M.A. Rasheed Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Oct-31-1995

Reported in : 1996(1)ALD(Cri)403; 1996(1)ALT(Cri)285; 1996CriLJ1156

Judge : V. Rajagopala Reddy, J.

Acts : Prevention of Food Adulteration Act - Sections 7 and 16

Appeal No. : Cri. Rev. Case No. 691 of 1992

Appellant : M.A. Rasheed

Respondent : State of Andhra Pradesh

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Raja Reddy, Adv.

Judgement :
ORDER

1. The petitioner is the accused No. 1 in C.C. No. 16 of 1991 on the file of the VII Metropolitan Magistrate, Hyderabad. He was charged along with A-2 and A-3 and was convicted under sections 7 and 16 of Prevention of Food Adulteration Act (for short, 'the Act') and sentence to undergo rigorous imprisonment of one year and to pay a fine of Rs. 2,000/-, in default to undergo rigorous imprisonment for 4 months. The other accused have been acquitted of the charges. The appeal filed by the

petitioner in Crl.A. No. 150 of 1992 on the file of the I Addl. Metropolitan Sessions Judge, Hyderabad, ended in dismissal and the conviction and sentence have been confirmed. Questioning the order this Crl. Revision Case has been filed.

2. The case of the prosecution is that on 21-8-91 at 12 noon the Food Inspector (P.W. 1) inspected the business premises of the petitioner, a General Stores at Mallepalli, Hyderabad, along with P.W. 2 his Attender. Sample was taken after due notice from an open gunny bag which was kept for sale. The sample was sent to the analyst and it was found that chanadal was adduced with kesari dal. The trial Court relying upon the evidence of P.Ws. 1 and 2 found that the sample was adulterated and has convicted and sentenced the petitioner as stated above. The Appellate Court reappraised the entire evidence on record and also found that the sample purchased from the petitioner was adulterated. The contentions raised by the petitioner before the Appellate Court have been considered in detail and have been rejected.

3. The counsel for the petitioner has vehemently contended before me that no independent witnesses have been examined in the case to prove Ex.P-4, the mediator-nama for the seizure of the food article, and hence the sale of the food article by the petitioner itself is doubtful. It is to be seen that one witness has been called at the time of holding panchanama and he was also cited as a witness as L.W. 2. However, he could not be examined for the reason that he could not be traced. The Courts below have considered this aspect and held that the non-examination of this witness does not therefore vitiate the prosecution case relating to sale of food article.

4. It is next contended that Rule 12 of Prevention of Food Adulteration Rules (for short, 'the Rules') has been violated. The Rule contains two limbs and both the limbs have been not complied by the prosecution and both the Courts below have not considered the violation of 1st limb of Rule 12 of the Rules.

5. The first limb of Rule 12 of the Rules provides that Food Inspector shall give notice of his intention to take sample, in the form No. VI then and there to the person from whom he takes sample and simultaneously also to the persons, if any, whose name was disclosed under Section 14-A of the Act. It is admitted that

notice in due form has been given to the petitioner before taking sample. However, no notice in Form-VI was given to A-2 and A-3 who were the wholesaler dealer nor any sample was taken from them. The contention is that the Food Inspector should have taken a sample from the wholesaler dealer also. This contention would assume importance if the Food Inspector had taken the samples from a sealed bag from the petitioner. In that event it becomes necessary that the samples from the wholesaler also were to be taken to verify whether the petitioner sold the food articles in the same form as it was purchased from the wholesale dealer. From a reading of this Section it cannot be said that sample from wholesale dealer has to be necessarily taken in all events. This Section only contemplates giving notice simultaneously along with the notice given to the petitioner. The food samples having been taken from an open bag, the Food Inspector might not have thought it necessary to take samples from the wholesale dealer.

6. The second limb of Rule 12 of the Rules mandates the Food Inspector to take a sample from the container in original condition of the articles, if such container is available in the premises. In this case the sample was taken from an open container and the evidence of P.W. 1 is that no other bag of the same article was available in the shop and the evidence on this aspect also believed by the Courts below. There is no material on record to hold that the petitioner was selling article in the same form as purchased from the wholesale dealer nor that he was having any other sealed bag in his shop and that no sample was taken from such bag. In view of the findings given by the Courts below, the argument in this regard has to be rejected.

7. The next contention is regarding warranty. Section 19(2) of the Act protects the purchaser of the food article, if he was selling the commodity in the same condition as he purchased from the sellor. It is also contended that the petitioner will not lose his benefit of warranty even if the article was sold in an open container. In support of this proposition he cited A.P. Grain and Seed Merchants Association v. Union of India, : 1971 CriLJ1556 and R. Damodaran & D. P. Gupta v. Chief Health Inspector and Food Inspector, 1986 (II) PFA Cases 327 (Mad). It is true that the Supreme Court has ruled that the purchaser will not lose the benefit of warranty

under section 19(2) of the Act if he opens the container of a branded article of food, nor does it imply, that if the container of a branded article is opened, the article of food ceases to be in the same state in which the vendor purchased it. If the article of food is sold in the same condition in which it was purchased from a licensed manufacturer or dealer, or was purchased with a warranty, the vendor will not lose the protection of sub-section (2) of Section 19 of the Act merely because he opened the container. It is also stated that the purchaser is protected provided he has properly sealed the article and sold the article in the same condition as he purchased the article.

8. The above decisions do not give a blanket protection to the purchaser on the ground of warranty. The Supreme Court clearly stated that it has to be established in each case that the purchaser has sold the food article in the same state in which it was purchased from the wholesaler. In this case, the petitioner being a kirana merchant and was selling chana dal making with kesari dal in a loose bag, unless there is material on record to show that he was selling in the same State in which it was purchased, the petitioner cannot avail the benefit of warranty. The question of warranty has to be decided on the facts and circumstances of each case. Both the Courts below have found that the petitioner is not protected under the warranty in view of the fact that he was selling food articles in an open bag.

9. Lastly it was contended that the sanction was not properly obtained since all the documents of the case were not placed before the sanctioning authority. The petitioner particularly relied upon Ex.D-1 case memo and says that it was not placed before the sanctioning authority. Both the Courts below have found that the sanction was obtained properly. The Appellate Court has considered sanction order Ex.P-14, wherein it was stated that the sanctioning authority has taken into consideration all the material placed before it and gave sanction to prosecute not only A-1 but also A-2 and A-3, who were wholesalers, who were alleged to have sold the article to the petitioner. There is nothing on record to show that Ex.D-1 was not placed before the sanctioning authority. However, in view of the fact that the wholesale dealers also have been prosecuted, whether Ex.D-1 was placed before the sanctioning authority or not loses its significance.

10. For the reasons given aforesaid the convictions passed by the Courts below have been confirmed.

11. It is contended that the sentence is excessive and that the petitioner is a small kirana merchant and that the article adulterated is not very injurious to health. In view of the fact that the offence has been committed quite a long time back and also taking into consideration that the petitioner is a small kirana merchant and all other circumstances of the case, I deem it proper to reduce the period of imprisonment for six months from one year. Accordingly the sentence of the petitioner to undergo rigorous imprisonment for a period of one year is reduced to a Rigorous Imprisonment for a period of six months. The fine of Rs. 2,000/- is confirmed. With this modification the Crl. Revision Case is dismissed.

12. Petition dismissed.