

**Devarkonda Ramesh Vs. the State of A.P.**

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**Court :** Andhra Pradesh

**Decided On :** Feb-21-2003

**Reported in :** 2003(1)ALD(Cri)803; 2003CriLJ2797

**Judge :** Dalava Subrahmanyam, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 13(2) and 16A

**Appeal No. :** Criminal Revn. Petn. Nos. 705 and 706 of 2000

**Appellant :** Devarkonda Ramesh

**Respondent :** The State of A.P.

**Advocate for Def. :** Public Prosecutor

**Advocate for Pet/Ap. :** P. Laxma Reddy, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Dalava Subrahmanyam, J.**

1. The revision petitioner accused filed the revision against the judgment, of conviction and sentence in C.C. No. 13 of 1994 dated 24-9-1998 on the file of the Judicial I Class Magistrate, Luxettipet in convicting him for an offence under

Sections 7(i), 2(ia) (m) r/w. 16(1)(a)(i) PFA No. 1954 and sentencing him to suffer R.I. for 6 months and to pay a fine of Rs. 1,000/- in default, suffer S.I. for 15 days, which was confirmed in Criminal Appeal No. 109 of 1998 on the file of the Additional Sessions Judge, Adilabad.

2. The brief facts of the case are as follows:

The Food Inspector on 13-5-1993 at about 4.45 p.m. along with his staff inspected the shop of the revision petitioner-accused and took samples of Mirchi powder, which was meant for sale for human consumption. The Food Inspector suspected the same to be adulterated, collected the sample of Food and sent one of the samples to the public analyst who opined that the said food article was adulterated and thereafter he lodged the complaint. The prosecution examined P.Ws. 1 to 3 and marked Exs. P-1 to P-24. The learned Magistrate after appreciating the entire evidence came to the conclusion that the offence was proved against the revision petitioner-accused. Aggrieved against the judgment of conviction and sentence the revision petitioner-accused filed criminal appeal No. 109 of 1998. The learned Additional Sessions Judge, Adilabad dismissed the appeal and confirmed the conviction and sentence.

3. Aggrieved against the judgment of conviction and sentence the revision petitioner-accused filed the revision contending that the judgment of conviction and sentence is illegal and not maintainable. It was further contended that the Courts below failed to appreciate that the case against the accused was tried as a calendar case instead of conducting as a summary trial. It was further contended that no notice about the report of the public analyst was served on the accused and therefore the trial is vitiated. It was further contended that the ingredients of the offence has not been made out and hence the Courts below committed error in convicting the revision petitioner-accused.

4. Now the point for consideration is whether the Courts below erred in convicting and sentencing the revision petitioner-accused for the offence alleged against him under the Prevention of Food Adulteration Act?

5. The revision petitioner-accused is akirana merchant and on 13-5-1993 at about 4.45 p.m., the Food Inspector inspected his shop and collected sample of Mirchi powder, and the public analyst opined that the same was adulterated.

6. The learned advocate appearing for the revision petitioner contended that the learned Munsiff Magistrate tried the case as a calendar case and the procedure followed by the Magistrate is irregular and he ought to have tried in a summary way. Section 16(A) of the Prevention of Adulteration Act, 1954 reads as follows:

'Section 16(A) Power of Court to try cases summarily:--

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under Sub-section (1) of Section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be apply to such trial:

Provided that in the case of any conviction in a summary trial under this Section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, unreasonable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said code.'

As per the above section, the Munsiff Magistrate ought to have tried the case summarily, but he followed the warrant procedure, which is vitiated. The learned advocate appearing for the revision petitioner-accused relied on decisions reported in (i) Public Prosecutor in Re: (1978) 2 Andh LT 546; (ii) Brij Pal v. The State of Haryana, (1999) 1 FAC 316 (Punjab & Haryana) while in the case of Brij Pal v.

The State of Haryana, it was held that non-compliance of the mandatory provisions would entitle the accused to be acquitted, and in *Ram Kumar v. State of Haryana*, (1995) FAC 63 (Punj & Hary), while it was held that the Magistrate, was bound to form his judicial opinion in accordance with the specific provisions of the statute provided under Section 16-A of the Act before switching over, from the summary procedure to a warrant case procedure. The revision petitioner-accused could not be deprived of a speedy trial by the mistake of the Magistrate who committed an illegality in not trying the case in a summary manner but resorted to warrant procedure without giving any reasons as was required of him in accordance with the second proviso to Section 16-A and in view of the fact that the trial Court failed to follow the mandatory provisions of Section 16-A, the trial is vitiated.

7. The next point that is urged by the learned counsel for the revision petitioner-accused is that the report of the public analyst was not supplied to him as required under Section 13(2) of the Act. Even though such an objection was not raised before the trial Court, it can be raised at any point of time. As seen from the records it is noticed that the public analyst report was sent by registered post to the address mentioned in the mediators report at the time of taking the sample. But the registered cover was returned unserved. The report was not served as required under Section 13(2) of the Act. Mere service 'by registered post is not sufficient service. Further, the cover was returned unserved. No steps were taken by the prosecution to serve the said notice. For the above said reasons, the prosecution failed to follow the mandatory provisions contemplated under Section 13(2) of the Act and on this ground also prejudice was caused to the accused and hence the trial is vitiated.

8. The learned advocate appearing to the revision petitioner-accused relied on a decision, reported in *Rameshwar Dayal v. State of U. P.*, (1996) 2 FAC 197 (SC) where it was held that serious prejudice has been caused to revision petitioner because of non-supply of the public analyst report as required under Section 13(2) of the Act. Further, it was held that such an objection can be taken even at the stage of revision. The Courts below have not considered the above factors into consideration and since prejudice was caused to the revision petitioner-accused, the conviction and sentence imposed by the Courts below are liable to be set

aside. For the above said reasons, the Courts below erred in convicting the revision petitioner-accused for the offence alleged against him under the Prevention of Adulteration Act and the revision petitioner-accused is found not guilty of said offence and he is acquitted,

9. In the result, the revision is allowed and the conviction and sentence imposed by the Courts below are set aside.

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