

Sanman Singh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-28-2013

Appellant : Sanman Singh

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. A. Usmani

Judgement :

1 Criminal Revision No.1066/1999 IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH : HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Revision No.1066/1999 Sanman Singh VERSUS State of Madhya Pradesh -----

Shri A. Usmani, counsel for the applicant. Shri Vinot Fouzdar, Panel Lawyer for the State/respondent.

ORDER

(Passed on the 28th day of February, 2013) The applicant was convicted for the offence punishable under 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the P.F. Act.) vide judgment dated 12.4.1999 passed by the Chief Judicial Magistrate, Raisen in Criminal Case No.649/89 and sentenced for six months rigorous imprisonment with fine of Rs.1000/-. In Criminal Appeal No.46/1999 the learned IInd Additional Sessions Judge, Raisen vide judgment dated 7.7.1999 dismissed the appeal. Being aggrieved with aforesaid 2 Criminal

Revision No.1066/1999 judgments passed by both the Courts below the applicant has preferred the present revision.

2. The prosecutions case in short is that on 9.8.1989, the Food Inspector Shri D. V. Kelkar (PW1) went to Naktara Bus Stand, Raisen for inspection. At about 8.00 a.m, he found that the applicant was coming from the outskirts with some brass cans and aluminum cans on a bicycle. He was stopped and a sample of 750 ml. of goat milk was taken by the Food Inspector. Sample was divided into three parts and 20 drops of formalin were added on each of the part and thereafter, the samples were duly sealed with the paper slips given by the Local Health Authority and properly wrapped. One part of the sample was sent to the Public Analyst for analysis and the other parts were deposited in the office of the Local Health Authority. The Public Analyst vide its report Ex.P/12 dated 18.9.1989 gave the report that the sample was adulterated. Thereafter, a sanction was obtained from the concerned authority to file a complaint and a notice under Section 13(2) of the P.F. Act was sent to the applicant and consequently, it was served upon him. A complaint was filed by the Food Inspector.

3. The applicant abjured his guilt. He has stated before the trial Court that he does not affix his thumb 3 Criminal Revision No.1066/1999 impression and therefore, he was not the person from whom the milk sample as taken. In defence one Shyamlal (DW1) was examined.

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

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

6. The learned counsel for the applicant has contended that the seizure was done on 9.8.1989 and the report of the Public Analyst was received on 18.9.1989 whereas, notice was given with delay of 3 months. In this connection the learned counsel for the applicant placed his reliance upon the order passed by the single Bench of this Court in the case of State of M.P. Vs. Khum Singh. [1997 (II) MPWN Note 119].. It is further contended that identity of accused was not settled. It was

not proved that the sample was taken from the applicant. In support of this contention the learned counsel for the applicant has placed his reliance upon the order passed by the single Bench of this Court in the case of Siddhulal Vs. Food Inspector and another. [1978 (I) MPWN Note 130). It is also submitted that there was a marginal difference in the percentage of solid not fat. and 4 Criminal Revision No.1066/1999 therefore, the applicant was not a culprit of adulteration. In support of this contention learned counsel for the applicant has relied upon the order passed by the single Bench of this Court in the case of Syed Jafar Ali Vs. Navnit Das. [1999 (1) MPWN Note 15). Therefore, it is prayed that the applicant was innocent and he should be acquitted.

7. On the other hand the learned Panel Lawyer has submitted that the concurrent findings given by both the Courts below cannot be disturbed. Without any illegality findings of conviction, dependent upon the facts cannot be disturbed and therefore, the concurrent findings of both the Courts below that the applicant adulterated the milk should be maintained. It is prayed that the revision filed by the applicant may be dismissed.

8. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, each contention of the learned counsel for the applicant may be considered one by one. First of all it is apparent from the evidence adduced before the trial Court that a report of Public Analyst was prepared and dispatched on 18.9.1989 and as per document Exhibit P/14, it appears that it was received after some time. However, a notice was given on 26.12.1989 i.e. approximately three 5 Criminal Revision No.1066/1999 months after receiving the report whereas, according to the provisions of Section 13(2) of the P.F Act such report should be supplied to the accused within 10 days. However, it is to be seen that whether the delayed supply of that report was fatal or not. In case of Khum Singh (supra) it was contended by learned counsel for the accused that the report was sent after 17 days was fatal to the prosecution and therefore, the trial Court acquitted the accused and no interference was done by the revisionary Court. No detail is available about the facts of that case as to why the trial Court found the delay of 17 days was fatal. It is apparent from the present seizure memo that 20 drops of formalin were added in each part of the sample. It

is expected that the effect of the preservative shall vanish after six months and therefore, if notice was given within six months of the date of the incident then the applicant had an opportunity to get his sample examined by the Central Food Laboratory and therefore, the delay of three months does not appear to be fatal in the present case. There was no specific law laid by this Court in the case of Khum Singh (supra) and therefore, order passed in that case may not be taken as a precedent in this case. It is apparent that the applicant did not apply for analysis of second part of sample after receiving the notice under Section 13(2) of 6 Criminal Revision No.1066/1999 P.F. Act.

9. So far as the second contention is concerned the applicant has not challenged the testimony of the Food Inspector Shri Kelkar. Secondly there was no enmity of the applicant with the Food Inspector. It is true that the applicant appended his signatures on various documents including the plea recorded by the Court and the document Ex.P/15, the acknowledgment slip. However, it was the sweet will of the applicant not to put his signature on the various memos and to put his thumb impression. Thumb impression could be compared at any stage and the applicant never requested the Court that his thumb impression may be compared by taking a sample of his thumb impression. Under such circumstances, if the applicant did not meet with the Food Inspector then his name, particulars of address could not be known to the Food Inspector and he cannot make a case against the applicant. There was no enmity between the applicant and the Food Inspector so that he could take an action against the applicant and, therefore, if the applicant appended his thumb impression on the various documents at the time of seizure and thereafter, he appended his signatures on the various documents then it makes no difference. There is no case about doubtful identity of the applicant. The order passed by 7 Criminal Revision No.1066/1999 in the case of Syed Jafar Ali (supra) is not applicable in the present case due to the factual differences. It is not a case of the applicant that he did not receive the notice under Section 13(2) of the P.F. Act. He did not challenge that he did not append the signature on the document Ex.P/15. Under such circumstances, it is proved that he received a notice under Section 13(2) of the P.F Act.

10. The learned counsel for the applicant has also contended that there were minor differences in the result of the sample and therefore, it may be ignored. In this context reliance is placed on the order passed by the Singh Bench of this Court in the case of Syed Jafar Ali (supra). However, that order cannot be taken as a precedent in the present case because there is a uniform percentage fixed for solid not fat. in case of goat milk through out the country. It is 9% in the entire country and therefore, the difference in percentage which was considered in that case cannot be accepted as such in the present case. In Article 11.01.11 of Appendix 'B' of the Prevention of Food Adulteration Rules, 1955 the standard for goat milk is given to be solids fat. not less than 3.5 % and solids not fat. not less than 9%. For other States percentage of solid fat is different but percentage of solids not fat is same all over the country. In the present case there is no problem 8 Criminal Revision No.1066/1999 in the percentage of solid fat but the percentage of solids not fat was found below the standard. It is 1.35% below than the prescribed standard and therefore, it cannot be said that it was a marginal difference with the standard fixed by the statute. Hence the judgment passed by this Court in the case of Sayed Jafar Ali (supra) cannot be applied.

11. The learned counsel for the applicant has also submitted that the Public Analyst has not mentioned as to how the milk was adulterated. Prima facie there is no any direction to the Public Analyst to explain as to how the sample was adulterated. If the sample is not according to the standard fixed by the statute then it is to be mentioned that it is adulterated. However, if adulteration of the milk, other than artificial or synthetic milk, is considered then it can be adulterated by three different procedures. Firstly by addition of some water in the milk, secondly to remove the creme from the milk and thirdly to add some substance to make it thick. These are three procedures to make the entire milk adulterated. If the water is added in the milk then percentage of fat as well as percentage of solids not fat shall be reduced but in the present case percentage of solid fat is higher than the standard. Similarly if creme is removed then the percentage of solids not fat shall be increased and percentage 9 Criminal Revision No.1066/1999 of fat shall be reduced but, that is not the position of the present sample. If some extra substance is added to make the milk thick then percentage of solids not fat shall increase but, in the present case the percentage of solids not fat is less than the

standard percentage and therefore, there is no answer given by the Public Analyst as to how the sample was adulterated.

12. It is apparent that the applicant brought the milk in cans kept on a bicycle. If milk kept in an utensil is brought on a bicycle on the uneven road then automatically churning is possible of the milk and it is possible that some fat granules may float on the milk and if a part of sample contains some of the fat granules along with the milk then percentage of fat would be higher than the prescribed standard. Under such circumstances, it can be concluded that the Food Inspector did not make the milk homogeneous before taking the sample and therefore, the sample which was taken by the Food Inspector does not represent the entire milk kept by the applicant for the sale and therefore, it is a lapse of the procedure adopted by the Food Inspector. It was expected from him that he should have made the milk homogeneous before taking the sample. When the part of sample which was sent to the Public Analyst does not represent to be a sample of the milk kept by 10 Criminal Revision No.1066/1999 the applicant then its report has no value to hold the applicant liable for adulteration. Hence by the report of the Public Analyst it cannot be said that the milk taken from the applicant was adulterated.

13. The learned Chief Judicial Magistrate as well as the Additional Sessions Judge did not consider as to why the percentage of fat was higher in the milk and therefore, their concurrent opinion of the conviction cannot be maintained. In the aforesaid circumstances, it cannot be held that the applicant was liable for adulteration. He could not be convicted for offence punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. Looking to the mixed error of facts and law, it would be proper to interfere in the judgments passed by both the Courts below by way of a revision.

14. Consequently, the revision filed by the applicant is hereby allowed. The conviction as well as the sentence directed against the applicant is hereby set aside. The applicant is acquitted from the charge of offence punishable under section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. He would be entitled to get the fine amount back if he has deposited before the trial Court. 11

Criminal Revision No.1066/1999 15. 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.

16. Copy of the order be sent to the trial Court as well as the appellate Court along with their records for information. (N.K.GUPTA) JUDGE 28 2/2013 bina

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