

Ramesh Kumar Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-10-2013

Appellant : Ramesh Kumar

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Harpreet Ruprah

Judgement :

1 Cr.R. No.1297/1999 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR SINGLE BENCH: HONBLE SHRI JUSTICE A.K.SHRIVASTAVA
CRIMINAL REVISION NO.1297/1999 APPLICANT : Ramesh Kumar, S/o. Chanulal, R/o. Obedullaganj, District Raisen (M.P.) Versus RESPONDENT: State of M.P. ----- Shri Harpreet Ruprah, Advocate for applicant. Respondent/State by Shri R.S. Shukla, Public Prosecutor.

ORDER

(10.10.2013) This revision application under Section 397/401 of Cr PC has been filed by the applicant against the judgment of conviction and order of sentence dated 20.08.1999 passed by learned Second Additional Sessions Judge, Raisen dismissing the criminal appeal No.6/1999 and thereby affirming the judgment of conviction and order of sentence dated 20.01.1999 passed by learned Chief Judicial Magistrate, Raisen in Criminal Case No.461/1990 convicting the applicant

under Section 16(1)(a)(i) of the Prevention of Food 2 Cr.R. No.1297/1999 Adulteration Act, 1954 (in short Act of 1954.) and thereby sentencing him to suffer imprisonment of six months RI and fine of Rs.1000/- and in default of payment of fine, further RI of 2 months.

2. No exhaustive statements of fact are required to be narrated for the purpose of disposal of this revision application since in elaboration they have been mentioned in the impugned judgment. Suffice it to say that on 07.06.1990 the Food Inspector Shri D.K. Khare (hereinafter shall be referred to as Food Inspector.) took the sample of 750 gms of Besan Ka Laddu (Magaj Ka Laddu) after purchasing the same. The sample was separated into three parts equally, meaning thereby keeping 250 gms of Laddu in each packet of polythene which were wrapped by thick paper and were sealed. The sample was sent to the State Food Laboratory which was received by the said Laboratory on 08.06.1990. The Public Analyst found the food sample to be adulterated vide its report dated 13.07.1990. The report was sent to the Office of Local Health Authority on 16.07.1990. The notice under Section 13(2) of the Act of 1954 was sent by the Food Inspector to the applicant on 30.08.1990.

3. A charge-sheet was submitted before the Court of learned Chief Judicial Magistrate, who framed charge punishable under Section 16 (1)(a)(i) of the Act of 1954 which the applicant 3 Cr.R. No.1297/1999 denied. The Food Inspector examined himself as PW2 and also examined one independent witness Roop Singh as PW1 before whom the sample was taken.

4. Learned Chief Judicial Magistrate on 20.06.1995 found the offence to be proved and eventually vide judgment dated 20.06.1995 convicted the applicant under Section 7(1) read with Section 16 (1)(a)(i) of the Act of 1954, however, in appeal before learned First Additional Sessions Judge Raisen (Criminal Appeal No.70/1996), the judgment was set aside and the matter was remanded to Trial Court by giving certain directions to examine the witnesses again. Eventually, the witnesses were re-examined. Thereafter, learned Chief Judicial Magistrate vide impugned judgment dated 20.01.1999 again held that applicant has committed the offence under Section 16 (1)(a)(i) of the Act of 1954 and passed the order of

sentence to suffer six months RI and fine of Rs.1,000/- with default stipulations. In the appeal filed by the applicant, the judgment of conviction and order of sentence was affirmed.

5. In this manner this revision application has been filed by the accused.

6. Vehemently it has been contended by Shri Harpreet Ruprah, learned counsel for applicant that there is total non-compliance of mandatory provision of Rule 16 of the Prevention of 4 Cr.R. No.1297/1999 Food Adulteration Rules, 1955 (in short Rules of 1955.). It has been then contended that there is non-compliance of Section 13(2) of the Act of 1954 and hence learned two Courts below have committed error in convicting the applicant. Thus, it has been prayed by learned counsel that by allowing this revision, the applicant be acquitted from the aforesaid charge.

7. On the other hand, Shri Shukla, learned Public Prosecutor argued in support of the impugned judgment passed by two Courts below and submitted that cogent reasons have been assigned to convict the applicant and therefore this revision being sans substance deserves to be dismissed.

8. Having heard learned counsel for the parties, I am of the view that this revision application deserves to be allowed.

9. On bare perusal of the panchnama Ex.P/7 this Court finds that nowhere it has been so mentioned that the sample which was collected by the Food Inspector was kept in neat, clean and dry polythene bags. In cross-examination also, the Food Inspector has admitted this fact and therefore according to me there is non-compliance of mandatory provisions of Rule 16 of the Rules of 1955. Not only this, nothing has been mentioned in the panchnama that after sealing the sample, the ends of the paper were neatly folded. According to me, this is also a mandatory requirement of 5 Cr.R. No.1297/1999 Rule 16 of Rules of 1955. Not only this there is non-compliance of Rule 16 (c) of the Rules also because nowhere in the panchnama it is mentioned that paper slip of the size was going round completely from bottom to top of the container bearing the signature. Further it has not been mentioned in the panchnama that thread by which the sample was tied, was tied in

a manner and fashion as mentioned in Rule 16 (d) of the Rules of 1955. Thus, I am of the view that there is complete violation of Rule 16 of the Rules of 1955.

10. Not only this, on bare perusal of the report of FSL dated 13.07.1990 (Ex.P/12) indicating that sample of Laddu was adulterated, this Court finds that on 16.07.1990 it was dispatched to the office of Local Health Authority but notice under Section 13(2) of the Act of 1954 was not sent within 10 days from the date of receipt of said report since it was sent on 30.08.1990 (Ex.P/14) and therefore there is non-compliance of the mandatory requirement of sending the report within 10 days from the date of its receipt. Hence, I am of the view that learned two Courts below have convicted the applicant against the mandatory provisions of Act of 1954 and Rules of 1955.

11. For the reasons stated hereinabove, this revision succeeds and is hereby allowed. The impugned judgment of conviction and order of sentence passed by learned two Courts 6 Cr.R. No.1297/1999 below is set aside and the applicant is acquitted from all the charges. He is on bail, his bail bonds shall stand discharge. (A.K. Shrivastava) Judge 10.10.2013 SS

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