

(2002) 03 AP CK 0026

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 705 of 2000

Nagasuri Pullaiah

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: March 11, 2002

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 11(3), 16, 7
- Prevention of Food Adulteration Rules, 1955 - Rule 17

Citation: (2002) 1 ALD(Cri) 633 : (2002) 2 ALT(Cri) 105 : (2002) 1 APLJ 445 : (2003) CriLJ 773

Hon'ble Judges: S.R.K. Prasad, J

Bench: Single Bench

Advocate: P. Ravikiran and P. Sundaraiaha, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

S.R.K. Prasad, J.

This revision is directed against the conviction and sentence passed by the IInd Additional Sessions Judge, Nellore in Cri. Appeal No. 24 of 1996 con-firming the sentence to undergo S.I. for three months and to pay a fine of Rs. 500/- in default to suffer S.I. for one month imposed by the Addl. Judicial Magistrate of 1st Class, Kavali in C.C. No. 170 of 1991.

2. It is the case of the respondent-being Food Inspector who presented the complaint that on 27-3-1991 at about 6.30 p.m. he went to the shop of the accused along with K. Achaiah and called the mediators by name P. Narasimham and Sk. Kasim and checked the food articles kept for sale. It is also the case of the complainant that he has purchased 450 grams of ground nut oil for Rs. 15-75 ps and paid the amount and obtained the receipt and he divided the said ground nut oil into three equal parts and kept in three empty dry cleaned bottles, closed with cork and lid tightly and tied with thread and affixed seals then the label issued by the

Local Health Authority was pasted on each bottle. That each bottle was packed with thick wrapper paper and the paper slip bearing C. No. 327/SLR/BII/S. No. 3878/1991 issued by the State Local Health Authority was affixed on each bottle which goes from bottom to and around the bottle and then he obtained the signatures of the accused in the manner described. Then he tied with thread on all the four sides and affixed seals on four sides covering the knots also, and then K. Atchiaiah drafted the mediators report and on 29-3-1991 the said Atchiaiah despatched the sample bottle along with form VII Memorandum to the public analyst. Hyderabad by Regd. Post parcel. It is further stated in the complaint that the remaining parts of sample bottles along with Form VII Memorandum in duplicate were despatched to the Director and State Local (Health) Authority, Andhra Pradesh, Hyderabad by Regd. Post parcel and the Public Analyst sent the Form II report dt. 10-5-1991 and the same was received by K. Atchiaiah and the analyst opined in his report that the sample was not conforming to Butyro-refractometer reading and it contained cotton seed oil and castor oil. It is adulterated and thereafter the accused has been charge-sheeted.

3. The plea of the revision petitioner is one of denial.

4. After trial the Addl. Judicial Magistrate of First Class, Kavali found him guilty and convicted and sentenced to undergo S.I. for three months and to pay a fine of Rs. 500/- in default S.I. for one month. Aggrieved by the same, he carried the matter in Crl. Appeal No. 24 of 1996 and the 2nd Additional Sessions Judge confirmed the conviction and sentence passed by the trial Court. Aggrieved by the same, this revision is filed.

5. It is mainly contended by the learned counsel for the revision petitioner that the samples were not sent for chemical analysis immediately as per the directions given u/s 11(3) of the Prevention of Food Adulteration Act, 1954 (for short "the Act"). He has also contended that Rule 17 of Food Adulteration Rules require that samples should be sent to the analyst not later than the succeeding working day and as it was not sent immediately. Hence the counsel contents that, the accused is entitled for an acquittal and there is failure in following the mandatory provisions. Learned counsel drawn my attention to Rule 17 of the Prevention of Food Adulteration Rules, 1955 (for the short "the Rules"). Rule 17 of the Rules which read as follows :

17. Manner of despatching containers of samples.-- The containers of the samples shall be despatched in the following manner namely :--

(a) the sealed container of one part of the sample for analysis and a memorandum in Form VII shall be sent in a sealed packet to the public analyst immediately but not later than the succeeding working day by any suitable means.

(b) The sealed containers of the remaining two parts of the sample and two copies of the memorandum in Form VII shall be sent in a sealed packet to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable

means.

(c) The sealed container of one of the remaining two parts of the sample and a copy of the memorandum in Form VII kept with the Local (Health) Authority shall within a period of 7 days be sent to, the public analyst on requisition made by him to it by any suitable means :

Provided that in the case of a sample of food which has been taken from a container bearing Agmark seal the memorandum in Form VII shall contain the following additional information namely :

(a) Grade (b) Agmark label No./Batch No. and (c) Name of packing station.

In. State of Himachal Pradesh v. Man Singh (2000) 1 FAC 36 (Him Pra) it is clearly stated that Rule 17 is mandatory and failure to follow Rule 17 of the Rules, the accused is entitled to acquittal.

In [G. Chandramouli and Another Vs. The State](#), Justice Jayachandra Reddy has stated the scope of Section 11(3) of the Food Adulteration Act, 1954 and Rule 17(a) of Food Adulteration Rules, 1955. The relevant paras 6, 7 and 8 read as follows :

The object of the Act is to check the-evil of food adulteration and in that direction to give the State Government the necessary means to check the evil. A perusal of the provisions of the Act and the Rules shows that some of the duties of the Food Inspector are mandatory in nature. But that does not mean that every duty cast on him should be characterised as mandatory and that any type of infraction of the same vitiates the entire case. (Para 6)

Every requirement in the provisions of law, which prescribe the duties of the Food Inspector, cannot be held to be mandatory. The employment of the word "shall" also is not conclusive about the mandatory nature of the requirement. It must also be satisfied that the requirement is intended to protect the right of liberty of the person. While examining the true manner of a particular requirement, the Courts must also see whether infraction of the same has caused any prejudice to the accused in a given case. (para 7)

Section 11(3) merely lays down that the Food Inspector shall send the same on the succeeding working day to the public analyst. This provision is mainly intended to check the Food Inspectors from tampering with the samples with a view to help the accused who have committed the unsocial act of adulteration and accordingly prescribed the time limit. If for any reason the Food Inspector causes some delay in sending the sample that does not in any way affect the right of liberty of a person or cause any prejudice to his case if because of the delay the sample gets decomposed the delay is to the advantage of the accused. If the sample is tampered with the analyst can easily detect the same by a comparison of the seals on the container with the subsequent impression received separately as prescribed under Rule 7 (para 7)

It cannot be said that the requirement that the Food Inspector shall send the sample on the succeeding working day is intended to protect the interests of the accused. On the other hand it is clearly plain from the report of the Joint Committee on the bill to amend the Act that these provisions are intended to check the Food Inspectors from indulging in corrupt practices. Therefore, if there is any delay, the Food Inspector may be answerable to the higher authorities but that delay does not in any way prejudice the case of the accused. (Para 8)

The time limit is not insisted as a protection for safeguarding the right of the person and it is also not in the nature of a public duty and any delay does not cause general inconvenience or injustice. Therefore, the provision is only directory and not mandatory. On the other hand, the interpretation that the provision is mandatory does not in any way promote the main object of the legislature. However, it shall not be understood that there is no duty cast on the Food Inspector to send the sample to the public analyst without the least delay. This is a provision to check the Food Inspectors from indulging in corrupt practices and also a measure to ensure that the samples are sent without any delay, so that they may be fit for analysis. (Para 8)

6. The rulings of this Court in [G. Chandramouli and Another Vs. The State](#), (cited supra) have binding force over this Court whereas the principles laid down in the other decisions are only persuasive value. It is clearly stated that if there is any delay, the Food Inspector may be answerable to the higher authorities but that delay does not in any way prejudice the case of the accused.

7. I agree with the principles and reasoning laid down in the said decision and find that the procedure mentioned under Rule 17(a) is only directory and not mandatory.

8. It is further contended by the learned counsel for the revision petitioner that independent witnesses are not examined and there is no corroboration of the version of the Food Inspector by any independent witness and hence the accused is entitled to acquittal. In support of his contention he placed reliance to *Lakhan Lal Modak v. State of Bihar*, 2000 FAJ 246 and *State by Food Inspector, Rajapalayam Municipality v. Ahemed Meeran* (1999) 2 Andh LD 558 . It is not the law that because of non-examination of the independent witness, the evidence of Food Inspector has to be- disbelieved. If the evidence of the Food Inspector is reliable and trustworthy, and supported the public analyst report it has no bar for believing the evidence of Food Inspector in the absence of examination of independent mediator. Corroboration must be insisted only if the evidence of Food Inspector is full of contradictions. This is not such a case. There is no need to insist for examination of independent witness where Food Inspector evidence is reliable.

9. It is also contended by the learned counsel for the revision petition that obtaining independent evidence is mandatory and the Food Inspector has not called the independent witnesses. I respectfully disagree with the principles laid down in *Lakhan Lal Modak v. State of Bihar*, 2000 FAJ 246 (Pat) that non-examination of the

independent witness leads to acquittal for the reasons of that supra.

10. It is also contended by the learned counsel for the revision petitioner that there is no proper analysis of the adulteration found and adulterants noticed. Adverting to the same, the learned Prosecutor contended that the report of the analyst is exhaustive. He has clearly mentioned that it contained Cotton Seed Oil and Castor Oil. The analyst report is marked as Ex. PH. Adverting to the same, it is clearly mentioned that it contained cottonseed oil and castor oil and is therefore adulterated.

Learned counsel for the revision petitioner tries to challenge the report alleging that the Halphen's test is not the correct test for analysis.

Under Section 293 of the Code of Criminal Procedure, Analyst is entitled to give a report and can be marked. If the revision petitioner is aggrieved by such report, he has to approach the Court with a request to send the same to Director of Central Food Laboratory. But in this case he has not chosen to adopt the said procedure. The report has become final and an undisputed one. He is unable to draw my attention to any text on scientific analysis of the samples to show that the Halphen's test is not the correct test. In the absence of the same, it may be taken as the correct test conducted by the analyst and hence it is clear that the samples contain cotton seed oil and castor oil and it is adulterated.

Court's attention is also drawn to a decision reported in [State of Madhya Pradesh Vs. Mohanlal Soni](#), wherein the Court took a lenient view as the adulteration is of marginal quantity. My attention is also drawn to a decision reported in Varinder Kumar v. Union Territory of Chandigarh, 1994 FAJ 198 (Punj and Har). Another decision reported in Sita Ram v. State of U.P. (2001) 1 FAC 150 (All) is also cited. The facts of the present case are different from the facts in the Supreme Court case and Punjab and Haryana High Court case and Sita Ram's case (2001) 1 FAC 150 (All).

This is a case where adulteration of cottonseed oil and castor oil was found in the samples. The samples were taken and the case was instituted in 1991. Both the Courts have taken a lenient view and awarded only three months sentence and there is no need to interfere either with the findings of both the Courts below or with the sentence imposed on the revision petitioner as there is no miscarriage of justice in this case. Both the Courts below have rightly convicted and sentenced the revision petitioner with S.I. for three months and fine and the sentence is confirmed.

Accordingly, the criminal revision petition is dismissed.