

Ashok Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-17-2013

Appellant : Ashok Kumar

Respondent : The State of M.P.

Judgement :

1 HIGH COURT OF JUDICATURE MADHYA PRADESH, JABALPUR SB: HON.
SHRI N.K.GUPTA,J.CRIMINAL REVISION NO.1283/1999 Ashok Kumar. Vs.
State of Madhya Pradesh.

----- Shri
Umakant Sharma, Sr. Advocate with Shri P.N. Tiwari, Advocate for the applicant.
Shri Ajay Tamrakar, Panel Lawyer for the respondent/ State.

ORDER

(Passed on the 17th day of April, 2013) Vide judgment dated 5.5.1998 passed by the Chief Judicial Magistrate Shahdol in Criminal Case No.531/1994, the applicant was convicted for the offence punishable under Section 7(1) read with Section 16(1)(a)(i), Section 7(5) read with Rule 32 read with Section 16(1)(a)(ii) and Section 14A read with Section 16(1)(c) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as PF Act.) and sentenced for six months RI with fine of Rs.1,000/- for each count of the offences. The sentence was to run one by one. In Criminal Appeal No.85/1998, the learned First Additional Sessions Judge Shahdol vide judgment dated 16.8.1999 acquitted the co-accused Rakesh Kumar

from all the charges, but conviction as well as the sentence directed against the present applicant was 2 maintained. Being aggrieved with the judgments of both the Courts below, this criminal revision is preferred by the applicant.

2. The prosecutions case, in short, is that the Food Inspector S.P.Dubey (PW-2) on 22.3.1994 went to the shop of Rakesh Kumar situated at Village Amjhor District Shahdol along with other Food Inspectors Shri K.G.Singh and Shri V.K.Mishra. He found that the applicant was selling the various edibles from that grocery shop of the co- accused. The Food Inspector saw that 50 bags of common salt crystal were collected by the applicant and he was selling those common salt crystals. There was no information about the manufacture, packing, date etc. of these crystals. The applicant could not inform about the distributor, who sold the common salt crystals to the applicant. Thereafter the Food Inspector proposed to purchase the sample of that common salt and he took 600 gm of crystal salt from the applicant after giving the payment. The sample was divided in three parts in dry and clean polythene bags and thereafter those bags were covered with thick paper and also sealed by the slip of the Local Health Authority. The various memos were prepared about the procedure and taking the sample etc. One part of the sample was sent to the Public Analyst, whereas remaining two parts were deposited with the Local Health Authority. The Public Analyst vide its report Ex.P-23 found 3 that the sample was adulterated. Therefore, after taking the sanction for prosecution, a complaint was filed before the concerned Magisterial Court. A notice under Section 13(2) of the PF Act was sent to both the accused persons, but they did not apply for re-examination of the sample from the Central Food Laboratory.

3. The applicant abjured his guilt. He took a plea that the sample was taken on Tuesday, which was holiday for the shops of village Amjhor and the shop was not open. The common salt was kept for the cattle so that it could be mixed with fodder etc., and therefore a sign board was placed near the bags of the salt, but the Food Inspector did not take the notice of that sign board. In defence Rambahore (DW-1) was examined.

4. The learned Chief Judicial Magistrate after considering the evidence adduced by the parties convicted and sentenced the applicant as mentioned above, whereas the appeal filed by the applicant was dismissed in toto.

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

6. The learned senior counsel for the applicant has submitted that the sample was not adulterated and the applicant was wrongly convicted for the alleged offence. In alternate, he has submitted that the applicant has faced the trial, appeal and revision for last 19 years, and therefore he may not be sent to the jail again. In support of his contention, he has placed his reliance upon the judgments 4 of Honble the Apex Court in the cases of Umedmal Vs. State of Maharashtra., (AIR 197.SC 1760.and Lingappa Shetty Vs. Hubli Darvar Municipal Corporation., (AIR 197.SC 1838). He has also referred the orders of the Single Bench of this Court in the cases of Indore Municipal Corporation Vs. Kishanlal Assodamal. (1987 MPLJ 641 and Amarsingh Vs. State of MP., [1993(1) MPWN 227 ..

7. After considering the submissions made by the learned counsel for the parties, it would be proper to consider the three counts conviction one by one. First of all if the matter of adulteration is considered, then from the memo Ex.P-14 and the statement of Food Inspector S.P. Dubey (PW-2), it is apparent that the Shri Dubey took a sample of solid common salt. He has mentioned in the memo Ex.P-14 that the applicant did not give any information as to whether the salt in question was a common salt or iodised salt. The applicant took a plea that the same was a common salt kept for the cattle and it appears that the Food Inspector accepted the plea, hence in the memo Ex.P-17 which was sent to the Public Analyst along with the sample in which the nature of category is shown to be salt whole.. It is nowhere mentioned that it was an iodised salt. Similarly, the Public Analyst in its report Ex.P-23 has mentioned the edible to be salt whole., and therefore it is apparent that it was the sample of salt 5 whole or solid common salt. For such a sample Article A.15 is prescribed in Scheduled B of the Prevention of Food Adulteration Rules. The learned Chief Judicial Magistrate has compared the result of the sample with Article A.15.01, which is prepared for iodised salt. If the standard of the common salt sample is perused in Article A.15, then it is apparent

that the percentage of sodium chloride was required to be 96%, whereas in the present sample it was found to be 98.179%. Similarly, it was directed that the maximum percentage of matter soluble in water other than sodium chloride should be not more than 3%, whereas in the present sample it was found to be 1.171%. The Public Analyst did not find any other test reading which was adverse to the applicant, but only he found that percentage of iodine was less in the sample. When the sample was not given for the iodised salt, then it was not expected that the element iodine would have been present in the sample, and therefore if the report of the Public Analyst is compared with the standard given in the Article A.15, then the sample was not at all adulterated. The learned Chief Judicial Magistrate has committed an error of law in convicting the applicant for the offence of adulteration punishable under Section 7(1) read with Section 16(1)(a)(i) of the PF Act.

8. The learned Chief Judicial Magistrate has convicted the applicant for the offence under Section 16(1) (c) of the PF Act for violation of Section 14A of the PF Act. 6 Actually Section 16(i)(c) of the PF Act is prescribed against the accused person, who prevents a Food Inspector from taking the sample, and therefore in the present case no such incident took place that the Food Inspector was prevented from taking the sample. Therefore the applicant could not be convicted for the offence punishable under Section 16(1)(c) of the PF Act. Actually for violation of the provisions of Section 14A of the PF Act, a charge of the offence punishable under Section 16(1C) of the PF Act should have been framed. But no such charge was framed against the applicant. The applicant could not be convicted for the offence under Section 16(1C) of the PF Act in absence of the charges. The applicant has already faced the trial, appeal and revision for last 19 years, and therefore it is not a case in which re-trial of the case may be directed. Specially when the applicant is to be acquitted from the main charge of the adulteration. Under such circumstances, it is not a fit case which could be remanded for framing of the correct charge. However, the applicant cannot be convicted for the offence under Section 16(1)(c) of the PF Act.

9. The third count of the conviction has been done by the trial court for the offence under Section 7(5) read with Rule 32 read with Section 16(1)(a)(ii) of the PF Act.

Rule 32 of the PF Rules is applicable for the food contents which are given in package. It is apparent from the memo 7 Ex.P-14 that the applicant had solid common salt in the bags. He had 50 bags of such salt. Under such circumstances, it cannot be said that it was a packed food which should be according to the conditions of Rule 32. Looking to the quantity of the common salt kept by the applicant, the statement of defence witness Rambahore (DW-1) appears to be correct. Rambahore has stated that solid salt was kept for the cattle so it can be added to the feed of various cattle. He has accepted that due to the disease of goiter, no villager was taking solid salt for eating. They were taking packed iodised common salt packed by the reputed company, and therefore 50 bags common salt was kept for the cattle. Looking to the huge quantity of common salt, no such packing was possible to be done, and therefore Rule 32 of the PF Rules was not applicable in the present case. Hence, the applicant could not be convicted for the offence under Section 7(5) read with Section 16(1) (a)(ii) of the PF Act.

10. If the applicant was selling the solid common salt in general, which was not iodised, then it was the violation of Rule 49 of the PF Rules, and therefore Food Inspector must have taken an action against the applicant for violation of Rule 49, whereas he prepared a false case of adulteration. After 19 years of the incident, it is not a fit case to be sent back to the trial Court to consider the 8 violation of Rule 49 of the PF Rules, and therefore it would be proper to decide the present revision on its own merits.

11. After considering the discussion as mentioned above, it is apparent that the common solid salt kept by the applicant was not at all adulterated. No violation of Rule 32 of the PF Rules was found. Similarly, no offence under Section 16(1)(c) of the PF Act was found, and therefore the applicant could not be convicted for any count of the charges for which he was convicted by the trial Court. The learned CJ.as well as the learned Additional Sessions Judge have committed an error of law in passing the perverse judgments. Therefore, the present revision can be accepted. Consequently, it is hereby accepted. The conviction as well as the sentence directed by both the learned courts below for the offence Section 7(1) read with Section 16(1)(a)(i), Section 7(5) read with Rule 32 read with Section 16(1)(a)(ii) and Section 14A read with Section 16(1) (c) of the PF Act are hereby

set aside. The applicant is acquitted from the aforesaid charges. He would be entitled for the fine amount back, if he has deposited before the trial Court.

12. The applicant is on bail, his presence is no more required, and therefore it is directed that his bail bonds shall stand discharged

13. A copy of this order be sent to the trial court as well as the appellate court along with their records for information and compliance. (N.K.Gupta) Judge
17/04/2013 Ansari.

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