

Vargheese Vs. State

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Court : Chennai

Decided On : Nov-21-2000

Reported in : 2001CriLJ2295

Judge : M. Chockalingam, J.

Acts : Essential Commodities Act - Sections 7; Prevention of Food Adulteration Act - Sections 10, 11, and 13(2); Tamilnadu Scheduled Articles (Prescription of Standards) Order, 1977; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Civil Appeal No. 64 of 1994

Appellant : Vargheese

Respondent : State

Advocate for Def. : S. Ravi, Govt. Adv.

Advocate for Pet/Ap. : R. Rajasekar, Adv.

Disposition : Appeal allowed

Judgement :

M. Chockalingam, J.

1. This appeal is directed against the judgment of the Special Judge, E.C. Act, Thanjavur, dated 12-1-1994 rendered in S.T.C. No. 47 of 1992, convicting the

appellant/first accused under Clauses 3 and 4 of Tamilnadu Scheduled Articles (Prescription of Standards) Order, 1977 read with Section 7(i)(a)(ii) of the Essential Commodities Act and sentencing him to undergo R.I. for one year and to pay a fine of Rs. 2,000/- and in default to undergo R.I. for four months.

2. Short facts that are necessary for the disposal of this appeal are as follows :

Prosecution had examined P.Ws. 1 to 4, and marked Exs.I to 10. P.W.4 Inspector along with his party, attached to Civil Supplies, C.I.D., Cuddalore, made an inspection on 27-7-1990 at 12.30 hrs. at the premises of the appellant and second accused situate at No. 6/3, Vellore Housing Board Building, Gundusalai, Cuddalore N.T., wherein the accused 1 and 2 were found manufacturing adulterated tea. On enquiry, the appellant admitted that he was residing in that premises along with his younger brother the second accused, and they were manufacturing adulterated tea. The Inspector in the presence of the witnesses prepared Ex.P9 observation Mahazar. He found tea in gunny bags, and adulterated tea powder and coffee powder, in a wooden box. He took 600 grams from each gunny bags and wooden box, as sample. He divided it into three portions, put the same in bags and sealed them. Out of six samples, he gave respective sample packets to the appellant. The sample adulterated tea was seized under Ex.P2 Mahazar in the presence of the witnesses P.W. 1 Allimuthu and P.W.2 Thangamani. The Inspector arrested the first accused/appellant and registered a case in Cr. No. 19/90. Ex.P10 is the first information report. The Inspector arrested the second accused on 30-7-90. The seized contrabands were sent to the Court on 17-8-90 along with a requisition to send the same for chemical analysis. Accordingly the said samples were sent to the Public Analyst, and the Analyst reports Exs.P3 to P8 were received. As per Exs.P4 to P8 Analyst report, the sample tea were found to be adulterated. Hence the Inspector filed the charge-sheet under the above said provisions.

3. After the evidence of the prosecution was over, the appellant was questioned under Section 313 of Cr. P.C. and he pleaded innocence.

4. After termination of the trial, the trial Court found the appellant guilty and convicted and sentence him, as referred to earlier, while acquitting the second

accused as the charges levelled against him were not proved.

5. Arguing for the appellant, the learned Counsel would submit that the lower Court was in error in convicting the appellant, having acquitted the second accused on the same set of evidence, that the lower Court was in error to hold that the appellant was present, having held that A2 was not present; that it is pertinent to note that the lower Court has observed that P.W. 1's evidence was false, but it is highly surprising that it has believed the prosecution case; that the lower Court should have dismissed the case of the prosecution, since the mandatory provisions of law were not followed at all. The learned Counsel would further add that though the sample was taken on 27-7-90, it was sent to the analyst on 20-8-90 only and the prosecution has not given any explanation whatsoever; and thus the enormous delay is violative of Sub Section 10 and 11 of P.F. Act; that for taking samples, pure materials were not used and hence under the stated circumstances, the lower Court should have rejected the case of the prosecution in toto and acquitted the appellant.

6. The learned Government Advocate on the Criminal Side was also heard.

7. After hearing the rival submissions and after careful scrutiny of the available records and materials, this Court has to necessarily set aside the judgment of the Court below.

8. In order to bring home the accusation made against the appellant, four witnesses were examined by the prosecution. Regarding the inspection and seizure of the contrabands, P.Ws. 1 and 2 were examined. According to the evidence of P.W. 4 Inspector, when he made the inspection of the said premises, A1 /appellant was present; that he gave a statement admitting the process and manufacturing of the adulterated tea by him with his younger brother-A2, and that the contrabands were seized in the presence of the two witnesses P.Ws. 1 and 2, P.W. 1 has deposed that when he accompanied the Inspector to the premises in question, it was found locked and the same was broke opened; that they made entry into the premises. Though the said witness was one of the two witnesses for inspection and seizure of the contraband, despite the above evidence, he was not treated hostile by the prosecution, and thus the said evidence P.W. 1 would be

binding on the prosecution. The prosecution does not come forward to give any explanation as to why P.W. I's evidence should not be believed. In view of the said evidence, it is highly doubtful whether any such inspection was held, as contended by the prosecution side and the alleged contrabands were seized as per the Mahazar.

9. P.W.3, a Court Assistant, has spoken to the fact of having sent the samples for chemical analysis and the Analyst reports have also been filed by the prosecution. However, the copy of the Analyst report was not served on the appellant.

10. Apart from the above, the proceedings initiated against the appellant cannot stand the scrutiny of law, in view of the mandatory provision under Section 13(2) of the Prevention of Food Adulteration Act. It has been already settled by this Court in a batch of cases reported in Section Arunachalam v. State, rep. by The Inspector of Police, Tirunelveli, 1993 MLW 211, that the relevant Section of the Prevention of Food Adulteration Act for taking sample and sending it to the Public Analyst, would be applicable to the prosecution case under Tamilnadu Scheduled Articles (Prescription of Standard) Order, 1977.

11. Under Section 13(2) of the Prevention of Food Adulteration Act, the Officer who took the samples, after receipt of the Analyst report and after filing the report in the Court, shall give a notice to the appellant along with a copy of the report of the Public Analyst and an intimation in writing that he could file an application before the Court making a request to send the second sample for the second analysis. A very reading of Section 13(2) of the Act would clearly indicate that it was intended to provide certain safeguards and right to the accused. In the instant case, admittedly Section 13(2) notice was not at all served on the appellant.

12. Section 13(2) of the Act contemplates that the accused should be put on notice as to the Analyst report along with an intimation in writing that he is entitled to make an application before the Court requesting for second analysis. The failure to serve a notice on the appellant as contemplated under Section 13(2) of the Act has vitiated the whole proceedings and would be fatal to the case of the prosecution. Thus the case of the prosecution cannot also be sustained in law.

13. The above short point would be suffice to set aside the judgment of the Court below, convicting the appellant on the said provisions. Accordingly, the conviction and sentence imposed upon the appellant are set aside, and the appellant/first accused is acquitted of the charges framed against him. The appeal is allowed. Fine, if paid, is directed to be refunded to the appellant.

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