

State of Madhya Pradesh Vs. Devi Singh

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Court : Madhya Pradesh

Decided On : Sep-18-1991

Reported in : 1993(0)MPLJ703

Judge : K.L. Issrani, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 13(2) and 16(1);
Prevention of Food Adulteration Rules, 1955 - Rule 9; Code of Criminal Procedure
(CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 996 of 1985

Appellant : State of Madhya Pradesh

Respondent : Devi Singh

Advocate for Def. : K.P. Chaturvedi, Adv.

Advocate for Pet/Ap. : B.M. Dwivedi, Govt. Adv.

Disposition : Appeal allowed

Judgement :

K.L. Issrani, J.

1. The present appeal is against the judgment and finding dated 12-11-1984 passed by Chief Judicial Magistrate, Betul, in Criminal Case No. 2768/80,

acquitting the respondent for an offence under Section 7(1)(ii) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

2. According to the prosecution, on 5-12-1980, at about 7.30 A.M., a sample of buffalo milk was taken from, the respondent by Food Inspector K.P. Pancholi, Public Analyst found the milk to be below the standard.

3. The learned trial Magistrate acquitted the respondent on two counts:--

(i) that it was not proved that the respondent was not selling the milk, and

(ii) that the report of the Public Analyst sent to the respondent under Section 13(2) of the Act was received by him or not.

4. Learned counsel for the appellant submitted that the provisions of Section 13(2) are not mandatory and the sale to the Food Inspector is also a sale. The judgment passed by the trial Magistrate deserves to be reversed.

5. Learned counsel for the respondent supported the judgment passed by the trial Magistrate and submitted that the appeal deserves to be dismissed.

6. In this case, it is not disputed before this Court that the sample was taken from the respondent by the Food Inspector after giving its price and all other procedure prescribed under the law was performed. The only point disputed is whether the letter Ex.P-11, addressed to the respondent enclosing a copy of the report of the Public Analyst Ex.P-10, was received by the respondent or not. It is also disputed as to whether the respondent is a milk-vendor.

7. It is now a settled law that the provisions of Rule 9(j) of the Rules framed under Prevention of Food Adulteration Rules and the provisions of Section 13(2) are not mandatory. In this case, however a copy of the report of Public Analyst Ex.P-10 was sent to the accused respondent on his given address by registered post through letter Ex.P-11. Ex.P-12-was-the postal receipt and Ex.P-12-A was the photocopy of the postal receipt on record. The address of the accused respondent was not disputed. Even no question was put to the Food Inspector K.C. Pancholi (P.W. 1) about Ex.P-11 or Ex.P-12-A despatching the report. Even to his

statement under Section 313, Criminal Procedure Code for Ex.P-10 and Ex.P-11, the only answer given by the respondent was that he does not know about it. In *Tulsiram v. State of M.P.*, AIR 1985 SC 299, it has been held that sending of Public Analyst's report to the vendor is not fatal. But here in this case, presumption can be drawn under Section 114 of the Evidence Act that the letter sent by registered addressed to the respondent on his correct address will be presumed to have been received by him. However it is surprising that after he appeared in the Court, he never made any grievance. He had also failed to show as to what prejudice was caused to him by not having a copy of the report of the Public Analyst. Thus there is no merit in the contention of the appellant in regard to non-receipt of the copy of the report of Public Analyst by him.

8. So far as the sale is concerned, the version of K.C. Pancholi, (P.W. 1) Food Inspector, has been corroborated by an independent witness Lakhanlal (P.W.2) who was not at all cross-examined by the respondent. Ex.P-4 is the notice given to the respondent for taking sample. Ex.P-5 is the receipt of payment of money, which is also signed by the respondent and Lakhanlal (P.W.2). Ex.P-6 is the Panchanama. Ex.P-10 is the report of Public Analyst stating that the sample does not conform to the standard prescribed. Ex.P-11 is the letter addressed to the accused on his given address enclosing a copy of the report of Public Analyst and Ex.P-12-A is the photocopy of the postal receipt. The only defence of the respondent under Section 313, Criminal Procedure Code is that he has been falsely implicated. In *Mangal Das v. Maharashtra State*, AIR 1966 SC 128, it has been held that if no objection is raised at the trial, the presumption is that the accused apprehended no prejudice. This case has defined the meaning of 'vendor' and it has been held that the word 'vondor', though not defined in the Act, would obviously mean the person who has sold the article of food, which is alleged to be adulterated. In that case, sale to the Food Inspector has been taken to be a sale within the special definition of 'sale' in Section 2(xiii), which specifically includes within its ambit the sale for analysis. In view of this, sale to the Food Inspector, in this case, will also be a sale within the four corners of the Provisions of the Prevention of Food Adulteration Act. Moreover, no defence was led before the trial Magistrate, as argued before this Court that the respondent was not selling the milk. No such thing also transpires from his statement under Section 313, Criminal

Procedure Code. No one else has been examined in defence also.

9. In view of the aforesaid findings, the findings arrived at by the learned trial Magistrate are palpably wrong and illegal and they are set aside. The accused-respondent is held guilty of the offence under Section 7(1)(ii) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

10. At the time of hearing, the accused-respondent was present. He and also his counsel were asked to address on the quantum of sentence. The submission of the learned counsel for the respondent was that the respondent is a poor person. The matter pertains to the year 1980 and the appeal against the quantum is also of the year 1985. Lenient sentence should be awarded against the respondent. The minimum sentence prescribed in a case is six months, which may extend to 3 years and with fine, which shall not be less than Rs. 1,000/-. But looking to the facts and circumstances of this case, the accused respondent is sentenced to 3 months' R.I. and a fine of Rs. 2,000/-; in default, further R.I. for three months.

11. The appeal is, therefore, allowed. The accused-respondent should surrender himself before C.J.M., Betul on 11-11-1991.

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