

Narendra Kumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-23-2005

Reported in : 2006FAJ121

Judge : W.A. Shah, J.

Acts : Madhya Pradesh Prevention of Food Adulteration Rules - Rule 50;
[Prevention of Food Adulteration Act, 1954](#) - Sections 16(1)

Appeal No. : Crl. Revision No. 605 of 1999

Appellant : Narendra Kumar

Respondent : State of M.P.

Advocate for Def. : Devendra Singh, Panel Lawyer

Advocate for Pet/Ap. : Harish Kumar, Adv.

Judgement :

ORDER

W.A. Shah, J.

1. On 17-3-1994 the Food Inspector, R.C. Gupta, at M. G. Road, Sonkutch inspected the shop of the accused/applicant and on its inspection found that the applicant was offering for sale number of items of sweets and other food. He was

yet not having any license issued under Rule 50 of the M.P. Prevention of Food Adulteration Rules. The Food Inspector also suspected that the BARFI which was being offered there for sale was adulterated, therefore, he after following requisite formalities also obtained sample thereof for food analysis. It was thereafter as per procedure prescribed put to analysis. The analysis revealed it to be adulterated. With due sanction the applicant was accordingly prosecuted for adulteration and for want of license. He pleaded not guilty. The trial ended in conviction. He was thus sentenced under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (for short 'Act' hereafter) to six months RI and fine Rs. 1,000/- and under Section 16(1)(a)(ii) of the Act to three months RI and fine of Rs. 500/-. The applicant took the matter to the Court of Sessions in appeal. But the learned Additional Sessions Judge who heard the appeal dismissed it and upheld the conviction and sentences. Hence the applicant has come up in this revision before the High Court.

2. Learned Counsel for the applicant made submissions in support of the revision application. The learned Panel Lawyer made counter submission.

3. Having heard the arguments I have gone through the record. After the presentation of the complaint Certificate from Director, Central Food Laboratory, Ex. P/20 has been obtained. It says that sample showed presence of non permitted coaltar colour (Green S) and B. R. Reading of extracted fat at 40 C which was less than the minimum prescribed limit as laid down in item No. 11.02.21 of PFA Rules. The sample was thus opined to be adulterated. However, I find that the certificate does not mention the chemical class and colour index of the allegedly unpermitted colour found in the sample. Thus the report is deficient in this respect. It is, therefore, found to be infirm and in this connection reference may be made to the following observation from *Vijay Kumar Agarwal v. State of M.P.* 1992(1) P.F.A. Cases 137:

It was necessary for the Public Analyst to disclose the chemical class and colour index of the allegedly unpermitted colour found in the sample.

4. So far as the opinion of the Director in the above report as to B. R. Reading is concerned that is also worthless because there is no standard prescribed for any

extracted edible oil from any food stuff. In this respect also a reference may be made to the following observation from *Prakash Chand v. State of M.P.* 1993(1) P.F.A. Cases 28 :

But there is no standard prescribed for any extracted edible oil from any food stuff.

5. For the above reasons the report of the Director. Central Food Laboratory Ex. P/20 deserves to be rejected and the Courts below acted upon it against law. Hence the conviction of the applicant regarding adulteration is not sustainable.

6. Under the circumstances the charge of want of license being independent as adulteration charge has failed against the applicant it does not go away simply on the ground that for selling any adulterated food material the law does not prescribe any license. On the basis of *Panchnama Ex. P/11* the concurrent findings of the Courts below that the applicant stored food stuffs for sale without license are not against law or fact.

7. In the result this revision is partly allowed and the conviction of the applicant under Section 16(1)(a)(i) of the Act is set aside and he is acquitted thereof, however, his conviction under Section 16(1)(a)(ii) of the Act is retained. Yet looking to all the circumstances of the case such as no record of any previous conviction against the applicant and the date of offence being 17-3-1994 the sentence thereunder is reduced to the period already undergone and fine of Rs. 500/- as imposed by Courts below. Amount of fine if paid as regards other head be refunded. The applicant is on bail. His bail is discharged.

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