
(2013) 03 MP CK 0110

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1143 of 2010

Ramesh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(A)(1), 7(2)

Citation : (2013) 03 MP CK 0110

Hon'ble Judges : G.S. Solanki, J

Bench : Single Bench

Advocate : Manish Datt, for the Appellant; V.K. Lakhera, PL, for the Respondent

Final Decision : Allowed

Judgement

G.S. Solanki, J.—Since these petitions are arising out of the same impugned judgment therefore, they are being decided by this common order. Applicants have filed these petitions being aggrieved by the judgment dated 21/07/2010 passed by Special Judge (Atrocity), Bhopal in Criminal Appeal No. 474/09 whereby applicants have been convicted u/s. 7(2) read with section 16(1)(A)(1) of the Prevention of Food Adulteration Act, 1954 and sentenced for six months SI and fine of Rs. 1000/- each with default stipulations.

2. The facts in short giving rise to these petition are that on 11/03/2003 Food Inspector H.D. Katore (PW-1) inspected the shop "Priyadarshini Super Market" which is a chain of Priyadarshini Cooperative Society established under the provisions of Cooperative Societies Act. He purchase three packets of 500 gms. each of "Tulsi" Brand chilly powder, prepared the samples and sent for analysis to public analyst. Though, as per public analyst report (Ex. P-20) sample was not found adulterated however, same was found misbranded as per Rule 32(i) of Prevention of Food Adulteration Rules, 1955 (hereinafter shall be referred as "PFA Rules" in short). After due investigation, applicants have been prosecuted before the Special Municipal Magistrate, Bhopal. Applicants denied the allegation and submitted that they have been falsely implicated. After recording the

evidence, learned Special Municipal Magistrate convicted and sentenced them as mentioned hereinabove vide order dated 18/11/2009. Being aggrieved, applicants preferred the appeal before the Special Judge but the same was dismissed and conviction and sentence passed by trial Court has been affirmed hence, these petitions.

3. Learned counsel appearing on behalf of applicants submits that report of public analyst is not exhausting. As per statement of Food Inspector H.D. Katare (PW-1) himself, the packets were containing packing date, batch number and expiry date. In para 2 of his statement, packing date 12/02, batch no. 3, expiry date 11/2003 were mentioned. He himself admitted in para 16 of his cross examination that possibility cannot be ruled out in regard to the fact that Priyadarshini Super Market purchased the bulk packed material from which the small packets may be stalled in racks for sale. He further admitted that applicant Ramesh Umekar was the Manager of aforesaid market and he purchased the samples from him. It is further submitted that in letter of Sanctioning Local Health Authority (Ex. P-19) fact of misbranding of the sample has not been mentioned therefore, there was no valid sanction in regard to prosecution of the applicants. It is submitted that since the date of expiry was already mentioned on the packet by using the language "best before..... months" in PFA Rules, the meaning to be conveyed is, the customers must use it before the expiry date therefore, customers are not mislead or misdirected. In support of his contention learned counsel for applicants placed the reliance on following authorities and submits that in the similar circumstances, High Court of Judicature at Madras has quashed the proceedings in an unreported judgment T. Prabhu Vs. State, Crl. OP No. 17653/2005. He further placed reliance on S.S. Gokul Krishnan and Others Vs. State, wherein policy of respondent/Food Adulteration Department was elaborately discussed in regard to Rule 32 of PFA Rules and it is considered that in case of such misbranding at the first instance, the party affected was to be given a written warning drawing its attention to Rule 32 and thereafter, if the violation was repeated after a written warning, the party should be prosecuted. On the basis of aforesaid fact, learned counsel for applicant submits that trial Court as well as Appellate Court committed the illegality in not appreciating the evidence in its proper perspective therefore, he prays for setting aside the judgment passed by courts below and further prays for acquittal of applicants.

4. Learned counsel appearing on behalf of respondent supported the finding and sentence recorded by the courts below and prays for dismissal of the revision petitions.

5. I have perused the record and judgment passed by court below alongwith the record of trial Court. It is true that whole case rests on the report of public analyst (Ex. P-20) wherein sample of chilly powder has not been found adulterated however, same is found misbranded in regard to Rule 32(i) of PFA Rules. Rule 32(i) of PFA Rules read as under:-

for consumption, in the following manner, namely:-

Best Before..... Months and Year

OR

Best Before..... Months from Packaging

OR

Best Before..... Months from Manufacture

OR

Best Before Upto Month and Year.....For the period upto and inclusive of 1st September

OR

Best Before Within..... Months From The Date of Packaging/Manufacture 2001)

(Note:- blank be filled up)

Provided that in case of wholesale packages the particulars under clauses (b), (f), (g), (h) and this clause need not be specified:

As per explanation VI, it says as under:

Explanation-VI: "Wholesale package" means a package containing.

a) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or

b) a commodity of food sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity of food to the consumer in smaller quantities.

6. Since the Super Market established under the Cooperative Societies Act, it provides selling of commodities on reasonable rates to the customers. As per admission of Food Inspector H.D. Katare himself he was unable to said that Priyadarshini Super Market had purchased the bulk packing and thereafter stalled the same in racks for selling to customers. As per the provision of section 32(i) of PFA Rules, in case of wholesale packages the particulars under clauses (b), (f), (g), (h) and this clause need not be specified. As per the Explanation VI, wholesale package means a package containing (b)- a commodity of food sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity of food to the consumer in smaller quantities. In these circumstances, firstly it was necessary for Super Market/Seller to comply with the provisions of Rule 32(i) of PFA Rules. Secondly it is on record that packets were containing the date of manufacturing, lot number and date of expiry as per Rule 32(e) (f) (g) of PFA Rules. Such type of situation was considered by the High Court of Madras and High Court of Delhi in an unreported case T. Prabhu

(supra) and S.S. Gokul Krishnan (supra) respectively and in both the cases prosecutions were quashed by respective Courts. Under such circumstances, I am also of the view that if the date of expiry was written on label, the meaning to be conveyed is, the customers must use it before the date of expiry and in this way, customers are not mislead or misdirected. Further, Prevention of Food Adulteration Act, 1954 is a Central Act and every State Government is required to adopt the uniform policy in regard to such technical offences. However, the Govt. of NCT Delhi adopted a policy in such fact situation that initially the party affected is to be given a written warning and drawing its attention to Rule 32(i) of PFA Rules and if the violation is repeated after a written warning, then party may be prosecuted. Such type of policy decision of Govt. of M.P. has not been brought to the notice of this Court but proper recourse would be to adopt such policy by the Govt. of M.P. It is also on record that sanctioning authority has not mentioned the fact of misbranding in his sanction order. It is well settled that sanction order must also be proved like any other fact and same has not been proved according to law.

7. Considering the overall facts and circumstances of the case, I am of the view that trial Court as well as Appellate Court have not appreciated the evidence in its proper perspective. Thus, judgment passed by courts below are not sustainable in the eye of law. Consequently, the revision petitions are allowed. The judgment passed by courts below are hereby set aside. Applicants are acquitted to the offence u/s. 7(2) read with section 16(1)(A)(1) of the Prevention of Food Adulteration Act, 1954. The fine amount, if deposited, be refunded to applicants.