

The Food Safety Officer, vs M.Arneeruddin on 28 October, 2022

Author: D.Nagarjun

Bench: D.Nagarjun

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL APPEAL No.1465 of 2017

JUDGMENT :

This Criminal Appeal is filed by the petitioner- complainant aggrieved by the judgment of acquittal dated 13.02.2017 passed by the learned I Metropolitan Magistrate (Municipal Court) at Hyderabad in C.C.No.4 of 2016.

2. The facts in brief as can be seen from record available before the Court are as under:

a) On 14.08.2015 at about 5.30 PM the Food Safety Officer of Ranga Reddy District, GHMC, Hyderabad along with his office subordinate and other revenue officials conducted raise on M/s.Tajuddin and Company, Shop A-27, Gaddiannaram Fruit Market, Kothapet, R.R. District. No responsible person was present in the shop at the that time in the shop and the Food Safety Officer came to know that the owner of the shop ran away from the shop. The Food Safety Officer took photograph of the shop, secure the presence of LWs 2 and 3 as mediators and on inspection of the shop, he found 50 wooden boxes each containing 1 kg of sapota fruits, which were kept for human consumption. On suspicion of using chemicals for ripening the fruits, took 2 kgs of sapota fruits by weighing them and prepared cash receipt for Rs.120/- as per the market value.

The Food Safety Officer obtained the signatures of LWs 2 and 3 on the cash receipt and prepared Form -V-A notice to accused in duplicate as per the procedure and obtained the signatures of the witnesses. The Food Safety Officer divided the purchased sapota fruits into four equal parts each containing 500 grams each and kept them in clean, dry and empty plastic bottles and capped them tightly with thread and sealed them with wax. He prepared the label with relevant details, obtained the signatures of mediators and pasted the label on each of the sample bottles. He wrapped the plastic bottles with thick brown paper and the ends are neatly folded. He also affixed the paper slip containing Code No.0012-SPL/01472/2015 with the stamp and signature of Food Safety Designated Officer and obtained signatures of mediators and pasted it on each of the bottles. He again tied the bottles with strong thread above and across the bottles and sealed them at four distinct places with sealing wax with the help of his specimen impression seal. He also prepared notice for the fourth part as per the procedure and obtained signatures of LWs 2 and 3.

b) The Food Safety Officer has drafted panchanama in the presence of mediators and handed over the sample bottle along with memorandum in Form VI to the State Food Laboratory and also another copy of memorandum and specimen impression of the seal and obtained acknowledgment. The remaining two sample bottles along with two copies of memorandum in Form VI were deposited with the Food Safety Designated Officer on 14.08.2015 and the fourth sample was also deposited with him on the same day. The Food Safety Officer wrote a letter to the Agriculture Market Committee with regard to the ownership details of the premises on 17.08.2015 vide RC No.0012/SPL/1472/2015, to which a reply was received along with copy of license, which revealed that accused by name M.Ameeruddin is the Proprietor of M/s. Tajuddin and Company; shop No.A-27, Gaddiannaram Fruit Market, Kothapet.

c) The Food analyst analyzed the sample and sent a report bearing No.417/2015-16 dated 18.08.2015 in Form - B to the Food Safety Designated Officer along with covering letter opining that the sample contains calcium carbide which is prohibited in ripening of fruits as per the regulation 2.3.5 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation 2011, hence it is unsafe. On receipt of the said report, the Designated Officer sent a notice along with Food Analyst Report to the accused on 22.08.2015 by registered post with acknowledgment due. The said notice was returned with an endorsement "shop closed". Then the Food Safety Officer has furnished a detailed report to the Designated Officer on 27.08.2015 along with annexure. The Designated Officer addressed a letter to the Commissioner of Food Safety for sanction of prosecution on 29.08.2015.

d) The Commissioner vide Proceedings No.678/FSS-3/2015, dated 24.09.2015, accorded sanction for prosecuting the accused and the same was forwarded to the Designated Officer. After collecting the sanction order, he verified the record and filed the present complaint before this Court on 28.11.2015 against the accused for the offence under Section 3(1)(zz)(iii), 26 (2)(i) of the Food Safety and Standards Act read with Regulations 2.3.5 of Food Safety and Standards (Prohibition and Restrictions of Sales) Regulations 2011 punishable under Section 59 (i) of the Food Safety and Standards Act.

e) Based on the strength of the said complaint, the cognizance of the case was taken as C.C.No.4 of 2016 on the file of learned I Metropolitan Magistrate (Municipal Court) at Hyderabad. The accused was examined under Section 251 of the Code of Criminal Procedure for the offence under Sections 3(1)(zz)(iii), 26 (2)(i) of the Food Safety and Standards Act read with Regulations 2.3.5 of Food Safety and Standards (Prohibition and Restrictions of Sales) Regulations 2011 punishable under Section 59 (i) of the Food Safety and Standards Act. During the course of trial, prosecution has examined PWs 1 to 3 and got marked Exs. P1 to P26. On behalf of defence, accused examined himself as DW1. On considering the rival contentions and the evidence adduced by both the parties, the trial Court found the accused not guilty of the offence alleged against him and was acquitted under Section 255 (1) of the Code of Criminal Procedure. Aggrieved by the same, the State through Public Prosecutor has filed the present criminal appeal to set aside the judgment dated 13.02.2017 passed by the learned I Metropolitan Magistrate (Municipal Court) at Hyderabad in C.C.No.4 of 2016 on the following grounds:

i) The learned Magistrate ought to have seen that prosecution has made the ingredients to attract the offences alleged against the accused.

ii) The learned Magistrate ought to have seen that PW1 had no grudge against the accused and moreover as per the directions of the High Court, PW1 along with his superiors has inspected the shop at fruit market and accused, who was selling the sapota ran away on seeing the officials.

iii) As per the provisions envisaged under the Act the Food Safety officer in the presence of mediators had collected the samples and sent for analysis and nothing is elicited in the cross examination to show that he is speaking false hood except alleging that no notice was sent to him but shop and ownership particulars were collected by PW1 from the agricultural market committee and notice was sent to the said address but it was returned, so there is no illegality in the procedure followed by the Food Safety Officer.

3. Heard learned Assistant Public Prosecutor and Sri P.Gangaiah Naidu, learned Senior Counsel representing Ms.G.Bhanu Priya, learned counsel for the respondent and perused the record.

4. Now the point for determination is:

"Whether the judgment dated 13.02.2017 passed by the learned I Metropolitan Magistrate (Municipal Court) at Hyderabad in C.C.No.4 of 2016, can be set aside?

5. The State through Public Prosecutor has filed this appeal alleging that contents of charge sheet, evidence recorded by the trial Court would go to show that the respondent - accused has committed the offence under Section 3(1)(zz)(iii), 26 (2)(i) of the Food Safety and Standards Act read with Regulations 2.3.5 of Food Safety and Standards (Prohibition and Restrictions of Sales) Regulations 2011 punishable under Section 59 (i) of the Food Safety and Standards Act and thereby the trial Court should have recorded a finding of conviction. It is further alleged that the trial Court should have considered that PW1 - Food Safety Officer was not having any grudge against the respondent

- accused; that at time the of inspection by PW1, the accused was selling Sapota and ran away on seeing the officials; that the Food Safety Officer has followed the procedure contemplated under the Act while collecting samples in the presence of mediators; that the respondent has not elicited anything to draw an inference that PW1 was speaking false hood and therefore, finding of the trial Court that the respondent not guilty of the offence is erroneous and therefore, sought for setting aside the same.

6. On the other hand, the learned senior counsel appearing for the respondent - accused has submitted that the Food Safety Officer has not followed the procedure contemplated under the Act; there is no corroboration in the evidence of PW1 Food Safety Officer and the mediators and therefore the finding of the trial Court is with proper reasoning and therefore, prayed the court to dismiss the criminal appeal.

7. Though the grounds mentioned the appellant are very generic in nature, on going through the defence taken by the respondent - accused and evidence put forth by the prosecution and the discussion went on in the judgment of the trial Court, would reveal that the respondent - accused has contested allegations of the Food Safety Officer on two grounds i.e., firstly Food Safety Officer has not followed the procedure in respect of lifting of the samples and sending the sample to the laboratory for analysis and secondly on the ground that there is no corroboration among the witnesses i.e., PW1 Food Safety Officer and also mediators.

8. According to the Food Safety Officer, he has visited fruit shop belonging to the respondent - accused on 14.08.2015 at 5.30 PM and found that the shop was kept open and he came to know that the owner ran away from the shop. PW1 has purchased 2 kgs of sapota by paying cash of Rs.120/- as sample under the cover of panchanama in the presence of mediators PWs 2 and 3. So far as this aspect is concerned, according to the complaint, by the time PW1 Food Safety Officer reached the shop of accused at 5.30 PM on 14.08.2015, the respondent - accused has ran away and he was not available. PW1 came to know that he ran away, that means, by the time he reached the scene of offence, the accused was not there. However, in the grounds of appeal, it is mentioned contrary to it that the respondent - accused ran away on seeing the Food Safety Officer. In any case, there is no dispute that at the time of lifting the samples, the respondent - accused was not present in the shop. As per the evidence of PW1, none were present in the shop. However, the evidence of PWs 2 and 3 would go to show that at the time of inspection, there were some persons belonging to the shop.

9. As per the definition of Food Business Operator under Section 2 (o) of the Act "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder. Therefore, the Food Safety Officer could have taken the signatures of those persons, who were present at that time. PW1 has also stated that he has paid Rs.120/- and prepared a cash receipt and he has also obtained signatures of PWs 2 and 3 on the said receipt. That means, PW1 has not paid Rs.120/- either to Food Business Operator or anybody pertaining to the shop. If there are no signatures pertaining to any of the persons running the shop, it creates a doubt whether PW1 has really lifted the samples from the store.

10. Further, the Food Safety Officer has lifted the sample on entertaining a doubt that the respondent - accused is using calcium carbide power for artificial ripening of the fruits, which is prohibited. If he was really under the impression that the accused has been using carbide for artificial ripening, then the Food Safety Officer should have seized all the fruits, and should not have allowed the fruits to be sold. This also creates a doubt as to whether PW1 has really visited the fruits on the given date.

11. PW3 has deposed that at the time of inspection, PW1 found calcium carbide paper packets in the boxes containing sapota, which is in brown colour. He also deposed that Food Safety Officer her removed calcium carbide packets from the boxes, which were taken as sample at the time of sampling. It is not the case of the prosecution that calcium carbide packets were found in the boxes containing sapota and thereby PW1 has entertained a doubt and for the purpose of analysis, he has sent the fruits to know as to whether really the powder contained in the boxes is calcium carbide or

not. It is the case of the petitioners that on seeing the sapota boxes, the Food Safety Officer has entertained a doubt that sapota fruits are ripened with the help of carbide. No reason is explained as to how he has entertained a doubt that sapota are being ripened with calcium carbide. If whatever PW3 has deposed is correct, there is no reason as to why Food Safety Officer - PW1 removed the paper packets containing carbide. In fact, if the paper packets containing carbide are available at the time of lifting the samples, that would have strengthened the case of the prosecution. Neither in the complaint nor in the panchanama, the respondent explained as to why paper packets containing calcium carbide was removed.

12. Apart from that, according to PW1, the inspection was commenced at 5.30 PM on 14.08.2015 and whereas PW2 has deposed that inspection was started at 2.00 PM and concluded at 5.30 PM. All these instances, create a doubt as to whether PW1 has really visited the shop on that relevant date and lifted the sample.

13. The other important aspect to be considered is that the Food Inspector has not followed the procedure in respect of sending the samples to the analyst. Learned counsel for the respondent - accused has submitted that lifting of sample in the absence of respondent - accused is against the procedure. However, Rule 2.1.3 authorizes Food Safety Officer to lift the sample even if the Food Business Operator is not available. Therefore, lifting of sample in the absence of respondent - accused is per se not an irregularity.

14. The other important aspect, which affects the case of the prosecution is that Rule 2.4.1 speaks about the procedure to be followed by the Food Safety Officer after lifting of the samples. It speaks that sample shall be divided into four samples. The sealed container of one part of the sample for analysis along with memorandum in Form VI shall be sent in a sealed packet to the Food Analyst under appropriate condition to retain the integrity of the sample. The sealed container of the second and third parts of the sample and two copies memorandum in Form VI shall be sent to the Designated Officer by any suitable means and the sealed container of the remaining fourth part of the sample and a copy of memorandum in Form VI shall be sent to an accredited laboratory along with fee prescribed by the Authority, if so requested by the Food Business Operator, under intimation to the Designated Officer.

15. In the case on hand, one of the samples, which was supposed to be sent to the accused was not sent to him. Once, the sample is received by Food Business Operator, he will have right to get the sample analyzed through an accredited laboratory for analysis under intimation to the designated officer. In the case on hand, as sample was not served on accused and thereby he lost an opportunity to send it to the laboratory of his choice, as such lot of prejudice is caused to the respondent - accused on account of not following the mandatory procedure. If at all the shop belong to the Food Business Operator is closed, PW1, who has got residential address of the accused, should have made an attempt to serve the same to his residence or atleast on the following day when the shop was opened. The Food Safety Officer should have obtained the address of the accused from the Agricultural Market Committee, from whom he has got the details of the ownership of the shop. PWs 2 and 3 deposed that there were workers belonging to accused No.1 shop at the time of lifting samples. But their signatures of those persons were not taken over in the panchanama or in the

receipt and sample was also not served atleast on them.

16. Considering the circumstances, the trial Court while analyzing the evidence placed before it, has rightly concluded that the evidence of PW1 is not corroborating and that there are lot of contradictions have been recorded and mandatory provisions of the Act have not been followed in respect of the sending samples and thereby basic right of the accused to send the sample to accredited laboratory has been missed. Therefore, finding of the trial Court that the accused was not guilty of the offence alleged against need not be interfered.

17. Accordingly, the Criminal Appeal is dismissed confirming the judgment of acquittal dated 13.02.2017 passed by the learned I Metropolitan Magistrate (Municipal Court) at Hyderabad in C.C.No.4 of 2016.

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

_____ DR. D.NAGARJUN, J Date: 28.10.2022 AS