

The State Vs. Y. Jayapal Hegde S/O Sri Y. Dharmaraj Hegde

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Court : Karnataka

Decided On : Jan-28-2008

Reported in : ILR2008KAR904; 2008(4)KarLJ145

Judge : V. Jagannathan, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 12, 14, 14A, 16(1), 20 and 20(1); Prevention of Food Adulteration Rules, 1955 - Rules 14, 15 and 16

Appeal No. : Criminal Appeal No. 1516/2002

Appellant : The State

Respondent : Y. Jayapal Hegde S/O Sri Y. Dharmaraj Hegde

Advocate for Def. : K. Chandranath Ariga, Adv.

Advocate for Pet/Ap. : Honnappa, H.C.G.P.

Disposition : Appeal dismissed

Judgement :

V. Jagannathan, J.

1. The State is in appeal questioning the judgment of the lower appellate court by which the learned judge of the lower appellate court had reversed the judgment of

conviction and sentence passed by the trial court in C.C. No. 75/1989 for the offence punishable under Section 7(i) r/w 2(ia)(a) and (m) the [Prevention of Food Adulteration Act, 1954](#) ('the Act' for short).

2. The facts in brief are to the effect that the Food Inspector of Primary Health Centre, Ajekar in Karkala Taluk, had visited the provision shop run by the respondent-accused on 30.8.1988 and found that the arrowroot item kept in the shop was adulterated one and not fit for human consumption and, therefore, he purchased 600 grams of arrowroot from the respondent and put it in plastic covers and thereafter a mahazar was conducted and the sample was subjected to test by the public analyst. The report given by the public analyst on 1.10.1988 was to the effect that the samples of arrowroot were found to be adulterated with starches other than arrowroot and, therefore, a report; was sent to the District Health Officer, Mangalore, who in turn accorded permission to the Food Inspector Shri Chandrashekhara Shetty to institute prosecution against the respondent. This is how the prosecution began and in support of its case, the prosecution examined P.Ws. 1 and 2 and documents Exs.P-1 to P-20 were marked. No evidence was placed by the respondent

3. After appreciating the evidence on record, the trial court accepted the case of the prosecution and convicted the respondent for the offences under Sections 7(i) read with 2(ia)(a) and (m) punishable under Section 16(1)(a)(i) of the Act and sentenced him to pay a fine of Rs. 800/ and also to undergo simple imprisonment for six months. Aggrieved by the judgment of conviction and sentence passed as aforesaid, the respondent-accused preferred appeal before the District & Sessions Judge, Udupi. The lower appellate court, after considering the contentions urged before it, allowed the appeal filed by the respondent on two grounds viz., that the prosecution did not follow the provisions of the Act and the Prevention of Food Adulteration Rules, 1955 ('the Rules' for short) in regard to collection of samples and it was collected not in bottle or jar or other container, but it was collected in polythene bags, which was violative of the requirement of Rule 14 of the Rules and the second reason is that the lower appellate court found that the prosecution had failed to comply with the requirement of Section 20 of the Act insofar as sanction to prosecute the respondent is concerned. The court found that the

District Health Officer was not competent to accord sanction to launch prosecution and, therefore, the sanction was invalid. It is these two grounds that led the lower appellate court to reverse the judgment of conviction and sentence passed and to acquit the respondent by allowing his appeal.

4. Aggrieved by the decision of the lower appellate court in reversing the judgment of the trial court, the State has come up in this appeal.

5. I have heard Sri Honnappa, learned Government Pleader for the State, and learned Counsel Sri K. Chandranath Ariga. for the respondent-accused.

6. The submission of the learned Government Pleader is that the lower appellate court; was not justified in holding that the collection of samples in polythene bags is violative of Rule 14 of the Rules and secondly, the sanction accorded by the District Health. Officer is in accordance with the requirement of Section 20 of the Act and, as such, the view taken by the lower appellate court is contrary to law and hence, the appeal be allowed.

7. On the other hand, the learned Counsel for the respondent-accused submitted that a bare look at the provisions contained in Rule 14 of the Rules make it clear that the samples will have to be collected either in a bottle or in a jar or other container, but not in polythene bag and, therefore, the first ground upon which the lower appellate court, recorded its finding is just and proper. As far as the defect in sanction is concerned, the learned Counsel for the respondent, by referring to Section 20 of the Act, submitted that the prosecution had failed to place on record the written consent given by the Central Government or State Government and, therefore, the sanction accorded by the District. Health Officer as per Ex. P-15 is contrary to the requirement of Section 20(1) of the Act In support of his submissions, he also placed reliance on the decisions reported in 1998 CrI.L.J. 1137 and 1996 CrI.L.J. 683.

8. Having thus heard the submissions of both sides, the point to be considered is whether the lower appellate court was justified in reversing the judgment of conviction and sentence passed by the trial court.

9. The first ground which led the lower appellate court to reject the case of the prosecution is that the samples of arrowroot were collected in polythene bags. In fact, P.W. 2 Chandrashekhara Shetty has deposed in his evidence that he collected the samples in plastic covers and sealed them with the help of candle light. Rule 15 of the Rules provides that all bottles and jars or other containers containing the samples for analysis be properly labelled and addressed. Rule 16 also describes the manner in which the samples shall be packed and sealed and at Clauses (b) and (c), reference is made to bottle, jar or other container. Thus, it is clear from the use of the expressions 'bottle, jar or other container' that what was required was a container of the type and nature described in the said Rule 15 for collecting the samples.

10. The use of the expression 'other container' will have to be read in tune with the words preceding that viz., bottle and jar, by complying the well known rule of construction viz., ejusdem generis. To put it in a layman's language, birds of the same feather flock together. Therefore, the expression 'other container' will have to be read and understood in the light of the use of the words 'bottle and jar'. Hence, the question of permitting the samples being collected in plastic or polythene bags is not contemplated under the Rules. Therefore, the procedure followed in the instant case is contrary to the above Rules. The decision reported in 1996 Cri.L.J. 683 also is to the effect that non-compliance of the mandatory requirement of taking food samples in clean and dry bottles vitiates prosecution.

11. As far as sanction is concerned, Section 20 of the Act provides thus:

20. Cognizance and trial of offences

(1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14A, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in Section 12, if he or it

produces in court a copy of the report of the public analyst along with the complaint.(2) xxx

12. It is, therefore, clear from the above provisions that no prosecution shall be instituted without the written consent, of the Central Government or the State Government, as the case may be. In the instant case, it is not in dispute that the sanction was accorded by the District Health Officer as per Ex. P-15 and the relevant portion of the said sanction order reads as under:

In exercise of the powers conferred on me under Section 20(1) read, with Govt. Notification No. HFW 542 PPS dated 18.4.1978, I hereby accord written consent to Sri C. Chandrashekar Shetty, Food Inspector, P.H. Centre, Ajekar, to institute prosecution under the provisions mentioned in para (2) above against the accused referred in para (2) above.

13. Nowhere in the sanction order we find mention of the Central Government or the State Government, giving its written consent authorising the District Health Officer to accord sanction. As such, the view taken by the lower appellate court that the sanction order is invalid is in accordance with the law laid down by the Apex Court in the case of Union of India v. P.K. Roy : (1970)ILLJ633SC .

14. For the foregoing reasons, the appeal lacks merit and is accordingly dismissed.