

(2008) 04 MP CK 0075

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 305 of 2003

Shambhoodayal Sharma

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

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

Citation : (2008) 28 CriminalCC 172

Hon'ble Judges : Brij Mohan Gupta, J

Bench : Single Bench

Advocate : Balwant Singh, for the Appellant; M. Bhardwaj, GA for Respondent No. 1 and None, for the Respondent

Final Decision : Allowed

Judgement

B.M. Gupta, J.—This revision is for impugning the judgment dated 10.07.2003 passed by Additional Sessions Judge, Gohad in criminal appeal No. 141/92, whereby the learned Judge has affirmed the judgment of conviction dated 09.08.2002 passed by Additional Chief Judicial Magistrate, Gohad in criminal case No. 2/94 convicting the petitioner for the offence punishable u/s 7(1) read with Section 16(1) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act), imposing rigorous imprisonment for one year alongwith fine of Rs. 1,000.

2. As per the case of the prosecution on 24.07.1993, the Food Inspector found the petitioner storing the food stuffs for sale at the shop run by the petitioner at the relevant time. He collected the sample of besan which was kept for sale. After analysis, the same was found adulterated. On this ground, the complaint was filed. The petitioner was tried and convicted as aforesaid.

3. Shri Singh, the learned advocate appearing on behalf of the petitioner, has assailed the impugned order on the ground: (1) that, as per Ex.P10, besan conforms the standard prescribed for it, (2) that, in case if flour of kesari daal is

found in besan, as there was no notification for banning the sale of kesari daal issued under Rule 44A of Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules), the besan cannot be considered as adulterated, (3) that, the complaint has been filed without permission of the Local Authority u/s 20 of the Act, (4) that, no notice was given u/s 13(2) of the Act to the petitioner. In support he has drawn attention in the following cases:

1. Nagar Palika, Khilchipur v. Rajendrakumar 1988 (2) FAC 3: 1998 1 MPWN 119;

(2) State of M.P. v. Madanlal 1989 1 MPWN 59;

(3) Bhairo Singh v. State of M.P. 1998 (11) MPWN 98

4. Shri Bharadwaj has submitted that he has no copy of the judgment, hence, he cannot argue the case. Before starting the arguments, he did not inform the court about this fact. After conclusion of the argument of the petitioner, which has been dictated hereinabove, when his turn came, he informed the fact about non-availability of the copy of the judgment. Considering the old pendency of the case and after adjourning the hearing at several times if at this stage, State puts this objection, no further time appears justified to be given for the purpose, nor the same has been asked.

5. Upon perusal of the Ex. P10 which has been proved by Mukut Singh Yadav PW1, test for BOAA was found positive, as the presence of flour of kesari daal was found in the besan and on this ground the public analyst has given his opinion that the sample of besan is adulterated as per the standards/provisions laid down under the Rules in respect of the above test. Article 18.04 of appendix (B) of the Rules which prescribes the standard for besan goes as under:

A. 18.04 - Besan means the product obtained by grinding dehusked Bengal gram (*Cicer arietinum*) and shall not contain any added colouring matter or any other foreign ingredient.

(a) Total Ash Not more than 5 per cent.

(b) Ash insoluble in dilute Not more than 0.5 per cent." hydrochloric acid

(Emphasis supplied)

6. It is true that the sample was found as per the standard with regard to the point (a) and (b) mentioned above in the standard. However, as per the report, test for BOAA was found positive as flour of kesari daal was present in the sample of besan. The starting words of the standard quoted hereinabove prescribes that besan means the product obtained by grinding dehusked Bengal gram (*Cicer arietinum*) and shall not contain any added colouring matter or any other foreign ingredient. This part of the prescribed standard indicates that there should not be any foreign ingredient in besan and it should be purely a product obtained by grinding the dehusked Bengal gram. Admittedly, kesari daal is not a Bengal gram or a gram. On this ground, it appears that aforesaid foreign material other than flour of gram was mixed in the sample of besan. It is further

argued by Shri Singh that no notification has been proved under Rule 44A of the Rules, banning sale of kesari daal and its products. It is true that no such notification is on record nor it is the case of the prosecution. Whether the notification is in existence or not, no opinion can be given as it is not required. Despite the fact that, if there is no ban on the sale of kesari daal and its products and the same is mixed in besan with flour of gram, as per the above standard, it will be deemed to be adulterated, as defined in Section 2(ia)(a) of the Act, in which the definition of Adulteration has been given. It is admitted that if any substance is found adulterated under any of the clauses mentioned in this definition right from clause (a) to (m), the substance will be deemed to be adulterated. The clause (a) of the aforesaid definition goes as under:

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) to (m)

7. It provides that if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be, then it will be called as adulterated. As per the aforementioned standard prescribed for besan, if a purchaser purchases besan, he remains of the opinion that it will be the flour of gram only and nothing else. If flour of kesari daal is mixed with the flour of gram, certainly it can be said that it is not of the nature, substance or quality demanded by the purchaser and is to his prejudice or is not of the nature, substance or quality which it purports or is represented to be. In that way, the first two contentions of Shri Singh cannot be sustained.

8. The facts of the case of Nagar Palika, Khilcltipur, 1988 (2) FAC 3. are different. - In that case, the charge was framed for the offence punishable u/s 16(1)(a)(i) of the Act, which envisages the food article as adulterated within the meanings of clause (m) of clause (ia) of Section 2 of the Act. For better understanding, clause (m) of Section 2(ia) and the relevant provision of Section 16(l)(a) are reproduced as hereunder:

(m) If the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided....

16. Penalties - (1) Subject to the provisions of sub-section (1 A) if any person:

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sales or stores, sells or distributes any article of food:

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of Section 2 or misbranded within the meaning of clause (ix) of that Section or the

sale of which is prohibited under any provision of this Act or any Rule made thereunder or by an order of the Food (Health) Authority;

(ii) other than an article of food referred to in sub-clause (i) in contravention of any of the provisions of this Act or of any Rule made thereunder; or

(b) to (g)....

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:

Provided....

9. It is true that if the charge is framed specifically u/s 16(1)(a)(i) of the Act, the consideration of the aforesaid clause (m) is required. If not, then consideration of this clause is not required. In the present case, vide order dated 07.09.1994, a charge u/s 7(1)(3) read with Section 16(1) of the Act has been framed. It is true that there are many clauses in Section 16(1) of the Act. That should have been clarified in the charge, but the text of the charge shows that the accused is being charged for selling of the adulterated besan. Hence, in that way, it cannot be said that any prejudice is caused to the petitioner nor this point has been argued or pressed during the course of arguments. It is only argued that clause (m) is necessary to be considered in the case and as per the standard prescribed, the sample has not been found below the prescribed standard. Hence, it is not adulterated. As observed hereinabove, the clause (m) is not relevant in this case, hence, the observation on this ground in aforementioned case cited on behalf of the petitioner does not help the contention of Shri Singh.

10. The facts of the another case in State of M.P. v. Madanlal (supra), cited on behalf of the petitioner, are also different. In that case, Namkeen of kesari daal/ tuara daal was sold. It was found that there is no notification banning the sale of tuara daal under Rule 44A of the Rules. Here, it is not the case. Had any product of kesari daal being sold on demand of purchaser, there would have been no offence in absence of such notification banning the sale of kesari daal or its products, but here the facts are different. In besan, flour of kesari daal has been mixed. Hence, if there is no such notification, as observed hereinabove, still the besan remains adulterated. Hence, facts being different, the observation in this case also does not support the contention of Shri Singh.

11. With regard to the third contention, that no written consent for prosecution was obtained from the Local (Health) Authority u/s 20 of the Act is concerned, the Food Inspector, Mukut Singh Yadav PW1 has stated in paragraph-3 that vide application Ex.Pl 1, he sought consent from the Local (Health) Authority to file the complaint and vide Ex.P 12, this was given to him by the Authority. On perusal of Ex.P 11 and P12, it appears that while writing a letter, consent was sought by the Food Inspector from Deputy Director of Food and Drugs

Administration, Bhind and vide Ex.P12, a written consent u/s 20(1) of the Act was accorded to him. Except this statement in para-3 of the statement of Food Inspector, Mukut Singh Yadav PW1, there is nothing on record with regard to this written consent u/s 20 of the Act. He has only stated that he received this consent from Local (Health) Authority. Neither this documents was written in his presence nor he has stated with regard to this fact. There is nothing on record as to whether this document bears the signatures of the Authority, who has been said to have issued this written consent. In absence of adequate proof, it cannot be acted upon and this fact cannot be accepted, that prior to filing of the complaint, the required written consent of Central Government or State Government or the person authorized in this behalf by the aforesaid Government has been obtained. As provided by Section 20 of the Act, no prosecution for an offence under the aforesaid offence is to be instituted except by, or with the written consent of the either of the above. As observed in the case of Bhairo Singh (supra), on this ground the prosecution of the petitioner appears bad in law and he deserves acquittal on this ground alone.

12. In paragraph-3 of the statement of Food Inspector Mukut Singh Yadav PW1, he has stated that a notice" u/s 13(2) of the Act was given by Local (Health) Authority to the petitioner and a copy thereof Ex.P 13 was sent to him. Ex.PI 3 supports his contention that it was sent to him and this document indicates that a notice was given to the petitioner. Another witness, Food Inspector Bhagwan Singh PW4 has stated that as per the direction, of Local (Health) Authority, he has brought the relevant record 6f his office with regard to sending the notice u/ s 13(2) of the Act to the petitioner. He has proved Ex.P14C, the outward register, and Ex.P15C, the postal receipt. He has stated that by this receipt, through registered post a notice was given to the petitioner. Vide Ex.P 14C, this notice was given on 12.01.1994 and vide first order-sheet of the record of the trial Court, the complaint was filed on 08.01.1994. On perusal of this notice Ex.P13, it appears that notice was given to the petitioner that his sample of besan has been found adulterated, and if he wants further analysis of the sample, he can apply within ten days. This fulfils the requirement of Section 13(2) of the Act. Vide para 14 of the impugned judgment, it appears that on 10.02.1994 on behalf of the prosecution this notice was filed on record and after hearing both the parties, it was taken on record. By this fact also, it was in the notice of the petitioner. Despite this fact, he did not apply for further analysis from the Central Food Laboratory. On this ground, if this contention on behalf of the petitioner has not been sustained by the Courts below, there appears no error.

13. At this stage, it is submitted by the parties that vide a letter No. 2240 dated 05.04.2008 received from Superintendent of Jail, the petitioner has already served his jail sentence awarded to him for the aforesaid offence. In view of this, the amount of fine, if deposited, is required to be returned back to him.

14. Consequently, the revision is allowed. The impugned judgment is set aside. Petitioner is acquitted from the aforementioned charged The amount of fine, if

deposited, be returned back to the petitioner.