

# Mirla Jalaiah vs The State Of Ap., Rep By Pp on 19 April, 2024

APHC010168232012

IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI [3367]  
(Special Original Jurisdiction)

FRIDAY ,THE NINETEENTH DAY OF APRIL  
TWO THOUSAND AND TWENTY FOUR

PRESENT  
THE HONOURABLE SRI JUSTICE V SRINIVAS

CRIMINAL REVISION CASE Nos.663 & 665 of 2012

Between in CrI.R.C.No.663 of 2012:  
Mirla Jalaiah ...PETITIONER

AND

The State Of Ap Rep By Pp ...RESPONDENT

Between in CrI.R.C.No.665 of 2012:  
Gontala Srinivasa Rao ...PETITIONER

AND

The State Of A P ...RESPONDENT

Counsel for the PetitionerS:  
1. G RAJKUMAR

Counsel for the Respondent:  
1. PUBLIC PROSECUTOR (AP)

The Court made the following:

COMMON ORDER:

Assailing the common judgment dated 18.04.2012 in CrI.A.No.57 of 2011 on the file of the Court of learned VI Additional Sessions Judge(FTC) at Markapur, confirming the conviction and sentence passed against the petitioners/accused Nos.1 and 2 by the judgment dated 21.04.2011 in C.C.No.42 of 2007 on the file of the Court of learned Judicial Magistrate of First Class at Podili, for the offence under section 7(i) and 2(ia)(m) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "PFA Act"), the petitioners/accused Nos.1 and 2 filed the present criminal revision cases under Section 397 r/w.401 of the Criminal Procedure Code, 1973.

2. These revision cases were admitted on 20.04.2012 and the sentence of imprisonment imposed against the petitioners/accused Nos.1 and 2 was suspended, vide orders in CrI.R.C.M.P.No.1050 and 1052 of 2012 respectively.

3. The shorn of necessary facts are that:

i). On 26.10.2004 at about 04.00 p.m., P.W.1-Food Inspector along with his attender conducted inspection in the shop of accused No.2 and at that time accused No.1 was present in the counter as salesman and license stands in the name of accused No.2 for running the agency shop. Then, P.W.1 secured the presence of P.W.3 to act as mediator.

ii). During inspection, P.W.1 found four plastic bags containing hundred pouches of 250 ml each water packet along with other companies' soft drinks kept for sale of human consumption. Plastic packets are with label as MRK packaged drinking water without manufacturing date, batch number and BIS certification.

iii). Suspecting genuineness of those water packets, he purchased twenty-seven (27) pouches at a cost of Rs.40-

50 ps and obtained cash receipt from accused No.1 and served Form VI notice to him. Packed all the pouches by dividing into three (3) equal parts containing nine (9) pouches each in a dried empty white mouth plastic bottles without tampering the pouches and put seals obtaining signatures of mediator and accused No.1, wrapped in a jink brown paper, ends filled with gum and obtained signatures of P.W.3 mediator, accused No.1, also signed by him and on 27.10.2004 sample portion was sent to public analysis deposing the remaining two (2) samples with Local (Health) Authority under acknowledgment.

iv). Then he sent Form VI notices to accused Nos.2 and 3 to furnish their proprietorship particulars, but they did not respond even after receipt of remainder notice dated 26.12.2004. On 23.12.2004, he received public analyst report along with covering letter disclosing that the sample does not have BIS certification and therefore it is misbranded. On 02.02.2005, P.W.1 submitted detailed report to the Director of Food (Health) Authority for taking appropriate penal against accused Nos.1 to 3.

v). On 11.08.2005, Director of Food (Health Authority) granted sanction orders for prosecution against accused Nos.1 to 3 for violation of Section 7(i) and 2(ia)(m) of PFA Act punishable under Section 16(ia)(i) of the Act. Then, P.W.1 filed a complaint before the Court and P.W.2, who is successor of P.W.1, issued notices under Section 13(2) of the PFA Act to all the accused.

4. The complaint was taken on file and numbered as C.C.No.42 of 2007 on the file of the Court of learned Judicial Magistrate of First Class at Podili, and after full-fledged trial found the accused Nos.1 to 3 guilty of the offence under Section 7(i) and 2(ia)(m) of PFA Act and sentenced them to undergo rigorous imprisonment of six (6) months each and to pay fine of Rs.1,000/- each, in default to suffer simple imprisonment of one (1) month.

5. Aggrieved by the same, the petitioners/accused Nos.1 and 2 preferred an appeal, vide Crl.A.No.57 of 2011, before the Court of learned VI Additional Sessions Judge at Markapur and the same was dismissed, vide common judgment dated 18.04.2012, by confirming the conviction and sentence

passed by the trial Court against the petitioners. However, the appeal preferred by the accused No.3 was allowed, vide common judgment, dated 18.04.2012 in C.A.No.58 of 2011, by setting aside the conviction and sentence passed against him by the trial Court.

6. Against the said common judgment of the first Appellate Court, the present criminal revision case was preferred by the petitioners/accused Nos.1 and 2.

7. Heard Sri Grandhi Rajkumar, learned counsel for the petitioners and Sri S.Dheera Kanishk, learned Special Assistant Public Prosecutor for the respondent-State.

8. Now the point that arises for determination in this revision is "whether there is any manifest error of law or flagrant miscarriage of justice in the findings recorded by the Trial Court as well first Appellate Court?"

9. Sri Grandhi Rajkumar, learned counsel for the petitioners/accused Nos.1 and 2 submits that except the self- serving solitary testimony of P.W.1, there is no other corroborative evidence from the prosecution side; that P.W.1 failed to seize the license particulars and ownership particulars of the shop; that P.W.1 failed to collect and seize the particulars regarding employment of accused No.1; that accused No.2 was not present at the time of alleged inspection conducted by P.W.1; that P.W.3, who is said to be mediator, did not support the prosecution version; that accused No.1 is an illiterate person and he does not know the contents of the documents, which he signed; that there is lacuna on the part of the prosecution in serving a notice under Section 13(2)(a) of PFA Act along with public analyst report within a reasonable time and in support of his contention he relied upon a judgment of Madras High Court in M.N.Katharmytheen v. State Rep.by Food Inspector, Tirunelveli Corporation<sup>1</sup>.

10. He further submits that denying the valuable right accrued to the revision petitioners under Section 13(2) is itself sufficient to acquit the accused. In support of the same, he relied upon a judgments of Hon'ble Supreme Court in M/s.Alkem Laboratories Limited v. State of Madhya Pradesh<sup>2</sup> and Girishbhai Dahyabhai Shah v. C.C.Jani<sup>3</sup>.

11. He further submits that the new Act provides imposition of penalty of imposing fine upto Rs.3,00,000/- only for the offence of misbranding under Section 52 of the Act; that the 2 (2020) 20 SC 174 3 (2009) 15 SCC 64 Trial Court as well Sessions Court failed to appreciate the material on record in a proper perspective, erroneously convicted the petitioners and the same is liable to be set aside. In support of the same, he relied upon judgments of the Hon'ble Supreme Court in Manik Hiru Jhangiani v. State of Madhya Pradesh<sup>4</sup> and M/s.A.K.Sarkar & Co. v. The State of West Bengal<sup>5</sup>.

12. As against the same, Sri S.Dheera Kanishk, learned Special Assistant Public Prosecutor for the respondent submits that P.W.1 who has territorial jurisdiction over Podili Area conducted inspection on 26.10.2004 in the shop of accused No.2 under Ex.P.1 orders and at that time accused No.1 was in the counter as a sale man of accused No.2; that during the said inspection P.W.1 noticed four plastic bags of water packets containing 400 pouches each 250 ml., 100 pouches in each bag

along with other companies soft drinks, kept for sale of human consumption; that having paid an amount of Rs.40-50, P.W.1 purchased 27 pouches of water packets from accused No.1 under Ex.P.2 receipt; that he served Ex.P.4 form No.6 notice on accused No.1; that P.W.1 divided the samples into three parts each contain nine pouches and kept each part into clean dry 4 2023 INSC 1078 5 2024 SCC Online SC 248 and empty mould plastic bottles, closed the mouth and tied with a thread and it was sealed and affixed Ex.P.4 label under the cover of Ex.P.5 Panchanama, which is signed by P.W.3 mediator and sent the same for analysis under Ex.P.6; that he sent Form VI notice along with covering letter to Mssr.Venkateswara Agencies, Kurnool Road under Ex.P.10; that P.W.1 received Ex.P.16 analysis report stating that the sample sent to the public analyst does not contain BIS certification and therefore it is misbranded; that P.W.1 prepared a detail report and submitted the same to the Director, Food Authority dated 02.02.2005 under Ex.B.17 and in-turn, he received Ex.P.18 letter from Director, Food Health Authority, Hyderabad for the institution of prosecution against accused Nos.1 to 3, then he filed a complaint before the Court.

13. He further submits that P.W.2, who is successor of P.W.1 sent Ex.P.21 notices under Section 13(2) of the Act along with public analysis report to accused Nos.1 to 3 on 13.04.2007 under Exs.P.22 and P.23 acknowledgments.

14. He further submits that even P.W.3 who acted as mediator did not support the prosecution version, admitted his signatures on seizure proceedings, thereby by adducing evidence of P.Ws.1 to 3 and Exs.P.1 to P.27, the prosecution categorically proved its case against the petitioners; that the Courts below rightly appreciated the evidence of on record and convicted the petitioners for the said offence.

15. In view of the above rival contentions, this Court perused the material available on record. It is the main contention of the petitioners is that except the self-serving testimony of P.W.1, there no evidence placed on record to prove the prosecution version and that there is a lacuna in serving a notice under Section 13(2) of the Act along with analysis report.

16. In order to prove its case, prosecution examined the Food Inspector, who conducted the inspection as P.W.1 and his successor in office, who served Section 13(2) notices on the accused as required under the Act was also examined as P.W.2. Even the mediator, who participated in the raid was examined as P.W.3, he did not support the prosecution version and turned hostile. However, he categorically admitted his signatures on seizure proceedings and in Ex.P.24 mediators report dated 26.10.2004 under which the samples were collected by P.W.1. The prosecution also produced and relied on Exs.P.1 to P.27 to prove its case.

17. It is not in dispute Ex.P.25 signature of P.W.3 in Ex.P.2 cash receipt issued by accused No.1 for the amount paid by P.W.1 towards water packets seized by him. It is also not disputed his (P.W.3) signatures under Exs.P.26 and P.27 in Ex.P.3 form VI notice issued to accused No.1 and Ex.P.4 label affixed on the container. But, simply he pleaded ignorance about the contents of the said documents and his participation in the raid. But, the material on record categorically disclosed that P.W.3 acted as mediator on the date of inspection. Furthermore, it is his testimony that he has facial acquaintance with accused Nos.1 and 2 and he know them. All these circumstances go to show that

P.W.3 is present while P.W.1 was conducting inspection and seized the material from the shop of accused No.2 in the presence of accused No.1.

18. Moreover, P.Ws.1 and 2 food inspectors reiterated the contents of complaint and also procedure followed by them from the date inspection till dispatch of Section 13(2) notices. Nothing was elicited during cross examination to disbelieve their testimonies. As such, the delay in serving the notices under Section 13(2) of the Act on accused Nos.1 and 2 is no way caused prejudice to them. It is not in dispute that it is not the case of adulteration. Accused Nos.1 and 2 being salesman and owner of the shop are prosecuted for selling the water pouches without BIS certification and other details as required under Rule 32 of PFA Act, which contemplates that every packet should contain the label carrying batch number, date of manufacturer and so on. It is also provided in Rule 49(2) of Sub Rule 28 of PFA Rules that no person shall manufacture, sell or exhibit for sale of packaged drinking water except under Bureau of Indian Standards. The report issued by the analyst under Ex.P.16 categorically proved the contravention of Rule 49 Sub Rule 28 of the Act. As discussed supra, it is not in dispute that P.W.1 duly lifted the samples from the shop of accused No.2 in the presence of accused No.1 and P.W.3. Thereby, the contention raised by the accused that P.W.1 did not follow the procedure and prosecution failed to prove its case has no legs to stand.

19. The trial Court as well Sessions Court categorically held that the testimony of prosecution witnesses clearly goes to show that the petitioners/accused Nos.1 and 2 sell the food material without proper label and BIS certification, which is in violation of Section 7(ia)(m) of PFA Act.

20. It is settled law that in view of the concurrent findings on facts by the Trial Court as well Sessions Court, this Court being Revisional Court is not expected to set aside the same without any material of perversity or manifest error in the findings arrived by both the Courts below. There is no material before this Court to discard the trustworthiness of prosecution witnesses.

21. All these facts go to show that both the Courts below rightly came to conclusion that the petitioners/accused Nos.1 and 2 committed an offence under Section 7(ia)(m) of PFA Act by selling the food material without proper label and BIS certification and that there is no apparent failure on the part of the Trial Court as well Sessions Court in appreciating the evidence on record or to arrive at a conclusion that prosecution proved the guilt of the accused Nos.1 and 2 for the said offence. In these circumstances, this Court is of the considered opinion that there is no perversity or flaw in the findings recorded by both the Courts below in convicting the accused Nos.1 and 2 for the said offence.

22. However, coming to the quantum of sentence is concerned, while arguing the matter, learned counsel for the petitioners/accused Nos.1 and 2 submits that the Prevention of Food Adulteration Act, 1954 was repealed by the introduction of the Food Safety and Standards Act, 2006 wherein Section 42 provides a maximum penalty of Rs.3,00,000/- for misbranded food. There is no provision for imprisonment. For which, he relied upon a judgment of the Hon'ble Supreme Court in M/s.A.K.Sarkar case (referred to supra), wherein the Apex Court referred its earlier pronouncements in T.Barai v. Henry Ah Hoe<sup>6</sup>, Nemi Chand v. State of Rajasthan<sup>7</sup> and Trilok Chand v. State of Himachal Pradesh<sup>8</sup> and held at paragraph No.10 that:

"10. The present appellant no.2, at this stage, is about 60 years of age and the crime itself is of the year 2000, and twenty- four years have elapsed since the commission of the crime. Vide Order dated 06.08.2018, this Court had granted exemption from surrendering to appellant no.2. Considering all aspects, more particularly the nature of offence, though we uphold the findings of the Courts below regarding the offence, but we hereby convert the sentence of appellant no.2 from three months of simple imprisonment along with fine of Rs.1,000/- to a fine of Rs.50,000/- (Rupees Fifty Thousand only). The sentence of appellant no.1 which is for a fine of Rs. 2000/- is upheld. The amount shall be deposited with the concerned Court within a period of three weeks from today. Accordingly, the appeal is partly allowed."

23. No doubt, in the present case also the crime is of the year, 2004 and by this time twenty (20) years have already been lapsed and that the present petitioners/accused Nos.1 and 2, at 6 (1983) 1 SCC 177 7 (2018) 17 SCC 448 8 (2020) 10 SCC 763 this stage, are aged about 61 and 46 years respectively. Furthermore, in the present case on hand, the petitioners are prosecuted for selling the water pouches without BIS certification.

24. Having regard to the above discussion, in view of the above pronouncements of the Hon'ble Supreme Court and nature of the offence, this Court is of the considered opinion that the conviction is upheld, however, to meet the ends of justice, the sentence of imprisonment is modified from six (6) months rigorous imprisonment each to a fine of Rs.10,000/- each in-addition to the fine already imposed for the offence under Section 7(i) and 2(ia)(m) of the PFA Act, 1954.

25. In the result, both the Criminal Revision Cases are allowed in part, modifying the sentence of imprisonment imposed against the petitioners/accused Nos.1 and 2 from six (6) months rigorous imprisonment each to fine amount of Rs.10,000/- (Rupees Ten Thousand Only) each, in-addition to the fine already imposed, in default to suffer simple imprisonment of six(6) months each, for the offence under Section 7(i) and 2(ia)(m) of PFA Act, 1954. The rest of the judgment dated 21.04.2011 in C.C.No.42 of 2007 on the file of the Court of learned Judicial Magistrate of First Class at Podili, regarding accused Nos.1 and 2 shall stands confirmed. The petitioners/accused Nos.1 and 2 are directed to pay the said fine amount before the Court of learned Judicial Magistrate of First Class at Podili within a period of one (1) month from the date of copy of this order made ready. Copy of this order shall be marked to the trial Court.

Interim orders granted earlier if any, stand vacated. As a sequel, miscellaneous applications pending, if any, shall stand closed.

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JUSTICE V.SRINIVAS Date: 19.04.2024 Krs THE HON'BLE SRI  
JUSTICE V.SRINIVAS CRIMINAL REVISION CASE Nos.663 & 665 of 2012 DATE: 19.04.2024 Krs