M. Ajithkumar Vs. The State By

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SooperKanoon Citation : sooperkanoon.com/1234027

Court : Karnataka

Decided On : Jun-24-2022

Judge : H.P.Sandesh

Appeal No. : CRL.RP 1527/2016

Appellant : M. Ajithkumar

Respondent : The State By

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE24H DAY OF JUNE, 2022 BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH CRIMINAL REVISION PETITION NO.1527/2016 BETWEEN: M.AJITHKUMAR AGED ABOUT60YEARS S/O. LATE MURARAPPA PROPRIETOR SWASTHIK TRADING COMPANY GENERAL MERCHANTS AND OIL DISTRIBUTOR B.M.BOAD, SHANTHEPETE HASSAN-573201. PETITIONER (BY SRI A. RAVISHANKAR, ADVOCATE [THROUGH V.C.].) AND: THE STATE BY FOOD INSPECTOR, KOPPA CHIKMAGALUR DISTRICT. RESPONDENT (BY SRI MAHESH SHETTY, HCGP) THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION397OF CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT
DATED244.2013 PASSED BY THE C.J.

AND J.M.F.C., KOPPA IN C.C.NO.451/2008 AND SET ASIDE THE

JUDGMENT

DATED911.2016 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE, CHIKKAMAGALURU IN CRL.A.NO.233/2013 2 AND ACQUIT THE REVISION PETITIONER OF THE OFFENCES ALLEGED AGAINST HIM. THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON1606.2022 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This criminal revision petition is filed under Section 397 of the Code of Criminal Procedure, 1973 praying this Court to set aside the judgment passed by the Civil Judge and JMFC, Koppa dated 24.04.2013 in C.C.No.451/2008 and also set aside the judgment dated 09.11.2016 passed in Crl.A.No.233/2013 by the Principal District and Sessions Judge, Chikkamagaluru and acquit the revision petitioner for the offences alleged against him and grant such other relief as deems fit in the circumstances of the case.

2. The factual matrix of the case of the prosecution is that the Food Inspector, Koppa has visited the shop belonging to the accused No.1-M. Umar on 16.02.2008 situate at Koppa and inspected the food articles and examined 20 packs each containing 200 miligrams of sungift refined cooking oil and found that there is adulteration in the said oil and noticed that the said 3 oil was supplied by the revision petitioner and filed the complaint against the accused persons stating that they have violated Section 7(2) of the Prevision of Food Adulteration Act, 1954 (the Act for short) and thereby committed the offence punishable under Section 16(a)(i) of the said Act.

3. Based on the complaint, cognizance was taken against this revision petitioner and accused No.1 and both of them not pleaded guilty. Hence, the prosecution, in order to prove their case, examined P.Ws.1 to 4 and relied upon the documents Exs.P1 to P13(a) and two memo of objects were marked as M.Os.1 and 2 containing sungift refined cooking oil.

4. The Trial Court, after considering both oral and documentary evidence placed on record, convicted both the accused and imposed sentence of fine of Rs.4,000/- each, failing which they are liable to serve the sentence of simple imprisonment for seven months. The accused No.1 paid the fine amount and the prosecution also challenged the inadequate sentence and filed appeal in Criminal Appeal No.233/2013 and the First Appellate Court reversed the judgment of the Trial 4 Court and imposed sentence of six months vide judgment dated 09.11.2016. Hence, the revision petitioner-accused No.2 has filed this revision petition.

5. Learned counsel appearing for the revision petitioner would vehemently contend that, admittedly, the charge was framed against the accused persons only to the effect that they have dealt with adulterated oil and the samples were sent to the laboratory for examination. The report do not indicate that the oil is adulterated and the same is with regard to misbranding which is also without jurisdiction and both the framing of charge as also the report is bad in law.

6. The counsel would also contend that the Trial Court also have totally ignored the admission of the complainant in his cross-examination that he had not sent the same for verification of the brand and that there is no notice given to the accused persons seeking for their explanation on the allegation of branding. He also contend that no opportunity was given to answer the claim/allegation and it was alleged for the first time, when the samples were received with the opinion that the same 5 is misbranded. He would also contend that the trial Judge grossly erred in not noticing the fact that there was no misbranding and no offence was committed by the revision petitioner and the trial Judge ought to have noticed that the witnesses admittedly admit that the samples sent for analysis is not adulterated. The oil that was manufactured and distributed was soybean oil and the branding was also soybean oil. Therefore, there could not have been any offence by the revision petitioner as alleged. The allegation of the prosecution that the images of sunflower is depicted on the packet though the oil sold is soybean and that the commodity - soybean oil is written in small fonts is not correct.

7. The counsel also would vehemently contend that the Court below ought to have noticed that the prosecution ought to have examined independent witnesses to

establish that they were misguided by the signs and small fonts of the packets and that they purchased the soybean oil under the impression that the same is sunflower oil and instead of acquitting, erroneously convicted the revision petitioner. The counsel would further 6 contend that the First Appellate Court, grossly erred in not appreciating the evidence on record and has not recognized the right of appeal of the revision petitioner envisaged in law in cases where the State comes in appeal with much delay and both the Courts have committed an error in not considering the defence of the revision petitioner.

8. The counsel would vehemently contend that the prosecution has not produced the notification regarding the appointment of the Food Inspector. In support of his contention, he relied upon the judgment of the Madhya Pradesh High Court in the case of SADHRAM VS. THE STATE OF M.P. in CRIMINAL REVISION NO.391 OF1990 wherein it is held that failure on the part of the prosecution to bring the notification of the complainant as Food Inspector goes to the very root of the case. In absence of such notification on the record it cannot be said that the complainant was legally and validly appointed as a Food Inspector and therefore, they were competent to launch the prosecution against the applicants. 7

9. The counsel also relied upon the judgment of the Allahabad High Court in the case of LALLAN PRASAD VS. STATE OF U.P. in CRIMINAL APPEAL NO.2901 OF1977 wherein it is held that duty of the prosecution to have led evidence to show that Surendra Singh had been appointed as Food Inspector for the town of Mahmoodabad and no evidence was led on this point. Hence, he had no authority to act as Food Inspector.

10. The counsel also relied upon the judgment of the Madhya Pradesh High Court in the case of HARBHAJAN SINGH VS. STATE OF M.P. AND ANOTHER in CRIMINAL REVISION NO.177 OF1980 wherein also, the Court has held that valid appointment of a person as Food Inspector is a prerequisite to set the ball rolling for purposes of purchasing the sample, sending the same to the Public Analyst .

11. The counsel would vehemently contend that drawing up of mahazar in the presence of independent witnesses is mandatory and no independent witnesses have been examined 8 before the Court, except the official witnesses. In support

of his argument, he relied upon the judgment of the Patna High Court in the case of LAKHAN LAL MODAK VS. THE STATE OF BIHAR in CRIMINAL REVISION NO.281 OF1996 wherein it is held that, if the mandatory provision of Section 10(7) of the Act is not complied with, the conviction and sentence is not in accordance with law.

12. The counsel also relied upon the judgment of the Allahabad High Court in the case of TURSHAN PAL SINGH VS. STATE OF U.P. AND ANOTHER in CRIMINAL REVISION NO.125 OF1989 wherein it is held that non-compliance of the direction contained on Section 10(7) of the Act and the omission to produce each independent witness in Court, creates a grave doubt regarding the truthfulness of the prosecution version.

13. The counsel also relied upon the judgment of the Andhra Pradesh High Court in the case of THE FOOD INSPECTOR, ZONE VISIANAGARAM, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD VS. POOSALLA JAGANNADHA RAO in CRIMINAL APPEAL9NO.1592 OF1990 wherein it is held that duty is cast on the Food Inspector to examine independent witnesses as per Section 10(7) of the Prevention of Food Adulteration Act.

14. The counsel also, in his argument vehemently contend that written sanction is mandatory to prosecute the accused. In support of his contention, he relied upon the judgment of the Himachal Pradesh High Court in the case of STATE OF H.P. VS. KISHORI LAL in CRIMINAL APPEAL NO.558 OF1996 wherein it is held that the prosecution is vitiated, if the written consent to prosecute had been signed by the competent authority is a matter of routine and without due application of mind.

15. The counsel also relied upon the judgment of the Andhra Pradesh High Court in the case of ADDA KASIVISWESWARA RAO VS. STATE OF A.P. in CRIMINAL REVISION CASE NO.604 OF1989 wherein it is held that the sanctioning authority must first state what is adulterated as per the report of the Public Analyst and what material it has perused 10 and then what are the reasons for granting the sanction in the light of the public interest.

16. The counsel also would vehemently contend that non-furnishing of report of Public Analyst defeats the right of the defence. In support of his argument, he relied upon the judgment of the Apex Court in the case of NARAYANA PRASAD SAHU VS. STATE OF MADHYA PRADESH reported in 2021 SCC ONLINE SC1016 wherein it is held that serving a copy of the Public Analyst report on the accused under Sub-section (2) of Section 13 of the Act is mandatory.

17. The counsel also in his argument vehemently contend that misbranding of label does not require opinion of the Public Analyst. The counsel, in support of his argument, relied upon the judgment of the Madras High Court in the case of P. ROBERT IMMANUEL AND ANOTHER VS. THE STATE REPRESENTED BY THE FOOD INSPECTOR reported in 2009 (2) FAC199 wherein it is held that the Food Inspector, who had the occasion to see the beverage bottles did not mention anything about the misbranding and it does not require the 11 opinion of the Public Analyst and held that proceedings initiated is nothing but abuse of process of law.

18. The counsel also relied upon the judgment of the Jharkhand High Court in the case of MD. SHREE OM INDUSTRIES VS. STATE OF JHARKHAND AND ANOTHER in CR.M.P.NO.2009 OF2011 wherein it is held that, it is not the case that clause which was required to be there under Rule 32 was never there over the packets rather it was there in small letters and therefore, there is sufficient compliance of Rule 32.

19. The counsel would vehemently contend that there is non-compliance of Sections 10(7), 11 and 13 of the Act by the prosecution which are mandatory in nature and goes to the root of the matter. The counsel also vehemently contend that the First Appellate Court has not reassessed the evidence and has only considered whether the Trial Court has committed an error in imposing inadequate sentence. The First Appellate Court being the final Court of finding was required to assess the evidence and the same has not been done and instead, 12 enhanced the sentence of simple imprisonment for a period of six months and therefore, it requires interference of this Court.

20. Per contra, learned High Court Government Pleader for the respondent-State would vehemently contend that the Trial Court, while considering the material on

record, framed appropriate points for consideration invoking Section 7(2) of the Act and sentence passed is also for misbranding and not adulteration. He would also vehemently contend that, inside the packet, soybean oil was found but, branding outside the packet is sunflower oil. Hence, the Trial Court comes to the conclusion that the same is misbranded. He would further contend that the principles laid down in the judgments referred by the learned counsel for the revision petitioner is not applicable to the facts of the case on hand and for the first time, the revision petitioner has urged the ground with regard to non-production of notification regarding appointment of Food Inspector is concerned and no such cross-examination was done during the course of cross-examination of prosecution witnesses, who have been examined as P.Ws.1 to 4. He also further contends that 13 notice was given to the revision petitioner and he had admitted in his reply but, the accused No.1 is no more and no sanction is required to initiate the proceedings. The charges leveled against the revision petitioner is also that he had misbranded and no charge is framed in respect of adulteration and both the Courts have taken note of the material on record and point framed is also in respect of misbranding and not in respect of adulteration. Hence, the very contention of the learned counsel for the revision petitioner cannot be accepted.

21. In reply to the arguments of the learned High Court Government Pleader for the respondent-State, learned counsel for the revision petitioner would vehemently contend that soybean oil itself is sold and the same is also printed on the cover. He would also contend that the Food Officer cannot give any authorization and the complaint is also filed by local authority and he cannot delegate the power to file any complaint and no notification or gazette notification is placed before the Trial Court. The counsel would vehemently contend that no independent witnesses are examined and the judgments referred 14 (supra) are aptly applicable to the case on hand, when no independent witnesses are examined. The counsel would further contend that no notice was given regarding misbranding and the same is admitted by P.W.1 in the cross-examination and the charge is framed for violation of Section 7(1) of the Act but, the conviction is in respect of 7(2) of the Act and though the prosecution contend that it is a case of misbranding, no material is placed before the Court with regard to the same. Hence, it requires interference of this Court.

22. Having heard the respective counsel and also on perusal of the material on record, the points that would arise for consideration of this Court are: (i) Whether the revision petitioner has made out a ground to exercise the revisional jurisdiction to set aside the orders passed by the Trial Court as well as the First Appellate Court?. (ii) What order?. 15 Point No.(i) 23. Having heard the respective counsel and also on perusal of the material available before the Court, the Trial Court imposed fine of Rs.4,000/- each and accordingly, accused No.1 deposited the fine amount and whether the accused No.2, the revision petitioner herein has deposited the amount or not is not forthcoming. Admittedly, this petitioner has also not challenged the same in any appeal before the Appellate Court i.e., the sentence of fine imposed by the Trial Court. However, the State has filed an appeal before the First Appellate Court on the ground of inadequate sentence. Hence, the Appellate Court modified the sentence of simple imprisonment for a period of six months, instead of fine of Rs.4,000/-.

24. The first and the foremost contention of the learned counsel for the revision petitioner before this Court is that there was no adulteration and it was only a misbranding. The counsel also relied upon the document Ex.P10 i.e., the report received from the Divisional Public Analyst cum Regional Assistant Chemical Examiner, Mysuru Division, N.P.C. Hospital Compound, 16 Nazarbad, Mysuru, wherein it is opined that the sample sent for analyst is not adulterated but, it is misbranded wide label-3(e) and the said report is given on 6th day of March, 2008. On perusal of the records of the Trial Court, it is seen that the charge was framed on 18th August, 2011 subsequent to receipt of the report. On perusal of the charges, it is seen that the trial Judge has framed the charge for the offence under Section 7 of the Act, particularly, Section 7(1) in respect of adulteration of food and Section 7(2) is in respect of misbranding food. The charge has been framed for the offence under Section 7(1) i.e., adulteration of food and that is not the case of the prosecution and the case of the prosecution is misbranding.

25. On perusal of the complaint which is dated 8th July 2008 particularly, page No.2 in the bottom, it is stated that the information given in the packet is erroneous and also referred that the report of the analyst is misbranded and categorically mentioned in page No.3 that there is violation of Section 7(2) of the Act,

punishable under Section 16(a)(i) of the Act. However, the allegation against this petitioner is that he has not issued 17 cash bill in terms of Section 14 of the Act and he had distributed the oil packet, wherein also specifically mentioned that the petitioner has violated Section 7(2) of the Act, punishable under Section 16(a)(i) of the Act. But, the trial Judge has framed the charge for the offence under Section 7(1) of the Act and not for the offence under Section 7(2) of the Act. It is also important to note that the complaint dated 8th day of July, 2008 is subsequent to the receipt of the report from the analyst which is marked as Ex.P10 which is dated 6th day of March, 2008. Hence, it is clear that the report is received on 6th day of March, 2008 and complaint is filed in the month of July i.e., 8th day of July, 2008 and inspite of it, though allegation is in respect of Section 7(2) of the Act, the Trial Court framed the charge for the offence under Section 7(1) of the Act. Hence, very framing of the charge itself is erroneous.

26. It has to be noted that the trial Judge, even while passing the judgment invoked Section 7(2) of the Act punishable under Section 16(a)(i) of the Act and not altered the Section from 7(1) to 7(2) of the Act. It is also rightly pointed by the 18 learned counsel for the revision petitioner that no notice was given to invoke Section 7(2) of the Act and though the same is noticed by the Trial Court, the charge has been framed for violation of Section 7(1) of the Act and punishment was provided for the violation of Section 7(2) of the Act. Hence, there is a glaring error on the part of the Trial Court since charge has been framed for Section 7(1) of the Act and conviction and sentence is passed for the violation of Section 7(2) of the Act. The Appellate Court also failed to take note of this aspect into consideration and concentrated mainly on the minimum sentence. Hence, the very judgment of the Trial Court as well as the First Appellate Court requires to be set aside on the ground that the charge has been framed for violation of Section 7(1) of the Act and conviction and sentence has been passed for violation of Section 7(2) of the Act.

27. The other contentions of the learned counsel for the revision petitioner are that, no authorization to file any complaint and the delegatee also cannot delegate the powers. He also would contend that, no notification was produced regarding 19 appointment of Food Inspector and the independent witnesses have not been

examined. It is also his contention that non- furnishing of report of Public Analyst and misbranding of label does not require any opinion from the Public Analyst. When charge has not been properly framed and conviction and sentence is passed for in respect of violation under Section 7(2) of the Act, it is appropriate to set aside the judgments of both the Trial Court as well as the First Appellate Court by keeping open the other contentions of the learned counsel for the revision petitioner and remand the matter to the Trial Court for framing appropriate charges and consider the matter afresh. If need arises, the Trial Court shall also permit the prosecution as well as the revision petitioner to adduce evidence before the Trial Court since, proper charge has to be framed and an opportunity has to be given to the revision petitioner to meet the case of the prosecution and unless the charge is specific, meeting the case of the prosecution by the defence is also very difficult. Hence, the judgment and sentence passed by the Trial Court as well as the First Appellate Court is not legally 20 sustainable in the eye of law and it requires fresh consideration. Accordingly, I answer point No.(i) as affirmative. Point No.(ii) 28. In view of the discussions made above, I pass the following:

ORDER

(i) The criminal revision petition is allowed. (ii) The judgment passed by the Civil Judge and JMFC, Koppa dated 24.04.2013 in C.C.No.451/2008 and the judgment passed by the Principal District and Sessions Judge, Chikkamagaluru dated 09.11.2016 in Crl.A.No.233/2013 are set aside. The matter is remanded to the Trial Court to consider the matter afresh in accordance with law within a period of six months, since the matter is of the year 2008. (iii) The revision petitioner and the prosecution are directed to appear before the Trial Court on 25th July, 2022 without expecting any notice. 21 (iv) The respective parties are directed to assist the Trial Court in disposal of the case within the stipulated time. (v) The Registry is directed to transmit the records forthwith to the concerned Court. Sd/- JUDGE ST