

(2006) 02 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 5896 of 2005

Jaipaldas

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482
Prevention of Food Adulteration Act, 1954 — Section 16(1), 2, 7(1)

Citation : (2006) FAJ 192 : (2006) 2 MPHT 118 : (2006) 1 MPLJ 560 : (2006) 1 MPLJ 500

Hon'ble Judges : Subhash Chandra Vyas, J

Bench : Single Bench

Advocate : Harish Kumar, for the Appellant; Shandilya, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

S.C. Vyas, J.

Heard finally at motion hearing stage with the consent of both the parties.

This is a petition u/s 482 of the Cr.PC invoking extraordinary jurisdiction of this Court for giving a direction to Trial Court to call public analyst in the Court so that he can be cross-examined by the petitioner/accused, who is facing trial u/s 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 before CJM, Indore.

Short facts of the case are that on 14-8-2001 Food Inspector, took sample of mango pickle from the shop of present petitioner, after following the procedure prescribed in the Food Adulteration Act. One part of the sample was sent for analysis to the Public Analyst, Bhopal. Public Analyst in his report found that the sample is misbranded and on the basis of this report a private complaint was filed against the petitioner before learned CJM. At the stage of defence evidence present petitioner moved an application for calling Public Analyst for cross-

examination u/s 311 of the Cr.PC. This application was rejected by learned CJM by order dated 16-3-2004. That order of rejection was assailed by the petitioner before XIIth Additional Sessions Judge by way of Cr.R. No. 811/06, learned Additional Sessions Judge by order dated 20-5-2005 dismissed the revision petition, therefore petitioner has come before this Court with a prayer for exercising jurisdiction u/s 482 of the Cr.PC to correct the mistake committed by two Courts below.

Learned Counsel for the applicant Shri Harish Kumar submitted that as per the report of the Public Analyst sample of mango pickle was as per prescribed standard given in Appendix A.16.16. He has further submitted that the percentage of fruit and vegetable in the product was more than 50% and the percentage of oil was also more than 10% and, therefore, as per report of the Public Analyst itself sample was as per the prescribed standard. He has further submitted that Public Analyst without any further investigation or without mentioning any fact to that effect opined in the report that the sample was misbranded. When Public Analyst was saying that sample is misbranded then it was his duty to show that as to how the sample was misbranded. Learned Counsel for the applicant submitted that in such circumstances it has become necessary to cross-examine Public Analyst so that the basis of his opinion can be brought on record.

Learned Counsel has also drawn the attention of this Court towards copy of the label pasted on the bottle of mango pickle, which shows that no artificial colour has been used in the pickle. It also shows that there is no mention to the effect that the pickle contains copper or minerals etc.

Learned Panel Lawyer submitted that the report of Public Analyst is admissible evidence and is a conclusive proof of the facts stated therein. The petitioner has never moved any application for calling the public analyst for cross-examination at the time of prosecution evidence and by not moving such application at the appropriate stage he has waived his right and, therefore, the application moved u/s 311 of the Cr.PC. On behalf of petitioner was rightly rejected by the two Courts below and no interference is called for by way of this petition.

The impugned order passed by learned Additional Sessions Judge perused. The copy of the report of Public Analyst and copy of the label pasted on the mango pickle manufactured by petitioner is also perused. Copy of the report of Public Analyst shows that except stating that the sample is misbranded nothing else has been mentioned in the report to show as to how the sample has been stated as misbranded. Definition of "misbranded" has been given in Section 2(ix) of the Prevention of Food Adulteration Act which reads as under:-

Section 2(ix) "misbranded"- an article of food shall be deemed to be misbranded-

(a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;

- (b) if it is falsely stated to be the product of any place or country;
- (c) if it is sold by a name which belongs to another article of food;
- (d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;
- (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;
- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchase as to its value for such uses;
- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder,

The definition shows that when an article is deemed to be mis-branded then it is required to be shown as to how it is misbranded and under which category of definition it can be said as misbranded. Merely saying that food article is misbranded is not sufficient and whoever alleges that a food article is misbranded he is required to show further that how the article is misbranded. When nothing has been said in the report of Public Analyst indicating as to how the mango pickle was misbranded then it was the duty of the Court itself also to ascertain from prosecution in this regard and if necessary to call Public Analyst as Court witness for affording an opportunity to both the parties so that it can be ascertained as to how the article was said misbranded by Public Analyst.

Petitioner moved an application u/s 311 of the Cr.PC during trial before learned Magistrate, same was rejected and the case was fixed for recording defence evidence which shows that the case was still at the stage of recording evidence of parties. If such application was moved then looking to peculiar facts of the

case application should have been allowed by the learned Magistrate for the ends of justice and to ascertain the real nature of misbrand from the public analyst and by disallowing the application, learned CJM failed to exercise jurisdiction vested in him appropriately. It should always be kept in mind by the Courts that object of Section 311, Cr.PC is to do justice and to bring material evidence on record. Learned Additional Sessions Judge also committed a mistake when revision preferred against the order passed by the Magistrate was dismissed by him.

Considering the overall circumstances of the case it appears that calling Public Analyst for the purpose of cross- examination and to explain the nature of misbranding will be in the interest of justice and, therefore, this application preferred by the petitioner deserved to be allowed.

Resultantly, the petition is allowed. The impugned order passed by learned Additional Sessions Judge is set aside. Learned Magistrate is directed to allow the application filed by the petitioner u/s 311, Cr.PC and to call Public Analyst for the purpose of cross-examination by the defence. With this direction application is disposed of.