

(2002) 02 AP CK 0002

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 1138 of 1997 and Cril. Revision Petition No. 1129 of 1999

S.G. Siva Murthy

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Feb. 28, 2002

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 11, 13, 13(2), 14A, 16(1)

Citation: (2002) 2 ALT(Cri) 1 : (2002) CriLJ 3309

Hon'ble Judges: T. Gopala Krishna, J

Bench: Single Bench

Advocate: E. Ella Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Gopala Krishna, J.

The petitioner was tried for the offences punishable u/s 16(1)(a)(ii), 7(i) and 2(ia), 9(a) of the Prevention of Food Adulteration Act. the trial Court being satisfied with the evidence let in by the prosecution has held that the petitioner is guilty of the offence alleged and accordingly sentenced him to undergo R.I. for a period of six months and also to pay fine of Rs. 1,000/-in default to suffer S.I. for a period of three months. Aggrieved by the same, the petitioner accused filed an appeal in CrI. A. No. 15 of 1999. the learned I Additional District and Sessions Judge, Kurnool confirmed the conviction and sentence awarded by the trial Court. Hence, present revision case has been filed.

2. The case of the prosecution in nutshell is that on 23-8-1986 the Food Inspector visited the business premises of the petitioner and found 45 Kgs. of groundnut oil and three open tins for sale. On suspicion, the Food Inspector collected samples following the procedure contemplated in provision of the prevention of Food

Adulteration Act, 1954 read with the Prevention of Food Adulteration Rules and sent the same for analysis on the same day. The Public analyst, who received the same on 26-8-1996, opined in his report dated 30-9-1996 that the sample does not conform to the iodine value and Bellier's test (turbidity temperature acetic acid) and as such it is adulterated. After receipt of the analyst report, the Food Inspector filed a complaint against the petitioner on 17-10-1996 and directed him to give a requisition, if he so desires, to send the second sample to another agency for examination. Accordingly, the petitioner gave a requisition on 27-10-1996.

3. The trial Court examined P. Ws. 1 to 3 on behalf of the prosecution and marked documents Exs. P-1 to P-13 and held that the petitioner guilty of the offence and accordingly sentenced him to suffer R. I for six months and to pay fine of Rs. 1,000/-. On appeal, the same was confirmed by the I Additional District and Sessions Judge, Kurnool.

4. Sri Ella Reddy, the learned Counsel appearing for the petitioner strenuously contended that the Courts below erred in not sending the second sample to another independent agency in spite of the request of the petitioner, which is contrary to the provisions contained in Section 13(2)(a) of the Act and would cause prejudice to the petitioner.

5. Heard the learned Public Prosecutor.

6. In the light of the said submissions, it is necessary to extract the relevant provision i.e. Section 13 of the Act, which reads thus :

Section 13 : Report of Public Analyst.

(1) The public analyst shall deliver any such form as may be prescribed a report to the local (Health) authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any whose name, address and other particulars have been disclosed u/s 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to other person or persons, as the case may be, inform such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of a copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2-A) When an application is made to the Court under Sub-section (2), the Court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the State Authority and upon such requisition being made, the said Authority

shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under Sub-section (2-A), the Court shall first ascertain that the mark and seal or fastening as provided in Clause (b) of Sub-section (1) of Section 11 are intact and the signature or thumb impression, as the case may be, is not tampered With, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of sample specifying the result of the analysis.

7. From a reading of the above provisions of law the following points are clear.

(i) Immediately after the receipt of the opinion or report from the public analyst, and after institution of the prosecution the Food Inspector shall send a copy of the report to the accused informing him that he can make an application to the Court within a period of ten days from the date of receipt of the copy of the report.

(ii) When an application as stated above is submitted by the accused person, the Court shall require the Local (Health) Authority to forward the second part and the Local (Health) Authority shall send the second sample to the Court within a period of five days.

(iii) When once the second sample is received from the Local (Health) Authority, the Court after being satisfied that it is in tact in all aspects despatch the same to the Director of the Central Food Laboratory.

8. In the light of the above said provisions of law, it is to be seen as to whether the approach adopted by the Court below is correct or not.

9. In the instant case, the inspection was done on 23-8-1996, the analyst opined that it is adulterated as per his report on 30-9-1996, the complaint was filed on 17-10-1996 and a requisition was made by the petitioner on 27-10-1006. Though the petitioner gave an application to send the second sample to another agency within the stipulated period often days, i.e. on 27-10-1996, curiously the Court below has not chosen to send the same though it is mandatory u/s 13(2-A) of the Act. Apart from that, the approach of the Court below, which is extracted hereunder, is that though the petitioner has submitted an application on 27-10-1996, he never pursued the same.

The petition filed by the appellant was there in the record. No action was taken on the petition. The appellant did not press for disposal of the petition. The appellant did not raise any objection during the trial of the case on the ground that he filed petition for sending the sample to the Central Food Laboratory and it was not disposed of. Had the appellant raised such objection, the lower Court would have taken a decision whether to send the sample to the Central Food Laboratory or not.

If such petition was pending and the appellant was pursuing that petition, the trial Court not have been commenced without disposing that petition. If the petition was allowed, the sample would have been sent to the Central Food Laboratory and after receiving the report only, the trial would have been commenced. It shows that the appellant filed petition, but not pursued it. It cannot be taken as prejudice to the accused, since the accused went on for trial without any murmur.

10. In my considered view, the approach of the Court below is not correct. When once the petitioner has performed his part as mandated under the provisions of Section 13(2), it is for the Court to direct the Local (Health) Authority to send the second sample and on receipt of the same the Court shall forward the same to the Director of Central Food Laboratory. Instead, the Court below expected the petitioner to pursue the matter and on account of the lethargy on the part of the petitioner, the second sample could not be sent. Admittedly, this non-compliance of the provisions of Section 13(2-A) and (2-B) would have caused prejudice to the petitioner accused. We do not know what could be the opinion of the Director of Central Food Laboratory had the second sample been sent for analysis. In this view of the matter, the petitioner is entitled for benefit of doubt and accordingly this criminal revision case is allowed. The conviction and sentence awarded by the Courts below is set aside. The bail bonds shall stand cancelled. The fine amount, paid if any, shall be refunded forthwith.