

Ramesh Agrawal Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-21-2013

Appellant : Ramesh Agrawal

Respondent : The State of M.P.

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABALPUR SB: HON.
SHRI N.K.GUPTA,J.CRIMINAL REVISION NO.845/1998 Ramesh Agarwal. Vs.
State of Madhya Pradesh.

----- Shri Sankalp
Kochar, Advocate for the applicant. Shri Ajay Tamrakar, Panel Lawyer for the
respondent/ State.

ORDER

(Passed on the 21st day of February, 2013) The applicant was convicted for commission of offence under Section 16(1)(a)(Part-I) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as Act, 1954.) vide judgment dated 25.4.1996 passed by the Chief Judicial Magistrate Chhattarpur in Criminal Case No.271/1988 and sentenced with one year's RI with fine of Rs.1000/-. In Criminal Appeal No.50/1996, the learned Third Additional Sessions Judge, Chhattarpur vide judgment dated 16.7.1998 partly allowed the appeal of the applicant by which the sentence of the applicant was reduced from one year' RI to six months' RI. Being aggrieved with the judgments of both the Courts belows, this criminal

revision is preferred by the applicant.

2. The prosecution case, in short, is that on 21.2.1988 at about 12:00 PM the Food Inspector Shri R.L. Nigam (PW-1) went to the shop of the applicant and proposed for taking a sample of sweet dish (barfi). He took the sample of the sweet dish (barfi). He purchased 600 gm barfi and divided into three equal parts and three samples were prepared. Those were duly added by preservative and sealed in different packets. The memo of the procedure was prepared. The samples were sealed by the slip issued by the Local Health Authority and thereafter a memo was prepared. One sample was sent to the Public Analyst Bhopal for its analysis and remaining two packets were deposited with the Local Health Authority. After the analysis, the Public Analyst sent a report Ex.P-7 to the Local Health Authority with the opinion that no silver foil was used for covering the sweet dish, on the contrary aluminum foil was used, and therefore the sample was adulterated. After obtaining the sanction from the Deputy Director, Food and Drugs Administration, Sagar a complaint was filed before the CJ.Chhattarpur.

3. The applicant-accused abjured his guilt. He did not take any specific plea in the case, and therefore no defence evidence was adduced.

4. The learned Chief Judicial Magistrate has convicted and sentenced the applicant for one year's RI with fine of Rs.1,000/-. The appeal filed by the applicant was partly allowed whereby the sentence of the applicant was reduced to the period of six months' RI with fine of Rs.1000/-.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the applicant has submitted that the Food Inspector did not comply with the provisions of Section 13(2) of the Act, and therefore the applicant was deprived from his valuable right to get his sample examined from the Central Food Laboratory. In support of this contention, the learned counsel for the applicant has placed his reliance upon the judgment of the Single Bench of this Court in the case of Nand Kishore Bhallu Yadav Vs. State of MP. (1996 MPLJ 383 . Similarly, the judgment passed by Hon'ble the Apex Court in the case of State of Orissa Vs. Gauranga Sahu. (AIR 200.SC 1233.is also referred. Similarly, the order

of Hon'ble the Apex Court in the case of *Girishbhai Dahyabhai Shah Vs. CC Jani*. [(2009) 15 SCC 64]. is also referred to show that non-compliance of the provision of Section 13(2) of the Act, 1954 is fatal.

7. In the present case, if the law laid down by Hon'ble the Apex Court is complied, then it would be apparent that no notice under Section 13(2) of the Act, 1954 was given to the applicant after receiving the report of the Public Analyst. If any preservative is added in the edible, then effect of that preservative did not vanish in six months and no preservative is added, then sample of edible could be deteriorated prior to that period. If the memo Ex.P-13 is perused then it would be apparent that no preservative was added in the samples, and therefore there was possibility of their deterioration within a short span of time. The sample was taken on 21.1.1988 and no notice under Section 13(2) of the Act, 1954 was given to the applicant. The complaint was filed on 18.5.1988, but notice of the complaint could not be served upon the applicant, and therefore he appeared for the first time before the trial Court on 27.11.1990. The applicant got the intimation of the report of the Public Analyst after two years and nine months, and therefore the sample of barfi consisting of khowa must have deteriorated. Under such circumstances, not compliance of the provisions of Section 13(2) of the Act, 1954 is clearly fatal in the present case, and therefore the applicant could not be convicted for the offence of adulteration.

8. In the case of *Gauranga Sahu (supra)* Hon'ble the Apex Court has directed that the provisions of Section 13(2) of the Act, 1954 should be followed i.e. a statutory requirement which should be observed mandatorily. If report is sent to the accused, then merely dispatch of the report is not sufficient to prove the compliance, but it is to be proved by the prosecution that the report was received with the accused within time so that he could have an opportunity to get his sample examined by the Central Food Laboratory. In the light of the aforesaid decision of Hon'ble the Apex Court, it is the case in which the provisions of Section 13(2) of the Act were not complied by the Food Inspector, and therefore the applicant could not be convicted for the offence under Section 16(1)(a)(Part-I) of the Act, 1954.

9. On the basis of the aforesaid discussion, the revision filed by the applicant appears to be acceptable. The concurrent findings of both the courts below suffer from legal flaw that no compliance was made to the provisions of Section 13(2) of the Act, 1954, and therefore the concurrent findings of both the Courts below are to be disturbed due to that legal mistake committed by both the Courts below. Hence the present revision filed by the applicant is hereby allowed. The conviction as well as the sentence directed for the offence punishable under Section 16(1)(a)(Part-I) of the Prevention of Food Adulteration Act, 1954 is hereby set aside. The applicant is acquitted from the charge of aforesaid offence.

10. At present the applicant is on bail, his presence is no more required, and therefore it is directed that the his bail bonds shall stand discharged.

11. A copy of this order be sent to the trial Court as well the appellate Court along with their records for information. (N.K.Gupta) Judge 21/02/2013 Ansari

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