

(2008) 09 AP CK 0007

Andhra Pradesh High Court

Case No: C.A. No. 328 of 2003

Food Inspector

APPELLANT

Vs

Gunturu Venkateswara Rao and
Another

RESPONDENT

Date of Decision: Sept. 5, 2008

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 11(4), 16(1), 2, 7
- Prevention of Food Adulteration Rules, 1955 - Article 38, 14, 22

Citation: (2008) 2 ALD(Cri) 598 : (2008) 3 ALT(Cri) 238 : (2009) CriLJ 531

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: Public Prosecutor, for the Appellant; N. Subba Rao, for the Respondent

Final Decision: Dismissed

Judgement

R. Kantha Rao, J.

This appeal is filed by the State against the judgment dated 22.3.2002 passed by the I Additional Munsif Magistrate, Gurazala in C.C. No. 139 of 2000 whereby and whereunder the learned Magistrate acquitted the respondents 2 and 3 for the offences under Sections 16(1)(a)(ii), 7(i) and 2(ia)(f) of the Prevention of Food Adulteration Act.

2. The brief facts giving rise for filing of the appeal are that PW-1 (V. Nageswara Rao), the Food Inspector inspected the firm of the 3rd respondent-M/s. Krishna Water Works, Piduguralla and drew samples in the presence of the second respondent who is the managing partner of the Firm and that of PW-2 (V.V. Subba Reddy) an independent witness who was taken as mediator, purchased 12 sachets of mineral water kept for sale from the second respondent, thereafter, he divided 12 sachets into three equal parts and put them in three clean dry empty plastic containers. Subsequent to conducting the sealing and sampling in accordance with

the Act and Rules, sent one sealed sample along with memorandum in Form No. VII to the public analyst. The report of the public analyst ultimately revealed that the sample contained moulds and colourless suspended particles, therefore, the drinking water therein is adulterated. After obtaining written consent from the Director and State Food (Health) Authority, A.P. Hyderabad, he filed complaint against the respondents and A-1.

3. As A-1 was absconding, the case against him was separated and trial was proceeded against the respondents 2 and 3.

4. The prosecution in order to prove it's case, before the learned trial Court, examined the Food Inspector as PW-1, the independent witness who was taken as mediator as PW-2 and marked Exs.P-1 to P-26. The respondents did not propose to examine any witnesses nor did they mark any documents on their behalf.

5. The learned trial Court on a consideration of the oral and documentary evidence found that PW-2, the independent witness did not support the case of the prosecution, PW-1, the Food Inspector committed several material irregularities and violations in conducting the sampling and sealing process and also in his inspection and ultimately the learned trial Court acquitted the respondents 2 and 3 herein. Feeling aggrieved, the State preferred this appeal.

6. Now the point for determination in this appeal is: Whether there are any valid grounds to interfere with the order of acquittal passed by the learned trial Court?

7. POINT; There are categorical admissions in the evidence of PW-1, the Food Inspector, that according to the instructions in Ex.P-5 (Proceedings Rc. No. 15/F8/99, dated 09.03.1999 issued by the Director of Institute of Preventive Medicine, Public Health Labs & Food (Health), Administration, Hyderabad), B. Chennareddy, Assistant Food Controller, Zone III was authorized to make surprise visits and draw samples. He also stated that he did not seize any books of account in order to prove that the respondents 1 and 2 were transacting business of selling drinking water sachets. As per Ex.P-5, PW-1, the Food Inspector is only supposed to assist the Assistant Food Controller at the time of inspecting any business premises. But, Ex.P-9, the mediatorsnama does not contain the signature of Assistant Food Controller indicating his presence at the time of inspection. However, it is also not the case of PW-1 that in fact, the Assistant Food Controller inspected the premises and he assisted him at the time of his inspection. From Ex.P-5 it is thus, obvious that under the Rules PW-1 is not authorized to make any surprise visit or inspection and he is only supposed to assist the Assistant Food Controller.

8. PW-1 further admitted in the cross-examination that he took three samples of 100 ml each and sent them for analysis. But as per Article 38 of Rule 22 of the Food Adulteration Rules, the minimum quantity of samples shall be 3000 ml. Further Ex.P-14 the report of the public analyst also does not specifically mention that the sample sent for analysis is sufficient. As such, the sample taken by the Food

Inspector is not adequate and it is very much in doubt whether with such a quantity, the analysis can be done accurately. Further, Section 11(4) of the Food Adulteration Act mandates that the report of the public analyst has to be sent to the Court within 7 days after receipt of the same. But in the instant case, the sample was sent to the Court beyond the prescribed period. Further the sample was drawn on 13.03.1999, sent for analysis on 15.03.1999 and the same was analysed on 20.04.1999, thereby the analysis was conducted 35 days after the prescribed period. The sample has to be analysed according to Section 11(4) of the Act within 21 days. Thus, there is a clear violation of Section 11(4) of the Act in sending the sample and conducting analysis.

9. Moreover, polythene bag cannot be called as container within the meaning of Rule 14 of the Rules. The rule mandates that the samples have to be drawn in clean glass containers (bottles). Admittedly, in the present case, PW-1 the Food Inspector drew samples into the empty plastic containers and thereby resorted to deliberate violation of Rule 14.

10. If found to be reliable and convincing, the Court can base a conviction solely on the evidence of PW-1, the Food Inspector despite the fact that PW-2 an independent witness did not support the prosecution version. But, in the instant case, there are several violations and material irregularities committed by PW-1, the Food Inspector and on account of the irregularities, the respondents are certainly entitled for acquittal. The trial Court, therefore, does not commit any mistake in recording an order of acquittal against the respondents 2 and 3. The judgment of the trial Court does not call for any interference in this appeal and the same is confirmed.

Consequently, the appeal filed by the State against the acquittal is dismissed.