

Nandi Kondala Rao vs The State Of Andhra Pradesh on 6 December, 2022

Author: R. Raghunandan Rao

Bench: R. Raghunandan Rao

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
CRIMINAL PETITION No.9714 of 2022

ORDER:

The petitioners had been convicted for an offences under Sections 3(1)(zz)(iii)(xi), 26(2)(i), 27(1) & 59 (1) of the Food Safety and Standards Act, 2006 in C.C.No.185 of 2014 before the Judicial Civil Judge-cum-Judicial Magistrate of First Class, Vinukonda.

2. Aggrieved by the said order of Conviction and sentence, the petitioners moved a Crl.Appeal.No.64 of 2019 before the Principal District & Session Judge, Guntur. During pendency of the said Criminal Appeal, the petitioners moved a Crl.M.P.No.683 of 2022 under Section 381 of Cr.P.C to permit the petitioners to summon an expert for examination for the purposes of eliciting certain facts. This application was dismissed by the Appellate Court on 21-11-2022. Aggrieved by the said order of rejection, the petitioners have approached this Court.

3. Sri D.S. Siva Darshan, learned counsel for the petitioners submits that the milk sample taken by the P.W.1 was sent to the State Laboratory and the Central Laboratory for analysis. The report of the State Laboratory only stated that the quality of the milk was substandard. However, the Central Laboratory had reported that the milk was substandard and un-safe. He would further submit that this variation had occurred due to the fact that P.W.1, while forwarding a sample to the State Laboratory had informed the State Laboratory that formalin had been mixed in the milk to preserve it while sending it to the State Laboratory for testing. However, this fact was not informed to the Central Laboratory. He would further submit that the Central Laboratory had reported that the milk which was tested was un-safe as it was not informed about formalin had been mixed in the sample.

4. Sri D.S. Siva Darshan, learned counsel for the petitioners submits the fact that the information was not given to Central Laboratory was elicited from P.W.1 during his cross- examination. However, the consequences of such information not being given could not be explained properly to the Trial Court and steps were taken for producing an expert to explain the said consequences before the Appellate Court. However, the Appellate Court had rejected the application on the ground that these issues could have been put to P.W.1 himself and there is no reason to allow such an application at the stage of appeal.

5. Sri D.S. Siva Darshan, learned counsel for the petitioners would submit that a liberal view has to be taken under Section 391 of Cr.P.C and examination of the witness could be permitted. He further submits that the time taken for examining the said witness very minimal and would not be cause any

delay in the disposal of the appeal itself.

6. The learned Public Prosecutor would point out that the petition filed before the Appellate Court did not contain any of these facts. He would point out that the petition only stated that the expert was being called to explain the difference between the cow milk and buffalo milk. In the absences of any of these issues being raised before the Appellate Court, the same cannot be raised before this Court. He would further submit that the Order of the Magistrate was passed on 21.02.2019 and the application was summoning the witness was filed only in August-2022 and the same cannot be accepted.

7. A perusal of the petition filed by the petitioners before the Appellate Court would show that the factum of formalin being mixed in the sample or the fact that such information was not given by Central Government due to which there is variation in the results of the samples tested by the State Laboratory and the Central Laboratory are not set out anywhere in the petition. In fact, the Appellate Court considered and disposed of the application only on the ground that the petitioners was seeking to examine an expert for the purposes of determining whether the milk which was test by the buffalo milk or Cow Milk and for given an opinion on the test conducted for such purpose. It is clears that the issues raised before this Court was never under the contemplation of the Appellate Court.

8. In the circumstances, this Court does not find any reasons to interfere with the Order of the Appellate Court.

9. Accordingly, this Criminal Petition is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

_____ R. RAGHUNANDAN RAO, J.

06.12.2022 BSM HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO CRIMINAL PETITION
No.9714 of 2022 06-12-2022 BSM