

State Of Karnataka vs Kailas Mahajan Narmada Trading Co on 13 December, 2022

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CRL.A.No.100013/2015
C/W Crl.A.No.100011/2015
& Crl.A.No.100012/2015

IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 13TH DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE S.RACHAIAH
CRIMINAL APPEAL NO.100013/2015

C/W

CRIMINAL APPEAL NO.100011/2015
CRIMINAL APPEAL NO.100012/2015

IN CRL.A.NO.100013/2015

BETWEEN

STATE OF KARNATAKA,

REPRESENTED BY

ADDL.STATE PUBLIC PROSECUTOR,

O/O THE ADVOCATE GENERAL,

HIGH COURT BUILDING, DHARWAD.

...APPELLANT

(BY SRI. RAMESH CHIGARI, HCGP)

AND

INDRAMAL S/O. RAGHUNATHMAL BHANDARI,

AGE: 38 YEARS, OCC: BUSINESS,

PROPRIETOR OF OM OIL MILL,

MURUGHARAJENDRA NAGAR, KAGINELLI ROAD, HAVERI.

...RESPONDENT

(BY SRI. A. P. MURARI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED U/S 378(1) AND (3) OF
CR.P.C. SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE
JUDGMENT AND ORDER DATED 28.08.2014 IN CRL.A.NO.52/2011
PASSED BY THE I-ADDL. DIST. & SESSIONS JUDGE, HAVERI, AND
SET ASIDE THE JUDGMENT AND ORDER DATED 28.08.2014 IN
CRL.A.NO.52/2011 AND CONFIRM THE JUDGMENT AND ORDER
PASSED BY THE TRIAL COURT IN C.C.NO.136/2008 DATED
09.09.2011.

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CRL.A.No.100013/2015
C/W Crl.A.No.100011/2015
& Crl.A.No.100012/2015

IN CRL.A.NO.100011/2015
BETWEEN
STATE OF KARNATAKA,
REPRESENTED BY
ADDL.STATE PUBLIC PROSECUTOR,
O/O THE ADVOCATE GENERAL,
HIGH COURT BUILDING, DHARWAD.

...APPELLANT

(BY SRI RAMESH CHIGARI, HCGP)

AND
KAILAS MAHAJAN
NARMADA TRADING CO.,
DISRIBUTOS AND STOCKIST,
BELLARY GALLI, HUBLI, DHARWAD DISTRICT.

...RESPONDENT

(BY SRI MAHESH WODEYAR AND
SRI R.P. UGARGOL, ADVOCATES)

THIS CRIMINAL APPEAL IS FILED U/S 378(1) AND (3) OF
CR.P.C. SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE
JUDGMENT AND ORDER DATED 28.08.2014 IN CRL.A.NO.46/2011
PASSED BY THE I-ADDL. DIST. & SESSIONS JUDGE, HAVERI, AND
SET ASIDE THE JUDGMENT AND ORDER DATED 28.08.2014 IN
CRL.A.NO.46/2011 AND CONFIRM THE JUDGMENT AND ORDER
PASSED BY THE TRIAL COURT IN C.C.NO.136/2008 DATED
09.09.2011.

IN CRL.A.NO.100012/2015
BETWEEN
STATE OF KARNATAKA,
REPRESENTED BY
ADDL. STATE PUBLIC PROSECUTOR,
O/O THE ADVOCATE GENERAL,
HIGH COURT BUILDING, DHARWAD.

...APPELLANT

(BY SRI RAMESH CHIGARI, HCGP)

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CRL.A.No.100013/2015
C/W CrL.A.No.100011/2015
& CrL.A.No.100012/2015

AND
KUMAR S/O. MALLESHAPPA BALLARI,
AGE: 48 YEARS, OCC: BUSINESS,
SRI SIDDHARUDHA KIRANI STORES,
R/O. NEAR OLD BUS STAND,
SHIGGAON, HAVERI DISTRICT.

. . .RESPONDENT

(BY SRI K. H. BAGI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED U/S 378(1) AND (3) OF CR.P.C. SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER DATED 28.08.2014 IN CRL.A.NO.51/2011 PASSED BY THE I-ADDL. DIST. & SESSIONS JUDGE, HAVERI, AND SET ASIDE THE JUDGMENT AND ORDER DATED 28.08.2014 IN CRL.A.NO.51/2011 AND CONFIRM THE JUDGMENT AND ORDER PASSED BY THE TRIAL COURT IN C.C.NO.136/2008 DATED 09.09.2011.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.11.2022, THIS DAY, THE ,COURT PRONOUNCED THE FOLLOWING:

JUDGMENT

Criminal Appeal No.100013/2015, Criminal Appeal No.100011/2015 and Criminal Appeal No.100012/2015 are filed by the State seeking to set aside the judgment and order dated 28.08.2014 in Crl.A.No.52/2011, Crl.A.No.46/2011 and Crl.A.No.51/2011 respectively on the file of learned I Addl. District and Sessions Judge, Haveri and confirm the judgment and order passed in C.C.No.136/2008 dated 09.09.2011 on the file of learned Civil Judge (Jr.Dn.) & JMFC, Shiggaon.

2. For the sake of convenience, the ranking of the parties henceforth will be considered as per the ranking in the Trial Court.

3. Brief facts of the case are as under:

Accused No.1 is the retailer, accused No.2 is the distributor and stockist and accused No.3 is the proprietor of Om Oil Mill, Haveri. All these accused Nos.1 to 3 are involved in manufacturing, distributing and selling of groundnut oil called as Mahaveer groundnut oil.

4. On 13.09.2007 at about 7:00 AM, the complainant suspecting that the adulterated oil was being sold at the store of accused No.1, went to the shop of accused No.1 and purchased three packets of Mahaveer Oil by paying Rs.210/- and after drawing the seizure panchanama, sent the said oil for chemical examination. After having received the report, the complainant has filed complaint under Section 200 of Cr.P.C, before JMFC Court, Shiggaon, against all the three accused persons for the offences punishable under Section 7(1) and Section 16(1A)(i) of the Prevention of Food Adulteration Act, 1954, (for short, "PFA Act").

5. The Trial Court convicted the accused Nos.1 to 3 for the above said offences. On appeal being filed by the accused persons, the Appellate Court acquitted all the accused persons for the above said offences.

6. Being aggrieved by the said order of acquittal passed by the Appellate Court, the State has preferred these appeals seeking to set aside the judgment and order of acquittal passed by the

Appellate Court in all the three cases.

7. Heard Sri. Ramesh Chigari, the learned HCGP and Sri.A.P.Murari, Sri.Mahesh Wodeyar and Sri.K.H.Bagi, learned counsel for each of the respondent in these three appeals.

8. Sri. Ramesh Chigari, the learned HCGP submits that the judgment and order of acquittal passed by the Appellate Court is contrary to the facts and law. Therefore, the same is liable to be set aside.

9. It is further submitted by the learned HCGP that, the Appellate Court has misconstrued that the Food Safety Act, 2006, ought to have been invoked instead of Prevention of Food Adulteration Act, 1954 which is unsustainable and it requires re-consideration.

10. It is further submitted that, the evidence of PW5 who is an independent witness, he was supposed to depose regarding the seizure of the groundnut oil which is said to have purchased by PW1 in the shop of accused No.1. However, he has turned hostile. The documents which PW1 has produced indicates that the accused No.1 was selling the adulterated groundnut oil after having purchased from accused No.2 and accused No.2 had purchased as a distributor from accused No.3 who is the manufacturer. Therefore, the prosecution has proved the case beyond all reasonable doubt that accused No.1, accused No.2 and accused No.3 are all involved in selling the adulterated ground nut oil. Even though, the prosecution proved the case, the Appellate Court failed to appreciate the evidence properly and thereby acquitted the accused which is illegal and perverse and the order of acquittal is liable to be set aside.

11. It is further submitted that the evidence of official witnesses cannot be brushed aside merely because they are considered as interested witnesses. Having submitted thus, the learned HCGP prays to allow the appeal by considering the evidence of official witnesses and documents there on.

12. Per contra, the learned counsel for the respondents jointly submitted that, the prosecution has failed to prove that the alleged adulterated groundnut oil is purchased from accused No.1. In the absence of independent witness regarding seizure of groundnut oil, at the shop of accused No.1, it cannot be held that the accused No.1 was selling the groundnut oil which is considered as adulterated.

13. It is further submitted that there is an inordinate delay in lodging the complaint. The said delay has not been explained properly by the prosecution. According to PW1, the alleged seizure has taken place on 30.09.2007 and permission to file the complaint was given on 25.10.2007. However, the complainant has filed a complaint before the Magistrate on 01.01.2008.

14. It is further submitted that the Appellate Court has rightly arrived at a conclusion that the complainant should have filed the complaint under Section 97 of the Food Safety and Standard Act, 2006 (for short "FSS Act") and not under Section 19 of the PFA Act. Therefore, the complainant has committed an error by invoking the wrong provision, hence, the Appellate Court rightly set aside the conviction. Having submitted this, the learned counsel for the respondents prays to dismiss the appeals.

15. Having heard the rival contentions of the learned counsel for the respective parties and also perused the documents available on record, the points which arise for my consideration are:

- a. Whether the judgment and order of acquittal passed by the Appellate Court is justifiable?
- b. Whether the appellant-State has made out grounds to interfere with the judgment and order of acquittal?

16. This Court being the First Appellate Court, in order to re-appreciate the entire evidence and documents, it is necessary to have a re-look upon the evidence of all the witnesses.

17. PW1 is the Food Inspector, attached to Shiggaon taluk. PW2 is the Health Inspector. PW3 is the Doctor who permitted PW1 to file a complaint. P4 is the FSL Officer who submitted his report as per Ex.P4. PW5 is the witness to the spot-seizure mahazar, he has turned hostile and not supported the case. The Appellate Court raised contention that the complainant should have filed complaint under Section 97 of the FSS Act and not under Section 19 of the PFA Act.

18. To arrive at a conclusion, it is necessary to refer Section 19 of the Prevention of Food Adulteration Act which reads thus;

"19. Defences which may or may not be allowed in persecutions under this Act.- 1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale."

19. It is also relevant to refer Section 7(1) of the PFA Act which reads thus:

"No person shall himself or by any person on his behalf manufacture for sale, store, sell or distribute

i) Any adulterated food

ii) xxx

(iii) xxx

(iv) xxx

(v) xxx

(vi) xxx

20. Section 16 of the PFA Act provides punishment for selling of adulterated food or any items. The punishment prescribed under the said Act is, the person who involved in the above said Act, he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months, but which may extend to three years, and with fine which shall not be less than Rs.1,000/-.

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21. It is relevant to refer Section 16(1A) of the PFA Act, which reads thus:

"(1A) If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,--

(i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (l) (both inclusive) of clause (ia) of section 2; or

(ii) xxx he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees"

22. It is also relevant to refer Section 97 of the Food Safety and Standards Act, 2006, which reads thus:-

"97. Repeal and savings.- (1) With effect from such date as the Central Government may appoint in this behalf, the enactment and orders specified in the Second Schedule shall stand repealed:

Provided that such repeal shall not affect:-

(i) the previous operations of the enactment and orders under repeal or anything duly done or suffered there under; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon

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the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply as if such provisions of the State law had been repealed.

23. On careful perusal of the above said provisions, it makes it clear that the provision of Section 6 of the General Clause Act 1897 shall apply, as such, provision of the State law had been repealed.

24. Further, it is relevant to refer Section 6 of the General Clause Act 1897, which reads as follows;

"6. Effect of repeal.- Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

a) revive anything not in force or existing at the time at which the repeal takes effect;
or

b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege,

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obligation, liability, penalty, forfeiture or punishment as aforesaid.

25. From the above provisions, it makes it clear that, any investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, for future punishment may be imposed as if the repealing Act or Regulation had not been passed.

26. Admittedly, under the Food Safety and Standards Act 2006, Section 97 was enacted on 05.08.2011. However, the alleged incident or search and seizure has taken place on 30.09.2007. Therefore, as on the date of alleged incident, no such repeal and savings provision were effected. Even though, the Food Safety and Standard Act, 2006 came into force on 23.08.2006, there was no embargo to the officers of the Food Department to file complaint under the Prevention of Food Adulteration Act, 1954. In this way, the Appellate Court committed an error in arriving at a

conclusion that the Food safety and Standards Act 2006 will be applicable instead of Prevention of Food Adulteration Act, 1954 which is illegal and the application of law is unsustainable.

27. It is relevant to refer the documents which PW1 has produced as Ex.P5 which was issued by accused No.1 where he

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was running a retail shop namely, Siddaroodha provisional store, old bus stop road, Shiggaon. It indicates that PW1 has purchased 3 ltrs of ground nut oil of Mahaveer brand. PW1 further produced Ex.P15 - receipt belonging to Narmada Trading Company. The said Narmada Trading Company is a distributor and stockist. The said receipt discloses the name of accused No.1 in the tax invoice column which indicates accused No.2 distributed Mahaveer brand groundnut oil to accused No.1. Similarly, Ex.P14 is the another document which belongs to Om oil mill. The said bill indicates that 300 ltrs. of Mahaveer brand groundnut oil has been supplied to Narmada Company i.e., accused No.2 shop. The said Om oil mill belongs to accused No.3.

28. In this way, the prosecution has proved the case through the evidence of PW1 and Ex.P5, Ex.P14, Ex.P15. The documentary evidence assumes significant role while analyzing the evidence unless it is contradicted or denied by the accused. Admittedly, in this case, the documents which are produced by PW1 have not been denied by the accused. Mere denial is not sufficient to discredit the trustworthiness of the documentary evidence. The documentary evidence indicates that PW1 has purchased Mahaveer brand groundnut oil from the shop of

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accused No.1. Therefore, the prosecution has proved the case through the evidence of PW1, PW4 who is FSL officer, PW2 was working as Taluk Medical Officer. It appears that the Appellate Court failed to consider all these evidence both oral and documentary and hence, committed an error in arriving at a conclusion.

29. In the light of the observation made above, the point which arose for my consideration are answered as point No.1 in the 'negative' and point No.2 in the 'affirmative'.

Order regarding sentence:

30. The learned counsel for the respondents / accused jointly submitted that the alleged incident is of the year 2007 and the Trial Court acquitted the accused for the above said offences. Such being the fact, if the Court is of the opinion that there are grounds to interfere with the order of the acquittal and if the accused are convicted, grave injustice would be caused to the respondents / accused. Therefore, the learned counsel for the respective respondents prays to show leniency by considering the age of the accused and also the age of the case. Further, the learned counsel for the respondents relied on the judgment of the Hon'ble Supreme Court in the case of

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N.Sukumaran Nair Vs. Food Inspector, Mavelikara¹. Para No.3 of the judgment reads thus:-

"3. The offence took place in the year 1984. The appellant has been awarded six months' simple imprisonment and has also been ordered to pay a fine of Rs.1000/-. Under Clause (d) of Section 433 of the Cr.P.C., 'the appropriate government' is empowered to commute the sentence of simple imprisonment for fine. We think that this would be an appropriate case for commutation of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial court a sum of Rs.6,000/- as fine in commutation of the sentence of six months' simple imprisonment within a period of six weeks from today and intimate to the appropriate government that such fine has been deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate orders under Clause (d) of Section 433 of the Cr.P.C."

31. Thus, it is appropriate to grant leniency by way of imposing fine instead of sending them to judicial custody. This Court while exercising the judicial discretion and considering the judgment of the Hon'ble Supreme Court (supra), is of opinion that it is appropriate to impose Rs.10,000/- each as fine.

(1997) 9 SCC 101

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32. Hence, I proceed to pass the following;

ORDER

(i) The appeals filed by the appellant - State stands allowed in part.

(ii) The judgment and order of acquittal dated 28.08.2014 in CrI.A.No.52/2011, CrI.A.No.46/2011 and CrI.A.No.51/2011 respectively, on the file of learned I Additional and District and Sessions Judge, at Haveri, is set aside and the judgment of conviction and order sentence dated 09.09.2011 in CC No.136/2008 on the file of learned Civil Judge (Jr.Dn.) & JMFC, Shiggaon, stands modified, by setting aside the sentence of imprisonment imposed on accused Nos.1 to

3.

(iii) The accused Nos.1 to 3 are hereby convicted for the offence punishable under Section 16(1A)(i) of the PFA Act.

(iv) The accused Nos.1 to 3 are sentenced to pay a fine of Rs.10,000/- each for the offence punishable under Section 16(1A)(i) of the PFA Act, in default of payment of fine, they shall undergo

imprisonment for a period of one year.

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(v) It is directed the accused Nos.1 to 3 shall deposit the fine of Rs.10,000/- before the Trial Court within four weeks from today, failing which, the Trial Court is at liberty to pass appropriate orders, to secure the presence of the accused, to comply the order of conviction.

(vi) The Registry is directed to send the records to the concerned Trial Court along with the copy of this order forthwith.

Sd/-

JUDGE PJ/Vmb