
(2006) 11 MP CK 0057
In the Madhya Pradesh High Court

C.L. Yadav and Another

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 13, 16, 7

Citation : (2007) 2 MPHT 360

Hon'ble Judges : S.C. Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Vyas, J.—This is a petition tiled u/s 482 of Cr.P.C. challenging the order passed by Chief Judicial Magistrate, Ujjain in Criminal Case No. 1562/2003 on dated 3-10-2005, whereby an application filed on behalf of the petitioners for discharging them from the charges punishable u/s 7(1) read with Section 16(1) (a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act" for brevity) read with Rule 64-B of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules" for brevity), has been dismissed.

2. Criminal Case No. 1562/2003 is pending in the Court of Chief Judicial Magistrate, Ujjain, on the basis of a complaint filed by Food Inspector, Ujjain for alleged violation of Section 7(ii) read with Section 16(1)(a)(i) of the Act read with Rule 42(S) and 64-B of the Rules.

3. The case of the prosecution in short is that Food Inspector, Ujjain purchased a sample of Maggi 2 Minutes Noodles from one Kishore Kumar Khemani, who is partner of M/s Khemani Brothers, 9 Daulatganj, Ujjain, after paying its cost. Petitioner No. 2 is the manufacturer of that product and Petitioner No. 1 is its nominated officer. One part of that sample was sent for examination to Public Analyst, who vide his report Annexure P-3 found that the sample was misbranded, as per Rule 42(S) read with Rule 64B of the Rules. On the basis of

this report as the sample was found misbranded, present petitioners and the seller are being prosecuted before learned Chief Judicial Magistrate, Ujjain. In the report of Public Analyst presence of Mono-Sodium Glutamate was found in that sample, and as there was no statutory declaration about addition of Mono-Sodium Glutamate in the sample of Maggi 2 minutes noodles, thus public analyst opined the sample to be misbranded. Second part of the sample was sent to Central Food Laboratory for analysis and report Annexure P-4 was received, indicating that the sample was not found adulterated in respect of test mentioned in that report. On the basis of this report of Central Food Laboratory, a request was made to learned Trial Court for discharging the petitioners, but learned Trial Court dismissed that application filed by petitioners in this behalf and, therefore, this petition has been filed.

4. In the meantime, an effort was made to send third part of the sample also to Central Food Laboratory for analysis and a permission to this effect was granted by the Trial Court, but ultimately this Court vide order dated 01-09-2005 passed in M.Cr.C. No. 3235/2004 set aside that order.

5. Learned Counsel for the petitioner submitted that the report of analysis of Central Food Laboratory completely supersedes the report of Public Analyst, on the basis of which prosecution was initiated by Food Inspector Respondent No. 2. In this regard, learned Counsel relied on the provisions of Section 13(3) of the Act and also on the judgment of Supreme Court passed in the case of Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, .

6. Per contra, learned public prosecutor submitted that as there is no mention of presence or absence of Monosodium Glutamate in the report of Central Food Laboratory and no test was applied by that laboratory regarding presence of Monosodium Glutamate in the sample and nothing has been stated regarding proper branding or misbranding of the article, therefore, in this regard report of Central Food Laboratory does not supersede the report of Public Analyst.

7. The provisions of Section 13(3) of the Act are as follows:

13(3) - The certificate issued by the Director of the Central Food Laboratory [under Sub-section (2B)] shall supersede the report given by the Public Analyst under Sub-section (1).

8. A bare reading of the above quoted provision clearly shows that word "shall" has been used in this provision before the word "supersede", indicating that the provisions of Sub-section (3) of Section 13 of the Act are mandatory in nature and whatever certificate has been issued by Director, Central Food Laboratory, it supersedes the report given by the Public Analyst under Sub-section (1) of the same section, in all respects. This provision of law has been introduced for benefiting, accused persons so that they can prove their innocence by getting second part of the sample analyzed from Central Food Laboratory, which supersedes the report of the Public Analyst for ensuring a fair trial.

9. In the case of Calcutta Municipal Corporation v. Pawan Kumar Saraf (supra) Hon''ble Supreme Court has considered the effect of certificate of Central Food Laboratory in Paragraph No. 14 and held that:

Thus, the legal impact of a Certificate of the Director of Central Food Laboratory is threefold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated there in are concerned.

10. The above stated case was decided by the bench of three Judges and in that case which was heard by Supreme Court even notice of SLP was not issued to the opposite party. That SLP was filed by Calcutta Municipal Corporation against the order passed by the Single Judge of Calcutta High Court, quashing the proceedings pending against respondent for the offence u/s 16(1)(a)(i) read with Section 7 of the Act. In that case also certain tests were applied by Public Analyst and it was opined that the sample of compound Asafoetida does not conform to the standard in respect of Alcoholic Extract and further it contains Colophony resin and Foreign resin, hence it was found adulterated.

11. In that case, it was argued on behalf of the petitioner corporation that the certificate of Central Food Laboratory is silent about galbanum resin, ammoniacum resin and mineral pigment so it must be presumed that the Director of Central Food Laboratory has not conducted those tests with the sample and hence the certificate cannot be acted on as such.

12. In the present case also, it has been argued on behalf the Respondent/State that test for Monosodium Glutamate has not been applied by the Central Food Laboratory, because the report is silent regarding such test.

13. Hon''ble Apex Court in the aforesaid case of Calcutta Municipal Corporation (supra) considering the arguments advanced by learned Counsel for the petitioner corporation, observed in Paragraph No. 15 that:

If the argument of the learned Counsel for the Corporation is upheld and the Certificate of the Director of Central Food Laboratory is sidelined as pleaded by him, the consequence is that there will not be anything surviving to show the quality of standard of the food articles involved in the case. Even that apart, the accused will be deprived of his statutory right to disprove the report of the Public Analyst.

14. Earlier decision of Supreme Court in the cases of Municipal Corporation of Delhi Vs. Ghisa Ram, and in Chetumal Vs. State of Madhya Pradesh and Anr, were also considered by the Apex Court. In both these above stated cases, the report of Director, Central Food Laboratory was found conclusive even when in first case the sample sent to him became highly decomposed and hence no analysis was possible and in second case the seal of the sample was tempered.

15. Therefore, the law laid down by the Supreme Court is clearly to the effect that the certificate of Director of Central Food Laboratory annuls or replaces the

report of Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated there in are concerned.

16. When the certificate of Director of Central Food Laboratory totally annuls or replaces the report of Public Analyst, then the report of Public Analyst cannot be looked into for any purpose. In the present case, the report of the Public Analyst was the basis of the prosecution, which has been annulled by the certificate of Director of Central Food Laboratory, so that certificate shows that sample which was sent for analysis was not found adulterated. It also shows that the sample was analyzed as per the provisions of the Act and Rules.

17. Rule 42(S) of the Rules, which has been referred in the report of Public Analyst also shows that:

Every advertisement for and or a package of food containing added Monosodium Glutamate, shall carry the declaration to the effect that the package of food contains added Monosodium Glutamate not recommended for infants below 12 months.

18. In this provision, the most important word is "added", which shows that in the sample of the food Monosodium Glutamate should be found added from outside in its chemical form and should not be a natural ingredients of food article itself. As and when Monosodium Glutamate is added, then a declaration as envisaged in Rule 42(S) of the Rules, is necessary, but when Monosodium Glutamate has not been added from outside and might be in the food article in its natural form, then no such declaration is necessary and even in absence of such declaration the food article may not be said to be misbranded.

19. Rule 64-B further clarify the same thing by saying that Monosodium Glutamate may be added to foods as per the provisions contained in Appendix C, of the Act, subjected to Good Manufacturing Practice level and under proper label declaration as provided in Rule 42(S). It shall not be added to any food for use by infant below twelve months and in certain food, which has been enlisted in this Rule. This entire provision is regarding addition of Monosodium Glutamate from outside.

20. In the facts of the present case, prosecution does not say that Monosodium Glutamate has been added from outside and was not a natural ingredients of the food article. In absence of such averments, it is difficult to held that the article was misbranded, even after receiving of certificate of Director, Central Food Laboratory.

21. Thus, examining the matter from all angles, it appears that the certificate issued by Director, Central Food Laboratory has totally annulled the report of Public Analyst and there remains no ground for continuing the prosecution of the present petitioners under the provisions of Prevention of Food Adulteration Act for violation of the Rule 42(S) and 64-B of the Prevention of Food Adulteration

Rules and thereby committing offence punishable u/s 7(1) read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954.

22. Resultantly, this petition succeeds and is allowed. The impugned order passed by learned Chief Judicial Magistrate, Ujjain is hereby set aside and petitioners are discharged from all charges.