorandum was also dated 10.10.2001. The postal receipts were also marked as Ex.P.10 and the postal receipts also show the date as 10.10.2001. The intimation to the local authority, Ex.P.12, also shows the date as 10.10.2001. The receipt of the sealed bag containing sample milk also shows the date as 10.10.2001. All other documents pertaining thereto regarding milk samples contained the date as 10.10.2001.

6.6 Considering the same, it simply proved that the mediatornama, Ex.P.8, was prepared by P.W.1 on 10.10.2001. The recitals at the first page of the mediatornama may appear to be some mistake caused by P.W.1. But for that reason, the entire prosecution case cannot be disbelieved. Thereby, I find no justification to entertain the argument of learned counsel for the petitioner on that score.

6.7 It is true that the prosecution has failed to bring any document of title regarding ownership of the said milk depot in the name of A.1. This issue was decided by learned trial court. The concerned authority has booked A.1 in this case on the version of A.2. A.2 is admittedly a relative of A.1. A.1 is admittedly running Kesava Milk Supply Depot and carrying on day to day milk business. He never raised any issue before the concerned

authority after registering such prosecution that he is not the owner of the said shop. Moreover, during examination of the accused under Section 313 Cr.P.C., A.1 also not disclosed anything disputing his ownership over the said Kesava Milk Supply Depot. Considering the same, this point is also decided against the petitioner/A.1.

6.8 After considering the entire aspect, it appears that the order of conviction passed by learned trial court and confirmed by learned appellate court appears to be justified. Accordingly, the order of conviction is hereby sustained. It is argued by learned counsel for the petitioner that the first petitioner, being A.1, is aged about 78 years and, considering the long pendency of the litigation, some leniency may be shown.

6.9 Heard learned counsel for the petitioners and perused the entire material. It is true that the litigation was started in the year 2001. The first petitioner, being A.1, must be more than 70 years old.

6.10 Considering the entire issue, the substantive sentence of rigorous imprisonment for six months is modified to simple imprisonment for one month.

6.11 The period of detention already undergone by the petitioners during the entire litigation shall be set off under the provisions of Section 428 Cr.P.C., corresponding to Section 468 of B.N.S.S.

7. Under the above observation, criminal revision case is dismissed. The order suspending the sentence during the pendency of the criminal revision case shall stand vacated.

8. The petitioners are directed to surrender before learned trial court or concerned jail authorities within four weeks from the date of passing of this order to serve out the remaining portion of the sentence. Failing which, learned trial court shall take necessary steps including issuance of non-bailable warrant for securing the presence of the petitioners and for compliance with the order.
9. Let a copy of this order be served upon learned trial court for ready reference.
10. Pending miscellaneous petitions, if any, pending in the revision shall stand closed.

JUSTICE SUBHENDU SAMANTA

Dt.08.10.2026
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