

Vithal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-15-2004

Reported in : 2005(1)MPHT10; 2004(4)MPLJ298

Judge : S.L. Kochar, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 13(2) and 16(1);
Prevention of Food Adulteration Rules, 1955 - Rule 9A

Appeal No. : Criminal Revision No. 455/2004

Appellant : Vithal

Respondent : State of M.P.

Advocate for Def. : Pravin Newalkar, Dy. Govt. Adv.

Advocate for Pet/Ap. : Satish Tomar, Adv.

Disposition : Revision allowed

Judgement :

S.L. Kochar, J.

1. This criminal revision has been preferred by the applicant against the judgment dated 21-6-2004, rendered by XIX Additional Sessions Judge, Indore in Criminal Appeal No. 217/2004; arising out order dated 7-4-2004 passed in Criminal Case

No. 6249/95 thereby finding the applicant guilty of the offence punishable under Section 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act (for short, 'the Act') and sentencing him to suffer simple imprisonment for 6 months and fine of Rs. 1000/-.

2. The prosecution case *Multum in Purvo* is that on 18th May, 1995 in the night at 1.30 p.m. from Sainath Home Industries of the applicant. Food Inspector, Prabhakar Kulkarni collected sample of chilli powder. After completing the procedure of taking sample, the same was sent to Public Analyst, Bhopal. The office of the local self authority has received report (Ex. P-13) and covering letter (Ex. P-12) proved by Food Inspector (P.W. 1). According to this report, sample was below prescribed standard, therefore, the same was found to be adulterated. Complaint was filed by Food Inspector before the Trial Court on 9-11-1995.

3. Learned Chief Judicial Magistrate framed charge against the applicant for the offence punishable under Section 7(i) and 16(1)(a)(i) of the Act on 8-5-1995. The case was proceeded as warrant trial. The applicant denied charges therefore, put to trial. Learned Chief Judicial Magistrate, after examining prosecution witness and defence witness and hearing both the parties, convicted the applicant as indicated above, against which the applicant went up in appeal and the same was also dismissed by the Lower Appellate Court. Hence, this revision against the impugned judgment.

4. Learned Counsel for the applicant has raised several points for consideration. Out of which, the most important point is non-compliance of Section 13(2) of the Act. According to the learned Counsel, copy of the report of public analyst (Ex. P-13) has not been sent by the Food Inspector or local self authority, within a period of ten days of the institution of prosecution because of which the applicant was deprived of availing his right to send the sample for further examination to the Central Food Laboratory and therefore great prejudice has been caused to him.

5. As against it, learned Government Advocate has supported the judgment and findings, arrived at by the two Courts below.

6. Having heard learned Counsel for the parties and after perusing the entire record of the case, this Court is of the view that there is substance in the submission of the learned Counsel for the applicant. Prabhakar Kulkarni, Food Inspector (P.W. 1) in his statement, nowhere has stated that after receiving the report from the Public Analyst (Ex. P-13), he had sent copy of the same within ten days from the date of institution of complaint before the Court to the applicant. Section 13 sub-section (2) requires Local Health Authority to send copy of the report of the Public Analyst to the accused and inform him that he may apply to Court, within a period of ten days to get the sample analyzed, by Central Food Laboratory. Rule 9-A provides that copy of the report shall be sent to the accused in ten days of the institution of prosecution against the accused.

7. The object of sub-section (2) of Section 13 is to afford an opportunity to the accused to get the sample analyzed, if so desired, by the Central Food Laboratory whose certificate is deemed to be final and conclusive proof of facts stated therein. Under Section 13 sub-section (2) of the Act, local self authority is not only required to send copy of the Public Analyst Report but also to intimate the accused about his right to send the sample for examination to the Central Food Laboratory. In the present case, there is absolutely no dispute that copy of the Public Analyst Report has not at all been sent to the applicant. Therefore, this Court has no hesitation to hold clear prejudice of the Provision of Section 13(2) of the Act. Learned Lower Appellate Court has not given any benefit for this breach to the applicant and also held in its judgment in Paragraph 22 that the sample was collected on 18-5-1995, complaint was filed on 9-11-1995 and the applicant appeared before the Court on 10-2-1996. After appearance of the applicant before the Court, he did not file any application expressing his desire to send second bottle of sample, for the examination to the Central Food Laboratory and it was a sample of chilli powder which could not be contaminated during this period of taking of sample and appearance of the applicant in Court. Therefore, no prejudice has been caused to the applicant and he is not entitled to get benefit of non-compliance of Provisions of Section 13(2) of the Act. This reasoning of the Lower Appellate Court is highly hypothetical. He has not considered real prospect of Section 13(2) of the Act and Rule 9-A. The Food Inspector or local health authority is not only required to send the copy of public analyst report but to intimate the right of the accused to send the

sample for further analysis by Central Food Laboratory whose report would be the conclusive and supersede the report of Public Analyst. On factual matrix, there is difference of 9 months between the period of collection of sample and appearance of the applicant before the Trial Court. During this period, changes could be occurred in the sample because of change of weather. Whether there was any change in the sample or not, could be considered only by Central Food Laboratory and whether the sample was in tact or fit for analysis, could have also been opined by the Central Food Laboratory. The Court can not form any opinion regarding this fact. Therefore, in the opinion of this Court breach of Provision of Section 13(2) of the Act is fatal to the prosecution and prejudice has also been caused to the applicant/accused who could not avail his legal right to get the sample examined from the Central Food Laboratory.

8. For the foregoing discussions, this revision is allowed. The conviction and sentence of the applicant are set aside. The applicant is in jail. He is directed to be released forthwith if not required in any other case. The amount of fine, if deposited by the applicant, be refunded to him.

9. Office is directed to send copy of this judgment to the Trial Court along with the record of the Court below.