

(2014) 10 MAD CK 0046

Madras High Court

Case No: Crl. R.C. No. 1257 of 2008

A.C. Saleem

APPELLANT

Vs

Food Inspector,
Coimbatore
Corporation

RESPONDENT

Date of Decision: Oct. 10, 2014

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 13(2), 16(1)(a)(i), 2(ia)(a), 2(ix)(k), 7(i)

Citation: (2015) 1 MLJ(Cri) 406

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: K. Shivashanmugam, Advocates for the Appellant; M. Mohamed Riyaz,
Government Advocate, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.T. Selvam, J.

This revision has been filed against two concurrent judgments of the Courts below convicting the petitioner for offences u/s. 7(i) & (ii), 16(1)(a)(i) r/w Section 2(ia)(a) and (m) and 2(ix)(k) of Prevention of Food Adulteration Act r/w Rules 23 and 32(a)(e)(f) and (i) of Food Adulteration Rules and sentencing him to undergo 6 months S.I. and fine of Rs. 3,000/- i/d 2 months S.I. for offences u/s. 7(i) & (ii), 16(1)(a)(i) r/w Section 2(ia)(a) and (m) and 2(ix)(k) of Prevention of Food Adulteration Act r/w Rule 23 of Food Adulteration Rules and fine of Rs. 2,000/- i/d 1 month S.I. for offence u/s. 32(a)(e)(f) and (i) of Food Adulteration Rules. The complainant/Food Inspector, Coimbatore Corporation, Coimbatore, inspected the grocery shop of the petitioner/accused on 01.03.2006 at about 10.30 a.m. and found that the accused was selling toor dhal in sealed packets on retail basis. The complainant took samples in three separate sealed plastic packets each weighing 500 gms. The complainant

issued a copy of Form VI and paid the cost of samples to the accused and obtained a receipt from him. They were repacked in three lots in keeping with Form VII and the seal of local health authorities were affixed. One packet was sent to the Regional Health Officer, second to the Local Health Officer and the third to the Food Analyst for the purpose of analysis. The report of the Public Analyst, Food Analysis Laboratory, Salem, was obtained on 23.03.2006 and the same informed as follows:

"I am of the opinion that the sample is Adulterated since, it is found to contain added colouring matter tartrazine where as split pulse (dhall) Arhar, shall be free from added colouring matter as per the Rule 23 and also that the same is misbranded as it is not labelled in accordance with the requirement of Rule 32(a)(e)(F) of PFA Rule 1955."

Thus, on the allegation that the sample was adulterated, the complainant sought permission of the Joint Director, Public Health and Preventive Medicine (PFA), Chennai, to launch prosecution. Obtaining sanction on 12.07.2006, the complainant launched prosecution before learned Judicial Magistrate V, Coimbatore, on 19.09.2006. Notice under Section 13(2) of the Act has been sent to the petitioner/accused along with Form 3 (Report of the Public Analyst) informing the petitioner/accused may exercise his right to have a sample tested by the Central Food Laboratory by filing necessary applications before learned Judicial Magistrate V, Coimbatore, within ten days. The case was tried in C.C. No. 875 of 2006 on the file of learned Judicial Magistrate V, Coimbatore.

2. Before the trial Court, the prosecution examined one witness and marked 26 exhibits. None were examined on behalf of the defence nor were any exhibits marked.

3. On appreciation of evidence, the trial Court rendered a finding of conviction and sentenced the petitioner to undergo 6 months S.I. and fine of Rs. 3,000/- i/d 2 months S.I. for offence u/s. 7(i) & (ii), 16(1)(a)(i) r/w Section 2(ia)(a) and (m) and 2(ix)(k) of Prevention of Food Adulteration Act r/w Rule 23 of Food Adulteration Rules and fine of Rs. 2,000/- i/d 1 month S.I. for offence u/s. 32(a)(e)(f) and (i) of Food Adulteration Rules. There against, the petitioner preferred an appeal in C.A. No. 461 of 2007 before learned Principal Sessions Judge, Coimbatore. Under judgment dated 18.08.2008, the appellate Court dismissed the appeal. Hence, this revision.

4. Heard learned counsel for petitioner and learned Government Advocate (Crl. side). This Court finds that in the instant case though a report of the Public Analyst informing that the colouring substance "tartrazine" had been used, has been marked as Ex. P17, the Public Analyst, who submitted such report has not been examined. Following the rationale of judgment of Punjab and Haryana High Court in State of Punjab v. Satpal 1992 (1) P & HC 263, this Court would allow this revision on the reasoning that in the absence of examination of the Public Analyst there is nothing to indicate the basis of his conclusions and the defence has been denied the

opportunity to dispute the same.

This Criminal Revision is allowed. The judgment of learned Principal Sessions Judge, Coimbatore, passed in C.A. No. 461 of 2007 on 18.08.2008, confirming the judgment of learned Judicial Magistrate V, Coimbatore, passed in C.C. No. 875 of 2006 on 24.09.2007 is set aside. Petitioner is acquitted of all charges. Fine amount, if any, paid by the petitioner shall be refunded to him.