HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No. 253 OF 2008

O R D E R:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner/accused challenging the judgment dated 18.02.2008, passed by the learned I Additional Sessions Judge, Mahabubnagar, in Criminal Appeal No.24 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner for the offence under Section 7(i), 2(ia)(m) of the Prevention of the Food Adulteration Act, 1954 (for short, 'the Act') punishable under Section 16(1)(a)(i) of the Act, vide judgment dated 19.01.2007 in C.C.No.126 of 2005 by the Judicial Magistrate of I Class, Narayanpet, were confirmed.

2. The revision petitioner herein is the accused and the respondent herein is the complainant in C.C.No.126 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the prosecution is brief is that PW1 – Food Inspector along with his attender visited M/s.Amul Ice Cream shop of the accused on 15.05.2004 at 10.30 a.m. At that time, the accused was transacting the business. Then, PW1 disclosed his identity as Food Inspector and called PW3 to act as mediator. PW1 inspected the shop and found 50 ml. of Ice candy yellow 200 in number and Ice candy orange 250 in number in ice cooler for sale of human consumption. On suspicion, PW1 purchased 18 Ice candy yellow each about 50 ml. for Rs.27/- and obtained cash receipt from the accused. Thereafter, PW1 served Form-VI notice to the accused under

acknowledgement. PW1 divided the Ice candy which was purchased in three equal parts containing six Ice candy each, added 24 drops of 4% Formalin, sealed as per the procedure prescribed under the Act and obtained signatures of PW3 and the accused on the samples. Then, PW1 sealed the samples under the cover of panchanama in the presence of PW3 and read over the contents of panchanama to the accused and PW3.

On 17.05.2004, PW1 sent a part of the sample along with Form-VII Memorandum with specimen impression seal to the public analyst. On the same day, a separate copy of Form-VII Memorandum also sent to the Local Health Authority, Zone-VI, Hyderabad through registered post. On 17.06.2004, PW1 received the Public Analyst report No.294/2004, wherein the public analyst opined that the sample does not conform to the standards of total dye contents and therefore it is adulterated. On 06.11.2004, PW2 submitted a detailed report along with xerox copies of documents to the Director of Food (Health) for permission to prosecute the accused. After receiving the written consent for prosecuting the accused on 19.03.2002, PW2 filed a private complaint before the Court to take action against the accused for having possession and the sale of adulterated Ice candies to the public.

4. The learned Judicial Magistrate of I Class, Narayanpet, took cognizance of the case and examined the accused under Section 251 Cr.P.C.

5. During the course of trial, to prove the case of prosecution, PWs.1 to 3 were examined and Exs.P.1 to P.20 got marked.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

7. The trial Court, after considering the evidence on record, convicted the accused for the offence under Section 7(i), 2(ia)(m) of the Act punishable under Section 16(1)(a)(i) of the Act and sentenced him to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default to suffer Simple Imprisonment for a period of one month.

8. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred Criminal Appeal No.24 of 2007 before the I Additional Sessions Judge, Mahabubnagar, where the appellate Court after hearing the arguments and considering the evidence on record, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

9. Being aggrieved by the judgment of the appellate Court passed in Criminal Appeal No.24 of 2007, the revision petitioner preferred the present revision case.

10. The learned counsel for the revision petitioner/accused argued that the prosecution failed to prove the offence under Section 7 of the Act beyond reasonable doubt; that both the Courts below erred in convicting the petitioner though there is no independent evidence supporting the case of prosecution; that both the Courts below convicted the petitioner only basing on the evidence of PW1; that the analyst report is not indicating that it is injurious for human consumption; that the prosecution failed to prove the delay in lodging the complaint; that PW1 – Food Inspector has not followed the procedure prescribed under the Act while drawing the samples; that no independent witness was examined; that no notice was given to the accused for sending the samples to the analyst; that when samples were drawn, no signature was obtained from the petitioner; that non-examination of the analyst is fatal to the case of prosecution; that no reasons were given in the analyst report whether the item,

which was sent for analysis, is above standard or below standard for consumption; that in the analyst report, the life period of dye is not discussed and that there is no corroboration to the evidence of PW1.

The learned counsel relied on a case-law reported in *State of Orissa Vs. Ravindra Sahu*[1], wherein the Hon'ble Supreme Court held at Para 3 as follows:

> "It is not in dispute that Rule 18 of the Prevention of Food Adulteration Rules is mandatory in character. If it is mandatory in character, the procedure laid down therefor was required to be complied with for sustaining the judgment of conviction. If on the basis of the materials on record, the High Court could come to a finding that the provisions therefore had not been complied with, we are of the opinion that the High Court was not precluded from going into the said contention only because the same had not been raised before the trial court or before the appellate court."

The learned counsel further relied on a case-law reported in *R.Chandrakanth Vs. State of A.P.*[2], wherein this Court held at Para 9 as follows:

> "From the language of the above provision of law, it is clear that the Food Inspector may seize or may not seize. The seizure by the Food Inspector in my considered view is not mandatory but only directory. When once the article is 'seized' then only the question of invoking the provisions of Section 11(4) would come into play. In the instant case, it is not the case of the complainant that the article of food i.e., oil, was seized by the Food Inspector. As per the allegations in the complaint, he only took sample of the oil. In the light of the above discussion, the judgment cited by the learned Counsel has no application."

The learned counsel also relied on a case-law reported in *Abdul Haleem Vs. State of U.P. and another*[3], wherein this Court held as follows:

> "From the perusal of the record it is apparent that no papers exhibiting compliance of Section 13(2) were filed by the prosecution in evidence. Therefore, it is clearly apparent that

compliance of Section 13(2) has not been proved. The learned Sessions Judge has disposed of this contention by stating that since the applicant has not made any application for sending the sample to the Central Food Laboratory, no benefit will accrue to the applicant. Provisions of Section 13(2) have been held to be mandatory by the Apex Court. Non-compliance of this section has an adverse impact upon the prosecution. The law requires that alongwith Public Analyst report, an intimation shall be sent to the accused person to enable him to apply within 10 days, from the receipt of the same, to the concerned Court, for sending his sample to the Central Food Laboratory for analysis. Unless the accused is afforded such an opportunity, he is not required to do the needful. If the prosecution fails to comply the provisions itself, benefit is certainly to accrue to the accused and not to the prosecution simply because the accused has not sought his sample to be sent to the Central Food Laboratory for further analysis on his appearance."

The learned counsel also relied on a case-law reported in *P.Gopalakrishna and another Vs. Food Inspector, Division III Office of the Assistant Food Controller Zone-1, Visakhapatnam and another*[4], this Court held at Para 5 as follows:

"Even according to the complaint, lable declaration is to the effect that the product was manufactured on 1.6.2006 and it is best before 12 months from the date of the manufacture. The shelf life of the product expired on 1.6.2007 and the complaint was filed on 20.8.2007, nearly two months after the shelf life. The Central Food Laboratory examined the sample on 7.1.2008, nearly 7 months after the expiry of shelf life. Because of the delay, there must have been variation in the standards prescribed. Two reports have given different results. As the complaint and notice under Section 13(2) of the Act was given after shelf life of the product, the petitioners could not apply to the Central Food Laboratory within a period of shelf life. Though the Public Analyst Report is dated 10.11.2006, the complaint was filed only on 20.8.2007. Petitioners who are said to be manufacturers of the product lifted by the Food Inspector, can be proceeded against only if the provisions of the Section 14 of the Act are complied with. Since there is nothing on record to show that the products purchased by the Food Inspector was supplied by the petitioner to accused No. 1 and since admittedly A1 did not produce any bill and has not disclosed the name and addresses of the supplier of the product lifted by the Food Inspector from him, it cannot be said that they supplied the product to accused No. 1 for public sale. So, accused No. 1 assuming that all the

allegations in the complaint are true, the petitioners cannot be said to have committed an offence under the Act, in view of issuance of notice under Section 13(2) of the Act, which was given after shelf life of the product was expired. Therefore, the petitioners could not have been applied for Central Food Laboratory within a period of shelf life. Therefore, the petitioners cannot be said to have committed the offence under the Act and as such no prosecution could be launched against the petitioners only on the basis of lable declaration alone and therefore, continuous of proceedings against the petitioners is nothing but abuse of process of the Court. Accordingly, the charge-sheet in CC No. 88 of 2007 on the file of the Judicial Magistrate of First Class, Araku Valley, Visakhapatnam District is liable to be quashed."

The learned counsel also relied on a case-law reported in *Hindustan Lever Ltd., Mumbai Vs. State of Andhra Pradesh*[5], wherein this Court held at Para 11 as follows:

"It was also further held that it is not necessary for the sanctioning authority to consider that the person who sold the food article is the owner, servant, agent, partner or relative of the owner or was duly authorised in this behalf. In fact, this decision was not considered in Crl. P No. 1081 of 2004. The scheme of Section 20 the Act is to give consent to initiate the prosecution to the competent person and to prosecute the offender. There cannot be any dispute about this though the reliance is placed by the Counsel for the petitioner on several judgments to the fact that the consent shall also disclose the offenders against whom the prosecution is to be initiated. The question before is whether the sanction order is bad for not naming the nominee in the consent order. So far as C.C. 287 of 2006 is concerned, the consent order for prosecution dated 30.1.2003 clearly shows that apart from accused Nos. 1 to 3, A-4 who is now the present petitioner (represented by responsible person). Therefore, it is quite clear that the offender which is the Company is clearly mentioned and there is no ambiguity. Who is to represent the Company is a different matter and in fact prior to the sanction order itself a notice is said to have been given on 5.3.2003 to inform the name of the nominee as contemplated under Section 17 of the Act, but, that is said to have been not furnished. In the other CC No. 452 of 2007 also the consent order refers to the petitioner represented by a nominee. Therefore, by no stretch of imagination, it can be contended that the consent order does not disclose the offender who is accused No. 4 in both the cases."

and finally, prayed the Court to allow the revision case by

setting aside the impugned judgment passed in Criminal Appeal No.24 of 2007.

11. On the other hand, the learned Public Prosecutor argued that that the delay is not fatal to the case of prosecution; that the Food Inspector has followed all the requisite provisions of the Act; that both the Courts below gave a concurrent finding that the accused committed the offence under Section 7(i), 2(ia)(m) of the Act punishable under Section 16(1)(a)(i) of the Act and those concurrent findings of both the Courts below need no interference, and finally prayed the Court to dismiss the revision case.

12. Now, the point for determination is --

> Whether the revision petitioner/accused is entitled to set aside the concurrent judgments passed by the trial Court as well the appellate Court for the offence under Section 7(i), 2(ia)(m) of the Act punishable under Section 16(1)(a)(i) of the Act?

13. **P O I N T**:

A perusal of the evidence of PW1 shows that on 15.05.2004 at 10.30 a.m., PW1 along with his attender inspected the ice factory of the accused, collected 18 Ice candy worth Rs.27/- from the accused and obtained cash receipt under Ex.P.1. Thereafter, on suspicion, PW1 served Form-VI notice disclosing his intention to take samples for analysis under the acknowledgement. Then, PW1 divided the sample into three equal parts as per the procedure in the presence of PW3 and obtained the signature of PW3 and the accused, and sent the samples to the Public Analyst, Hyderabad. PW1 also sent the sample to the Local Health Authority, Hyderabad.

14. The evidence of PW2 shows that he took the investigation from PW1 on 06.01.2004 as he was appointed as the Food Inspector. On 06.01.2004, PW2 submitted a detailed report under Ex.P.13 to the Director, Food Health Authority, Hyderabad for issuing orders to

prosecute the accused. After receiving the authorisation, PW2 filed a complaint before the Court on 29.04.2005. Before filing the complaint, PW2 issued notice under Ex.P.15 under Section 13(2) of the Act to the accused. The said notice was received by the accused under due acknowledgement under Ex.P.17.

15. Admittedly, the accused has no grievance for sending one of the samples for independent analysis. A perusal of Ex.P.11 – Analysis report no doubt did not contain the words 'injurious to health' or 'unfit for human consumption'. The learned counsel for the petitioner/accused raised the said point and according to him since the analyst has not mentioned that the samples seized by the Food Inspector – PW1 is injurious to health or unfit for human consumption, the petitioner/accused cannot be prosecuted. However, the standard specifications for dye content should be not more than 0.1 gm/kg, whereas in the sample it was found
0.58 gms/kg and the analyst gave an opinion that the sample was an adulterated. Though it is not mentioned by the analyst that the sample is injurious to health or unfit for human consumption, the accused has not maintained the standards prescribed under Rule 30 of the Act. Further, when analyst specifically stated that the sample was adulterated, then naturally it is unfit for human consumption. Therefore, omission on the part of the analyst for non-mentioning the words 'injurious to health' or 'unfit for human consumption', is not fatal to the case of the prosecution.

16. It is also argued by the learned counsel for the petitioner/accused that there is no independent evidence to corroborate the evidence of PWs 1 and 2, therefore the panchanama conducted by the Food Inspector is not valid. No doubt, the prosecution examined PW3 who was present at the time of taking samples from the accused, but he turned hostile. But, the conviction

can be sustained basing on the sole evidence of Food Inspector if it is free from blemish. The appellate Court also relied on a decision reported in *Naga Suri Pullaiah Vs. State of A.P. [2002(2) ALT (Crl.) 105 A.P.]*, wherein this Court held that "There is no law that the evidence of Food Inspector has to be disbelieved just because independent witnesses are not examined and that there is no need to insist upon independent evidence because there is no bar to believe the evidence of Food Inspector."

17. The contention of the learned counsel for the petitioner/accused that no notice was given to the accused for sending the sample to the analyst, is incorrect because PW1 clearly stated in his evidence that he followed the procedure while lifting samples and serving notice under Form-VI, and obtained the signature of the accused. Insofar as notice under Section 13(2) of the Act is concerned, the said notice was sent to the accused and it was duly served on the accused under Ex.P.17 acknowledgment.

18. After purchasing Ice candy, PW1 served Form-VI notice to the accused by expressing his intention to send the sample to the analyst and obtained the signature of the accused on Ex.P.2. It is not the case of the accused that his signature on Ex.P.2 is forged one. The trial Court also compared the signatures of the accused on Ex.P.2 and other documents with his admitted signatures and held that the accused himself signed on the documents filed by the prosecution i.e. Ex.P.2 and Ex.P.17. Therefore, the evidence of PWs 1 and 2 corroborates with each other and proved the case of prosecution.

19. Further, the case-law reported in *R.Chandrakanth Vs. State of A.P.* (2 supra) has no application to the facts of the present case because in the present case PW2 followed the procedure under Section 13(2) of the Act and no prejudice will be caused to the accused, and therefore the accused is not entitled for benefit of

doubt. The facts of the case-law reported in *Abdul Haleem Vs. State of U.P. and another*
(3 supra) has no application to the present facts of the case as PW2 issued notice under Section 13(2) of the Act and the accused received the same under Ex.P.17, therefore the prosecution in this case proved that the notice under Section 13(2) was issued to the accused. In *P.Gopalakrishna's case*
(4 supra), a product was manufactured on 01.06.2006, it has to use before 12 months from the date of manufacture, the shelf life of the product expired on 01.06.2007, the complaint was filed on 20.08.2007 nearly two months after the shelf life, the Central Food Laboratory examined the sample on 07.01.2008 nearly 7 months after the expiry of shelf life, two reports have given different results, and therefore it is held that because of the delay, there must have been variation in the standards prescribed. But, in the present case, there is one report under Ex.P.11 which clearly shows that the ice candy is adulterated. Further, notice under Ex.P.15 was issued and the same was received under Ex.P.17 acknowledgement. Moreover, there is no delay in sending the sample to the analyst because the seizure was made on 15.05.2004 and PW1 sent one of the samples on 17.05.2004 along with Form-VII memorandum.

20. Insofar as the case-law reported in *Hindustan Lever Ltd., Mumbai Vs. State of Andhra Pradesh* (5 supra), this Court clearly held that it is not necessary for the sanctioning authority to consider that the person who sold the food article is the owner, servant, agent, partner or relative of the owner or was duly authorised in this behalf. It is further held that the scheme of Section 20 of the Act is to give consent to initiate the prosecution to the competent person and to prosecute the offender. Therefore, the contention of the learned counsel for the petitioner/accused in the present case that the prosecution has not proved his ownership to M/s.Amul Ice Cream

shop, cannot be considered and the above case-law has no application to the present facts of the case. With regard to the case-law reported in *State of Orissa Vs. Ravindra Sahu* (1 supra), it has no application to the present facts of the case simply because the Food Inspector has followed all the requisite procedure under the Act.

21. Evidently, the accused has not made out any ground that the findings of both the Courts below suffer from any irregularity, perversity or without any evidence. Therefore, findings of both the Courts below need no interference and conviction passed in C.C.No.126 of 2005 as confirmed in Crl.A.No.24 of 2007, is hereby confirmed.

22. At this stage, the learned counsel for the revision petitioner/accused prayed that in case this Court confirmed the conviction, a lenient view may be taken while imposing quantum of sentence because it is a case of 2004, already 11 years had elapsed, the accused was in jail for about one week and he is the sole breadwinner of his family. However, the trial Court already imposed minimum punishment of six months prescribed by the Act and it was confirmed by the appellate Court. Therefore, taking further lenient view does not arise in this case.

23. Accordingly, the Criminal Revision Case is dismissed, confirming the judgment dated 18.02.2008, passed in Criminal Appeal No.24 of 2007 on the file of the I Additional Sessions Judge, Mahabubnagar.

24. Miscellaneous petitions pending if any, in this Criminal Revision Case, shall stand closed.

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ANIS, J

Date: 30.04.2015

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[1] (2011)15 S.C.C. 798

[2] 2002(2) ALT (Crl.) 288 (A.P.)

[3] 2002(1) ALT (Crl.) 3 (NRC)

[4] 2011(2) ALD (Crl.) 565 (AP)

[5] 2013(2) ALD (Crl.) 694 (AP)