

**HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

**CRL.R.C.No.57 of 2004**

**JUDGMENT:**

This criminal revision case is directed against the judgment of the learned IV-Additional Sessions Judge, Ongole, in Crl.A.No.17 of 1999 dated 09.01.2004 confirming the conviction and sentence of simple imprisonment for a period of one year and a fine of Rs.1,000/-, in default, simple imprisonment for a period of three months, for the offences punishable under Sections 16 (1) (a) (i) read with Section 7 (i) and 2 (ia) (m) of the Prevention of Food Adulteration Act (for short 'the Act') read with Rule 47 of Prevention of Food Adulteration Rules, imposed against the revision petitioner-accused by the learned Additional Judicial Magistrate of First Class, Addanki, Prakasam District, in C.C.No.189 of 1996 dated 22.01.1999.

It is the case of the prosecution that on 17.10.1995 at about 1.00 P.M. the Food Inspector, Prakasam District (PW.1) inspected the toddy shop of the accused and found the accused transacting business with an open pot containing 12 litres of toddy, and on suspicion that the said toddy being adulterated, he purchased one litre of toddy for the purpose of sending it for public analysis. After purchase, he divided the said toddy into three equal parts and sent one sample to the Public Analyst, who gave his report opining that the sample does not conform to the standards of alcohol content and contains saccharine and is, therefore, adulterated. Accordingly, a complaint was filed after following the procedure contemplated under the Act. The complaint was taken cognizance by the concerned Magistrate.

During the trial, the prosecution has examined P.Ws.1 to 3 and got marked Exs.P1 to P26 to prove the guilt of the accused. On behalf of the accused, D.W.1 was examined and Exs.D1 and D2 were marked. On a perusal of the entire evidence, both oral and documentary, the trial Court found the accused guilty of the offences punishable under Sections 16 (1) (a) (i) read with Section 7 (i) and 2 (ia) (m) of the Prevention of Food Adulteration Act read with Rule 47 of Prevention of Food Adulteration Rules, and accordingly convicted and sentenced him as stated supra. On appeal, the said conviction and sentence were confirmed. Hence this revision.

The main contention of the learned Counsel for the petitioner is that the Food Inspector has no jurisdiction to file a case against the petitioner-accused under the provisions of the Prevention of Food Adulteration Act and even if he has jurisdiction he shall strictly follow the procedure envisaged under the relevant rules framed under the provisions of the Excise Act, but not under the provisions of the Prevention of Food Adulteration Act. In this context, the learned Counsel for the petitioner has placed reliance on the decision of this Court in GAZETTED FOOD INSPECTOR, DIV-1, MAHABUBNAGAR DISTRICT Vs. P.MOHAN GOUD<sup>[1]</sup>, wherein it was held as under:

“The analyst report in the instant case shows that the sample did not conform to alcohol content. The sample containing less percentage of alcohol content cannot be termed as adulterated having due regard to the Rules 4 and 5 of the latter Rules. The sample has not been analyzed by the Chemical Examiner as envisaged under the provisions of the former Rules. Lifting of the samples and getting the samples analyzed as has been done in this case by the Food Inspector are in total deviation to the

provisions of the Rules envisaged under the former Rules. The penal provisions are contained in the Excise Act. Section 34 thereof prescribes penalties for illegal import, export, transport, manufacture, sell or possess, of any intoxicant. The expression 'intoxicant' is defined under clause (19) of Section 2 of the Excise Act. As per the said provisions the expression "intoxicant" means any liquor as defined in clause (21) thereof. As discussed hereinabove, clause (21) of Section 2 defines the expression "liquor" which is an inclusive definition and it includes toddy. Therefore, toddy though it is tapped from a tree, is a liquor and consequently intoxicant as per the provisions of the Excise Act. If such an intoxicant is sold in contravention of any Rules issued under the Excise Act, it is punishable under Section 34 thereof. Section 36 thereof prescribes penalty to holder of licence for his misconduct. Section 37 thereof prescribes penalty for adulteration by the licensed vendor or manufacturer. The provision specifically envisages that if the licensee indulges in mixing or permitting to mix with the intoxicant being sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength or any article prohibited by any Rule made under the Excise Act. Therefore, adulteration of toddy shall have to be understood as contained in Section 37 of the Excise Act and as contained in Rule 5 of the latter Rules. The samples not conforming to the alcohol content, as has been drawn and analyzed in the instant case, cannot be considered to be adulterated under the provisions of the Excise Act and the Rules framed specifically in respect of toddy intoxicant. The whole case launched against the respondent herein in that view of the matter is misconceived.

The competency of the Food Inspector to lift the samples cannot be doubted. But the Food Inspector while seeking to lift the sample of any

intoxicant when he is specifically authorized or empowered, he shall follow the procedure envisaged under the relevant Rules framed under the provisions of the Excise Act but not the provisions of the PFA Act and the Rules framed thereunder. The prosecution of the respondent in this case is in flagrant violation of the provisions of the Excise Act and the relevant Rules framed in respect of toddy. Therefore, in that view of the matter, the prosecution must fail”.

In the light of the aforesaid decision of this Court, this Court has no hesitation to come to the conclusion that the entire prosecution launched against the petitioner-accused under the provisions of the Prevention of Food Adulteration Act and the Rules framed thereunder is vitiated.

The Criminal Revision Cases is accordingly allowed and the conviction and sentence passed against the petitioner-accused by the trial Court for the offences punishable under Sections 16 (1) (a) (i) read with Section 7 (i) and 2 (ia) (m) of the Prevention of Food Adulteration Act read with Rule 47 of Prevention of Food Adulteration Rules,, as confirmed by the appellate Court, are hereby set aside and the petitioner-accused is acquitted of the said offences. Fine amount, if any, paid by the petitioner-accused shall be refunded to him.

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**(GOPALA KRISHNA TAMADA, J)**

30-09-2010  
Gsn.

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[\[1\]](#) 2006 (1) ALT (CRL.) 29 (A.P)