
(2010) 12 MP CK 0014

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1771 of 1995

State of Madhya Pradesh

APPELLANT

Vs

Vishnoo Prasad Yadav

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 354

Prevention of Food Adulteration Act, 1954 — Section 11, 16(1), 17(1), 20, 7(1)

Citation : (2011) ILR (MP) 787 : (2011) 3 MPHT 483

Hon'ble Judges : Naresh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Gupta, J.—The Appellant/State has preferred this appeal against the judgment dated 20.12.1993 passed by the Chief Judicial Magistrate, Hoshangabad in Criminal Case No. 774/1990 by which the Respondent was acquitted from the charge u/s 17(1) read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (for short the "Act, 1954").

2. Prosecution case, in short, is that, on 9.9.1990 at about 7:30 AM in the morning, Shri V.N. Shrivastava, Food Inspector, District Flying Squad, Hoshangabad had stopped the Respondent, who was taking two cans of milk containing 10 liters of cow milk. Shri Shrivastava took three samples of the milk after due intimation. A Panchanama Ex.P/9 was prepared. All the three parts of the samples were properly sealed. One of the sample was sent to the Public Analyst and the report was received that the cow milk possessed by the Respondent was adulterated. Therefore, a request has been made to Deputy Director, Khadya Avam Aushadhi Prasashan (hereinafter referred to as the "Deputy Director, KAAP") to grant permission to file a complaint against the Respondent. Deputy Director, KAAP vide letter dated 14.11.1990 issued such a permission and then a complaint has been filed before the Chief Judicial Magistrate, Hoshangabad for an offence punishable u/s 7(1) read with Section

16(1)(a)(1)(ii) of the Act, 1954 and an intimation was given to the Deputy Director accordingly. Then Deputy Director, KAAP issued an intimation to the Appellant that if he wants to get the other parts of samples analysed by the Central Food Laboratory, then he can apply within ten days before the trial Court.

3. The Respondent abjured his guilt in the trial Court. He did not take any specific defence but he challenged the sanction issued by the Deputy Director, KAAP and therefore, Dr. Ravindra Mahadev Dagawkar (D.W.1) was examined as a defence witness.

4. After considering the evidence adduced by both the parties, the Chief Judicial Magistrate, Hoshangabad opined that no valid sanction of the prosecution was issued because the issuing officer was not a competent authority, and therefore the Respondent was acquitted from all the charges.

5. It was noticed by the Registry of this Court that Ex.P-21 to Ex.P-24 were not available in the case file of the trial Court. A long correspondence took place, but ultimately vide memo dated 20/4/1995 the Chief Judicial Magistrate, Hoshangabad informed that those documents were sent to the District Magistrate with the file in connection with proposal of appeal and such documents are not deposited in the record room separately. However, on perusal of record of the trial Court, it would be clear that such documents were annexed just after the memo of complaint at page 14 to 16, though no proper endorsement regarding their exhibit is marked by the Criminal Reader or the then Presiding Officer on those documents.

6. I have heard the learned Counsel for the parties.

7. Learned Panel Lawyer for the State has submitted before the Court that sanction of the prosecution was issued by the competent authority, who was the Deputy Director, KAAP, and therefore the sanction was valid. As per the provisions of Section 20 of the Act, 1954, it is the State Government who is authorized to issue such sanction for the prosecution. Vide Notification No. 2929/4059/17/Medi-2 dated 17/8/1983 the State Government declared the Chief Medical & Health Officer to be Ex-Officio Deputy Director, Khadya Avam Aushadhi Prasashan, who was authorized to grant sanction of the prosecution within the District.

8. In the present case, the Controller, Khadya Avam Aushadhi Prasashan had sent an explanation letter dated 11/3/1993 Ex.P-24 to show that since Dr. R.K. Laad, Chief Medical & Health Officer was transferred to Khandwa, his charge was given to Dr. R.M. Dagawkar, District Family Welfare Officer, and therefore he was the Chief Medical & Health Officer in the District, hence as per the Notification dated 17/8/1983 he was the Ex-Officio Deputy Director, Khadya Avam Aushadhi Prasashan.

9. As per the provisions of Section 20 of the Act, 1954, the State Government has authorized the Deputy Director in each District to grant prosecution sanction

and Chief Medical & Health Officer of the District was declared Ex-Officio Deputy Director for this act. Therefore, if Dr. R.M. Dagawkar, was appointed as the Chief Medical & Health Officer, Hoshangabad, then he could issue prosecution sanction. No such order is produced before the trial Court that Dr. R.M. Dagawkar was declared to be Incharge, Chief Medical & Health Officer, Hoshangabad. According to the charge report Ex.P-23, Dr. R.K. Laad handed over his charge as a Chief Medical & Health Officer, Hoshangabad, whereas Dr. R.M. Dagawkar took the charge being DHO and senior most Medical Officer of the District. If he was appointed as Incharge, Chief Medical & Health Officer, then certainly he could issue the sanction for prosecution. There is no order on the record by which it can be said that Dr. R.M. Dagawkar was authorized under any notification or special order. As per the provisions of Section 20 of the Act, 1954, the State Government was authorized to grant prosecution sanction and the Government has sub-delegated such powers to the Deputy Director in each District of the State, therefore it was necessary for the compliance of the provisions of Section 20 of the Act, 1954 that the officer should have been appointed as Chief Medical & Health Officer for this purpose.

10. Dr. R.M. Dagawkar in the charge report Ex.P-23 has used his designation as DHO, whereas in the document Ex.P-17 he used his designation to be Local Health Officer. Rubber seal of such designation is clearly visible on the document Ex.P-19. From the action of Dr. R.M. Dagawkar, it is clear that he was never appointed as a Chief Medical & Health Officer or Incharge, Chief Medical & Health Officer, Hoshangabad at the relevant time, therefore explanation given by the Controller, Khadya Avam Aushadhi Prasashan vide memo dated 11/3/1993 cannot be accepted. Since Dr. R.M. Dagawkar was not appointed as the District Chief Medical & Health Officer or Incharge, District Chief Medical & Health Officer, Hoshangabad, therefore the notification issued by the State Government dated 17/8/1983 was not applicable in the case of Dr. R.M. Dagawkar and he did not receive any authority of the State Government regarding grant of permission to prosecute u/s 20 of the Act, 1954. In such circumstances, the Chief Judicial Magistrate, Hoshangabad did not commit any mistake in holding that the prosecution sanction was invalid, as it was not issued by the competent authority.

11. Attention of this Court was invited to the provisions of Section 354 of Code of Criminal Procedure in which it is mentioned that each decision should be based on points for determination and reasons for that decision, but the trial Court did not hold that whether sample taken from the Respondent was adulterated or not. Also no specific reason was mentioned in the judgment on that point. Such type of judgment writing is erroneous. It is violative of the provisions of Section 354 of Code of Criminal Procedure Suppose the decision based on single point of prosecution sanction is reversed by the Appellate Court after 15 years, then no other finding will be available to consider by the Appellate Court and it would be impracticable to remand the case for its finding on the merits of the case after elapse of 20 years of the incident in which the alleged crime was committed. However, the merits of this case can be discussed at this stage.

12. Looking to the evidence given by the Food Inspector, it appears that he took a sample of cow milk and the Public Analyst by its report Ex.P-15 found the sample adulterated on the basis of Standard given in Article A.11.01.11 in Appendix B of the Act. As per the Standard mentioned in particular Article for Madhya Pradesh minimum percentage of milk fat was required to be 3.5% and minimum percentage of milk solids not fat was required to be 8.5%. As per the report of the Public Analyst Ex.P-15 milk fat was found as 3.9%, whereas milk solids not fat was 5.49%. Therefore milk solids not fat was 3% less in the sample. No extra material was found in the sample. If percentage of the milk solids not fat is found less than the prescribed standard, then the presumption would be that some water was added in the milk, and therefore percentage of milk solids not fat was less, but if some water is added in the milk, then percentage of solids fat must also be reduced in comparison to the standard percentage. In the present case, percentage of milk fat was found 0.4% higher than the prescribed standard, which was not possible, if water was added to the milk from which sample was taken and therefore it clearly indicates that proper stirring or churning was not made by the Food Inspector at the time of taking sample. Umrao Singh (PW-3) has admitted in the cross examination that the Food Inspector dipped the bottle in the milk container and took the sample, and therefore it would be clear that the sample was not taken according to the rules followed to the provisions of Section 11 of the Act, 1954.

13. In this context, the judgment of the Punjab and Haryana High Court in the case of Jarnail Singh v. State of Haryana 2008 (1) EFR 149 may be referred in which in similar circumstances the Court noticed that milk was not properly made homogeneous, and therefore the accused could not be convicted for the alleged adulteration. In the present case, it is very much clear that before taking the sample, the milk was not properly made homogeneous, and therefore sample was not a representative sample of the milk. In these circumstances, it cannot be said beyond doubt that the milk in question was adulterated.

14. On the basis of aforesaid discussion, it is very much clear that the Respondent cannot be convicted for the alleged offence u/s 17(1) read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954. Therefore, I am of the opinion that the Court below has not committed any illegality in acquitting the Respondent from the charges levelled against him. The judgment of acquittal passed by the Court below seems to be just and proper which does not call for any interference. The appeal is meritless and deserves to be dismissed.

15. In the result, the appeal of the State does not succeed and accordingly it is dismissed.

16. The Respondent is on bail, hence it is directed that his bail bonds shall stand discharged.