
(1990) 10 MP CK 0022
In the Madhya Pradesh High Court
Case No : Criminal Revision No. 420 of 1984

Chaturbhuj Yadav

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 08-10-1990

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 20, 20(1)

Citation : (1992) ILR (MP) 603 : (1991) JLJ 65 : (1990) MPJR 721 : (1991) 36 MPLJ 42 : (1991) MPLJ 42

Hon'ble Judges : K.L. Issrani, J

Bench : Single Bench

Advocate : L.M. Sanghi, for the Appellant; Alka Pandya, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.L. Issrani, J.

The present revision-petition has been preferred by the applicant against his conviction u/s 7(5) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") sentencing him with rigorous imprisonment for six months and fine of Rs. 1,000/-, and in default of payment of fine, further rigorous imprisonment for six months, by the Second Additional Sessions Judge, Damoh in Criminal Appeal No. 183 of 1983, arising out of the judgment and findings dated 7-10-1983, in Criminal Case No. 1533 of 1988, passed by the Chief Judicial Magistrate, Damoh.

The applicant is a milk seller. On 11-7-1982, he was selling cow milk in the village Tendukheda when P.W.I Food Inspector Shri J. K. Trivedi took sample of the milk from him and sent it to Public Analyst, Bhopal, who found the milk to be adulterated, as it was below the prescribed standard. The Food Inspector filed the challan against the applicant in the Court of Chief Judicial Magistrate, Damoh. The applicant had pleaded guilty. After recording the evidence the applicant was

convicted by the Chief Judicial Magistrate. His appeal before the Second Additional Sessions Judge, Damoh, has been dismissed. He has, therefore, filed the present revision-petition before this Court.

Before this Court, the submission of the learned counsel for the applicant is that the applicant is a rustic villager. He has wrongly been convicted on the basis of his admission of guilt to the charge framed and read-over to him. The applicant did not know the language of the charge. No opportunity was given to the applicant to think over on the admission of the guilt. The charge was not explained to him. He was not asked whether he was voluntarily admitting his guilt or he is under pressure before the Food Inspector. It is also submitted that the report of the Public Analyst, Bhopal clearly shows that the sample analysed by him, fat contained was 4.9% which is 1.5% more than the prescribed standard while the milk solid was 7.1% i.e. 0.9% below the prescribed standard. Looking to the report no offence against the applicant for adulteration of the milk could be made out. The learned counsel for the applicant has further submitted that the Food Inspector was not authorised to file the challan before getting sanction to file the challan against the applicant. According to the counsel for the applicant, the Food Inspector has no authority or jurisdiction of prosecution for offence under the Act except by, or with the consent of the State Government or a person authorised in this behalf. In this case, the Food Inspector has failed to prove his authority. As such the trial is vitiated on that ground alone.

Having heard the learned counsel for the parties and going through the record, I am of the opinion that revision-petition deserves to be allowed on one simple ground that no authority or sanction as required u/s 20 of the Act was placed on record and proved by the Food Inspector or other witness. P.W.I Food Inspector Shri J.. K. Trivedi, failed to state as to whether he was authorised to file the present complaint against the applicant. In the case of A.K. Roy and Another Vs. State of Punjab and Others, it has been held that the language of Section 20 of the Act is mandatory. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting Section 20(1) was to confer a power on the authorities specified therein, which power had to be exercised in the manner provided and not otherwise. Thus, where the prosecution was launched by the Food Inspector u/s 20(1), without any written consent by the State Government, or the person authorised for such prosecution, such launching of prosecution would be illegal. The prescribed authority alone had the power to initiate the prosecution for an offence under the said Act. The prosecution by the Food Inspector is, therefore, vitiated.

The learned counsel for the applicant has also pointed out the decision of Supreme Court, reported in Suk Das Vs. Union Territory of Arunachal Pradesh, on the ground that the applicant was not provided legal aid while answering the charge, the Magistrate, was obliged to inform the accused of his right to obtain

the free legal aid and the conviction reached without such information is vitiated. The learned counsel has also pointed out that there is no evidence of milk being homogeneous and no offence is made out. But, since the prosecution has failed to place on record the sanction for prosecution, they have not been able to point out the same before this Court, I think, this ground alone is sufficient to quash the conviction and sentence passed against the applicant.

I, therefore, allow the revision-petition. The conviction and sentence passed against the applicant by the Court below are set aside. The applicant is on bail. His bail-bonds are discharged. However, the prosecution will be at liberty to file fresh prosecution against the applicant, in case they are authorised to do so.