

Man Mohan Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-26-2013

Appellant : Man Mohan

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. S. K. Dixit

Judgement :

1 Criminal Revision No.321/1997 IN THE HIGH COURT OF MADHYA PRADESH,
JABALPUR SINGLE BENCH : HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal
Revision No.321/1997 Man Mohan VERSUS State of Madhya Pradesh
----- Shri Sankalp Kochar and
Shri S. K. Dixit, Counsel for the applicant. Shri Ajay Tamrakar, Panel Lawyer for
the State/respondent.

ORDER

(Passed on the 26th day of February, 2013) The applicant was convicted for the offence punishable under section 7(1) read with 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the P.F. Act.) vide judgment dated 1.10.1996 passed by the JMFC, Lakhanadon in Criminal Case No.920 of 1992 and sentenced for six months rigorous imprisonment with fine of Rs.3000/-. In Criminal Appeal No.230/1996 the learned First Additional Sessions Judge, Seoni vide 2 Criminal Revision No.321/1997 judgment dated 21.3.1997 dismissed

the appeal. Being aggrieved with aforesaid judgments passed by both the Courts below the applicant has preferred the present revision.

2. The prosecutions case in short is that on 19.7.1989, Food Inspector R.P. Singh (PW2) took samples of chilli powder from the shop of Raj Kumar Sharma situated at Lakhanadon. The chilli powder was prepared and packed by the present applicant and sold in the name of Shanti Grah Udyog Kendra, Jabalpur. Sample was duly sent to the Public Analyst and Public Analyst by its report Ex.P/11 found that other readings of various tests were appropriate but artificial colour was found in the sample. After getting due sanction a prosecution was initiated by the Food Inspector. The applicant has applied for analysis of the sample from the Central Food Laboratory and therefore, one part of the sample was sent to the Central Food Laboratory, Gaziabad and a report was received that the sample was adulterated because test of non-volatile ether extract. was found to be 11.4 % which was less than 12%. Thereafter, the complainant took a fresh permission from the Local 3 Criminal Revision No.321/1997 Health Authority to prosecute the applicant and thereafter a fresh complaint was filed before the trial Court.

3. The applicant abjured his guilt. He took a specific plea that his product was affixed with Agmark and therefore, he has prepared a standard product and no adulteration was possible in that product. Due to lapse of time such type of difference in analysis could arise. However, Arvind Pathak, In-charge Chemist, Agmark Department, Jabalpur was examined as a defence witness to show the procedure relating to affixing the Agmark and duration in which sample remains useful.

4. After considering the evidence adduced by the parties the learned Judicial Magistrate First Class convicted and sentenced the applicant as mentioned above. In appeal filed by the applicant no relief could be given to the applicant.

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

6. The main contention of the learned counsel for the applicant in the case is that sample was taken on 19.7.1989 and according to the statement given by the In-charge Chemist Arvind Pathak sample deteriorated due to passage 4 Criminal

Revision No.321/1997 of time and it was mentioned by him that such packets of chilli powder were useful within a period of nine months whereas, the sample was examined by Central Food Laboratory on 16.7.1990 or soon before that date therefore, such type of minor change could have been occurred in sample of chilli powder and therefore, the seized sample was not at all adulterated. In this context it would be apparent that initially the application was filed against the applicant that the sample was found adulterated on the basis of the report of the Public Analyst that artificial colour was used. However, that complaint was taken back by the Food Inspector and again a fresh complaint was filed on the basis of the report received by the Central Food Laboratory. In the report of the Central Food Laboratory, it is apparent that no artificial colour was found. The Food Inspector himself was of the opinion that no artificial colour was found by the Central Food Laboratory and therefore, the report given by the Public Analyst was not acceptable hence, he took back the complaint.

7. Thereafter, a second complaint was filed against the applicant by getting a prosecution sanction from the 5 Criminal Revision No.321/1997 concerned officer. Therefore, it appears that the complaint was filed on the basis of the report given by the Central Food Laboratory only. The standard of chilli powder is given in the Article A.05.05.01. If standard is compared with the report of the Central Food Laboratory then it would be clear that sample was fit in the other tests but, it was not fit for the fifth test i.e. 'non-volatile ether extract on dry basis' which was required to be not less than 12 % by weight whereas the Central Food Laboratory found that it was 11.4%. In that respect if the report of the Public Analyst is perused then in that report it was mentioned that 'non- volatile ether extract on dry basis' was found to be 12 % by weight. Under such circumstances by comparing both the reports, contention led by learned counsel for the applicant can be accepted that due to lapse of time the sample was deteriorated otherwise the concerned reading was as analyzed by the Public Analyst could not be appropriate. Under such circumstances, by difference of that single reading as given by the Central Food Laboratory it cannot be said that the sample was adulterated. It appears that the sample was not adulterated on that count as per the report 6 Criminal Revision No.321/1997 of the Public Analyst but since sample was sent to the Central Food Laboratory approximately one year after its seizure

then it should have lost its actual quality and therefore, the reading of that content was found slightly low than the prescribed limit.

8. On the basis of the aforesaid discussion, it appears that the analysis done by the Central Food Laboratory was done with delay of at least one year and therefore, the reading of that sample for that count will be taken from the report of Public Analyst and therefore, according to that reading that sample was not adulterated. Both the Courts below have convicted the applicant for offence punishable under Section 7(1) read with Section 16(1)(a)(i) of the P.F Act without any basis. They did not consider that due to lapse of time the sample was deteriorated. Under such circumstances, interference is required from the side of this Court by way of a revision in the judgments passed by both the Courts below.

9. On the basis of the aforesaid discussion the revision filed by the applicant is hereby allowed. The conviction and the sentence passed by the trial Court for Criminal Revision No.321/1997 offence punishable under Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act are hereby set aside. The applicant is acquitted from the aforesaid charges. He would be entitled to get the fine amount back if he has deposited the same before the trial Court.

10. The applicant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

11. Copy of the order be sent to the appellate court as well as the trial Court for information and compliance. (N.K.GUPTA) JUDGE 26 2/2013 bina

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