

IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD

CRIMINAL APPEAL No.1868 of 2009

Between:

The Food Inspector, Medak
District, reptd., by the Public
Prosecutor

... Appellant

And

V.Prabhakar, S/o V.Ramulu

... Respondent

JUDGMENT PRONOUNCED ON 06.01.2022

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether your Lordship wishes to
see the fair copy of the Judgment? : Yes/No

Dr. CHILLAKUR SUMALATHA, J

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHACRIMINAL APPEAL No.1868 of 2009

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< Gist:

> Head Note:

! Counsel for the appellant: Assistant Public Prosecutor

^ Counsel for the respondent: Sri Chilumula Pratap Reddy

? Cases Referred:
(2018) 15 SCC 93

THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**CRIMINAL APPEAL No.1868 of 2009****JUDGMENT :**

The accused, who was charged for the offences under Section 16(1)(a)(i), 7(i) and 2(ia)(m) of the Prevention of Food Adulteration Act, 1954 (hereinafter be referred as "the Act", for brevity), was acquitted by the Court of Judicial Magistrate of First Class, Andole at Jogipet, through judgment in C.C.No.42 of 2003, dated 19.01.2006 and aggrieved by the said judgment of acquittal, the State has preferred this appeal.

2. Heard and gave due consideration to the submission of the learned Assistant Public Prosecutor and the learned counsel appearing for the respondent/Accused.

3. For the sake of convenience of discussion, the appellant would be referred hereinafter as the prosecution and the respondent as the Accused.

4. The case of the prosecution, in brief, as could be culminated through the complaint, is that on 13.09.2002 at about 1-00 p.m., the Food Inspector of Medak District, accompanied by his Attender inspected M/s. Maheshwari Kirana and General Stores, which is located at Jogipet. At the time of the visit, the Accused was present and was

transacting the business. The Food Inspector, during the course of inspection of the said shop, found 40 sealed Luna Sweet packets and suspecting them to be adulterated, he purchased 3 packets in the presence of the mediator (PW.3) and thereupon he served Form – VI Notice to the Accused.

5. The packets purchased were divided into 3 equal parts and were sealed and labelled, as required. A panchanama was prepared and it was attested by the Accused and the Attender, who accompanied the Food Inspector. On 16.09.2002 one part of the said sample was sent to the Public Analyst for analysis. On the same day, a notice was issued under Form – C to the Manufacturer, but the said Manufacturer failed to give any reply. The sample sent to the Public Analyst was analyzed and the Public Analyst delivered his report on 17.10.2002. The Public Analyst opined that the sample does not conform to the standard of total dye content and it is, therefore, adulterated. A detailed report was submitted to the State Food (Health) Authority. The said authority accorded written consent for institution of prosecution against the Accused.

6. Subjecting the evidence of PWs.1 to 3 and Exs.P-1 to P-29 to scrutiny, the trial Court came to a conclusion that the prosecution failed to establish its case beyond all reasonable doubt and, therefore, acquitted the Accused.

7. The finding of the trial Court is assailed by the State on the following grounds :

1. The prosecution has made out its case by establishing the ingredients of the offence under Section 16(1)(a)(i), 7(i) and 2(ia)(m) of the Act.

2. That the reasons assigned for acquittal of the Accused are erroneous and that the conclusion arrived at is unjustifiable.

3. Though the Accused was found to be selling the adulterated sweets, which were not fit for human consumption and as the same is confirmed by the Public Analyst through his report, the trial Court acquitted the Accused, which is not proper.

8. In the light of the said contentions, the point that arises for consideration is:

Whether the trial Court has properly appreciated the facts of the case and applied the required principles of law for coming to a just conclusion with regard to the proof of guilt of the Accused beyond all reasonable doubt.

9. Submitting that the judgment of the trial Court is erroneous, the learned Assistant Public Prosecutor has contended that the Food Inspector of Medak District, inspected the shop of the Accused and seized the adulterated sweets, which were kept for sale and after following all the required formalities, the said sweets were sent for analysis and the Analyst gave a clear finding that the said sweets are

adulterated and that the sample does not conform to the standard of total dye content and, therefore, a complaint was filed before the Court and during the course of trial, the prosecution examined the Food Inspector as PW.1, the Attender, who accompanied the Food Inspector as PW.2 and the Mediator as PW.3 and also produced all the documents, including the Analyst Report, and thereby established its case beyond all reasonable doubt, but the trial Court, basing on the trivial lacunae in the evidence produced, acquitted the Accused, which is highly erroneous and as the Accused has committed offence affecting the health and safety of the public at large, he is liable for conviction and, therefore, he should have been convicted by the trial Court.

10. Seriously assailing with the submissions, learned counsel for the Accused submitted that the alleged mediator, who was examined as PW.3, failed to support the case of the prosecution and, indeed, nothing was seized in the presence of the said mediator and no recovery panchanama was drafted in his presence and the same is stated by PW.3 during the course of evidence and further, the procedure followed is in clear violation of the principles of natural justice, as no reasonable opportunity was accorded to the Accused to send the alleged seized sweets for analysis to the Central Food Laboratory and that itself vitiates the entire trial proceedings and, therefore, the trial Court has rightly acquitted the Accused. The learned counsel further submitted

that it is not the Accused, who has manufactured the sweets that were alleged to have been seized from his shop even as per the version of the prosecution. The Food Inspector, observing the same, gave Notice to the Manufacturer of the said adulterated sweets. That being the case, the prosecution has to state why the said Manufacturer is not arrayed as an Accused in this case. For the said query raised, no reason was accorded by the learned Assistant Public Prosecutor. Even the documents produced and the evidence of the witnesses does not reveal any convincing explanation for not arraying the Manufacturer as an Accused.

11. Coming to the next crucial aspect i.e. whether the Accused lost his valuable opportunity of sending the seized product to the Central Food Laboratory for analysis, the relevant events and dates are essential, which are as under:

Date of lifting the sample : 13.09.2002

Date of sending the sample
to the Analyst : 16.09.2002

Date on which the Public
Analyst sent his report : 17.10.2002

Date of filing of the complaint : 14.08.2003

Date of issuance of Notice
under Section 13(2) of the Act : 11.09.2003

12. In the light of the above material available on record, now it has to be seen what the legal provisions enumerated under the Act says and envisages.

13. Section 11 of the Act prescribes the procedure to be followed by the Food Inspector. As per the said provision, when the Food Inspector takes the sample of food for analysis, he shall give notice in writing then and there to the person from whom he has taken the sample revealing his intention to have the said sample analyzed. Thereupon, the Food Inspector shall by the immediate succeeding working day, send the sample of the article seized to the Public Analyst for analysis.

14. Section 13 of the Act indicates the duty of the Public Analyst. As per the said Section, the Public Analyst shall deliver the report to the Local (Health) Authority of the result of the analysis of the article of food submitted to him for analysis.

15. Rule 7 of the Prevention of Food Adulteration Rules, 1955 (for brevity “the Rules” hereinafter) lays down the duties of the Public Analyst on receipt of the package containing the sample of food for analysis from the Food Inspector. Rule 7(3) of the Rules mandates that the Public Analyst shall within a period of 40 days from the date of receipt of the sample for analysis send his report narrating the result of the said analysis in Form – III to the Local (Health) Authority.

16. Reverting back to the Act, as per Section 13, on receipt of the report of the result of analysis, the Local (Health)

Authority shall, after institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name and other particulars have been disclosed under Section 14-A forward a copy of the report of the result of the analysis to those persons informing them that if they desire, they may make application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by Local (Health) Authority, analyzed by the Central Food Laboratory.

17. Rule 9B of the Prevention of Food Adulteration Rules, 1955 is framed in aid of Section 13(2) of the Act.

18. Thus, in the light of the above provisions, it has to be seen whether the Accused was accorded his justifiable opportunity to get the sample analyzed through the Central Food Laboratory. As earlier discussed, though the Analyst submitted his report on 17.10.2002, the Prosecution for the reasons best known, could not file the complaint till 04.08.2003. After filing of complaint, notice, as required under Section 13(2) of the Act, was issued on 11.09.2003. The same is evident as per the contents of Ex.P-23 and Ex.P-24. Thus, there is delay of about 11 months in according opportunity to the Accused for getting the sample analyzed through the Central Food Laboratory. As rightly projected by learned counsel for the respondent/Accused, the condition of

the sweets, which were seized might have become so worse that they could not be subjected for analysis, even if they were sent. One could take notice through common sense, that any edible object, that too, the things like sweets, would get damaged, becomes inedible and unfit for chemical or scientific examination by passage of considerable time. Therefore, it can unhesitatingly be held that the Accused had lost his valuable opportunity of getting the sample analyzed through Central Food Laboratory. The above view of mine, is also based on the order of the Hon'ble Apex Court in ***Laborate Pharmaceuticals India Limited and others vs. State of Tamil Nadu***¹, wherein the Hon'ble Apex Court at paras 7 and 8 held as under :

“7. The cognizance of the offence(s) alleged in the present case was taken on 4-3-2015 though it appears that the complaint itself was filed on 28-11-2012. According to the appellant the cough syrup had lost shelf life in the month of November 2012 itself. Even otherwise, it is reasonably certain that on the date when cognizance was taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory.

8. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analyzed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant manufacturer part of the sample as required under Section 23(4)(iii) of the Act; and secondly, on the

¹ (2018) 15 SCC 93

part of the Court in taking cognizance of the complaint on 4-3-2015 though the same was filed on 28-11-2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for reanalysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be a lame prosecution.”

19. No convincing reason is given as to why the complaint could not be lodged for such a long period. Further-more, as discussed earlier, no steps were taken for arraying the Manufacturer of the alleged sweets as an Accused. All these things cast a cloud of suspicion regarding veracity of the prosecution’s version. Further-more, the alleged mediator, who was examined as PW.3, failed to support the case of the prosecution. Further, the evidence of PW.2 also becomes doubtful in the light of his statement during the course of cross-examination that the Food Inspector always cites him as one of the panchas.

20. Thus, in the light of the above discussion and lacunae in the case of the prosecution, this Court is of the view that the trial Court has rightly acquitted the Accused extending the benefit of doubt.

21. Therefore, this Court holds that the judgment of the trial Court does not suffer from any infirmity as projected by

the appellant. Thus, the ultimate conclusion of this Court is that the appeal lacks merits and deserves to be dismissed.

22. In the result, this Criminal Appeal is dismissed confirming the judgment rendered by the Court of Judicial Magistrate of First Class, Andole at Jogipet, in C.C.No.42 of 2003, dated 19.01.2006.

23. Miscellaneous applications pending, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

06.01.2022.

NOTE : L.R. Copy be marked.
(B/O)
Msr