

G. Mallesh Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Apr-12-2007

Reported in : 2007CriLJ3394

Judge : Bilal Nazki and ;Nooty Ramamohana Rao, JJ.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 10(4), 10(4A), 11(4) and 13(2)

Appeal No. : Cri. Revn. Case No. 1478 of 2002

Appellant : G. Mallesh

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor and ;C. Padmanabha Reddy, Amicus Curiae

Advocate for Pet/Ap. : N. Raghavendra Reddy and ;P. Venugopal, Advs.

Judgement :

Bilal Nazki, J.

1. Heard learned Counsel for the parties and also learned senior counsel, Sri. C. Padmanabha Reddy, appearing as Amicus Curiae.

2. A learned single Judge of this Court while hearing the Criminal Revision Case made a reference to this Court on a doubt entertained by him about the correctness of the law laid down in *R. Chandrakanth v. State of A.P.* 2002 (2) ALT (Cri) 288 (AP).

3. It is contended by the learned Counsel for the parties that in fact, the judgment in *R. Chandrakanth's case* (supra) no longer holds good in view of a Division Bench decision of this Court in *Handi Instant Foods, Chennai v. State of A.P.* 2007 (1) ALD (Cri) 316 (AP) : 2007 Cri LJ 1112. Since the judgment, which was sought to be referred by the learned single Judge of this Court is contrary to the judgment of the Division Bench (supra) and this Court is in respectful agreement with the judgment of the Division Bench, therefore, we do not intend to go again into the questions raised.

4. Paras 11, 14 and 15 of the judgment of the Division Bench (supra) are reproduced.

From the above decision, it is clear that Section 13(2) of the Act confers valuable right on the accused under which provision the accused can make an application to the Court within a period of 10 days from the receipt of a copy of the report of the Public Analyst to get the samples of food analyzed in the Central Food Laboratory and in case the sample is found by the Central Food laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. That would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case, even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay.

Whenever there is a report of the Analyst that the food article is adulterated by the date of filing of the complaint, there was prima facie material to show that the accused committed the offence. In order to prove his innocence, it is for the accused to make an application to send the second sample to the Central Food Laboratory for analysis by exercising his right provided under Section 13(2) of the

Act and if the Central Food Laboratory differs with a view of the Public Analyst, the accused can be given the benefit of doubt, if there is a report from the Central Food Laboratory after sending the second sample for analysis that the food sample is not fit for analysis due to lapse of time, the accused is entitled for quashing the proceedings. But, without sending the sample to the Public Analyst either on the ground that there was time gap from the date of collecting the sample and filing the complaint or that the date fixed for using the food article has expired or that the period fixed for 'best before' use has been crossed, the accused is not entitled for quashing the proceedings without showing that prejudice has been caused on account of, delay caused in filing the complaint and serving the copy of the report of Public Analyst on the accused under Section 13(2) of the Act.

For the foregoing reasons, we hold that when a complaint is filed under the Prevention of Food Adulteration Act against the accused for adulteration of food article, the prosecution is not liable to be quashed against him on the ground that he was denied a right under Section 13(2) of the Act for sending the second sample to the Central Food Laboratory for analysis on account of delay caused in filing the complaint and furnishing the Analyst Report to the accused without there being any prejudice caused to him is shown.

5. It is further contended by the learned Senior Counsel appearing as Amicus Curiae that a judgment in *M. Eswaraiah v. State of A.P.*, Food Inspector, Cuddapah 1999 (1) ALD (Cri) 42 (AP), has wrongly held that Section 11(4) of the [Prevention of Food Adulteration Act, 1954](#) (for short 'the Act') was applicable to all those cases in which samples were taken by the Food Inspector. He pointed out that Section 11(4) of the Act would apply only when an article of food is seized by Food Inspector in terms of Section 10(4) of the Act.

6. Section 10(4) of the Act lays down:

if any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided and he shall in either case, take a sample of such article and submit the same for analysis to a public analyst: Provided that where the food inspector keeps such

article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the food inspector deems fit and the vendor shall execute the bond accordingly.

7. Section 11(4) of the Act lays down that:

An article of food seized under Sub-section (4) of Section 10, unless destroyed under Sub-section (4A) of that section, and any adulterant seized under Sub-section (6) of that section shall be produced before a magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst:

Provided that if an application is made to the magistrate in this behalf by the person from whom any article of food has been seized the magistrate shall by order in writing direct the food inspector to produce such article before him within such time as may be specified in the order.

8. The Sections are so clear that no further discussion is needed to come to a conclusion that Section 11(4) of the Act would not apply to all the cases, in which sample is taken by the Food Inspector, but would only apply in those cases where article of food is seized in terms of Section 10(4) of the Act.

9. In this view of the matter, we hold that the law laid down in M. Eswaraiah's case (supra) is not the correct law. On the other hand, the judgment of this Court in Bhogi Uma Maheswara Rao v. State of Andhra Pradesh 2003 (1) ALT 330 : 2003 Cri LJ (NOC) 166 (AP) holds the law correctly.

10. The reference is accordingly answered. Let the revision be placed before the learned single Judge.