
(2002) 09 MP CK 0036
In the Madhya Pradesh High Court
Case No : Criminal Revision No. 390/98

Kanwarlal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)

Citation : (2002) 4 MPHT 402

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : Amit Agrawal, for the Appellant; Desai, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.—This revision has been filed by the applicant against the judgment dated 31-7-98 passed by the learned Addl. Sessions Judge, Bhanpura, Distt. Mandsaur in Cr. Appeal No. 35/97 arising out of the judgment dated 24-12-96 passed by the learned Judicial Magistrate First Class, Bhanpura, District Mandsaur in Cr. Case No. 161/83 convicting the applicant for the offence punishable u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act (for brevity "the Act") and sentencing him to undergo R.I. for six months and a fine of Rs. 1,000/-, in default of payment of fine to suffer further R.I. for two months.

2. The applicant has been convicted for selling adulterated Namkeen-Sev prepared from gram-flour (Besan). Sample was taken on 18-2-93 by the Food Inspector. According to the Public Analyst report (Ex. P-5), the sample was not containing any foreign matter, insect or infection etc., but, it contained the starch. The sample was not upto the standard as prescribed by the Rules of the Act, for gram-flour. Apart from Besan in the report (Ex. P-5) starch was also present which is contrary to the prescribed standard. Therefore, the Namkeen-Sev was found adulterated.

3. I have heard Shri Amit Agrawal, learned Counsel for the applicant and Shri G.

Desai, learned Deputy Advocate General appearing for the State and perused the record.

4. The contention of the learned Counsel for the applicant is that for Sev, there is no standard prescribed in the Rules of the Act. Therefore, the applicant cannot be convicted. He placed reliance on the following judgments :--

(1) M.V. Krishnan Nambissan Vs. State of Kerala, . (In this case, no standard for the contents of butter milk was prescribed. Therefore, the Supreme Court has acquitted the accused).

(2) 1992(1) Weekly Note 62. (In this case, the food article was Chironjidana).

(3) 1993(1) E.F.R. 486 (Prakashchand v. State of M.P.). (In this case, the food article was Gur-Gappa). (4) 1993(2) F.A.C. 25 (Tajkumar v. U.T.). (In this case, the food article was Amchoor).

(5) 1993(2) FAC 107 (State v. Samvandam and Ors.). (In this case, the food article was tea-infusion mixture of tea, sugar and milk and no standard was prescribed for it).

5. Having considered the submissions advanced by the learned Counsel for the parties and also considering the legal position, this Court is of the opinion that there is much force in the arguments advanced by the learned Counsel for the applicant that for Namkeen Sev which has been prepared from Besan (Gram-flour) oil, salt and other spices, the standard of gram-flour as prescribed in the schedule could have not been considered to hold the applicant guilty for selling the adulterated food article. There is no specific standard for the contents of Namkeen Sev prescribed under the Rules and its schedule. Therefore, the applicant cannot be held guilty for selling the adulterated food article.

6. According to the Public Analyst's Report (Ex. P-5), the Namkeen Sev was not upto the standard as prescribed for gram-flour and foreign matter, i.e., starch was present in it. First of all, the gram-flour (Besan) was not taken as food sample from the applicant and secondly, if in Namkeen Sev some starch was found on analysis, the same could be because of use of edible oil. It is also pertinent to note that no contents were found in the analysis report in Namkeen-Sev which was unfit for human consumption.

7. The learned Counsel for the State has not been able to controvert the aforesaid legal position. Therefore, in view of the evidence available on record, the applicant cannot be held guilty for selling the adulterated food article. Thus, he is entitled for acquittal.

8. Accordingly, the revision petition is allowed and the applicant stands acquitted of the offence with which he has been charged. The fine if any deposited by the applicant shall be refunded to him. His bail bonds shall stand discharged.