
(1995) 09 MP CK 0006

In the Madhya Pradesh High Court

Case No : Criminal Re. No. 185 of 1992 & Criminal Revision No. 185 of 1992

Uma Prasad and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 06-09-1995

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 7(1)(3)
Prevention of Food Adulteration Rules, 1955 — Rule 9A

Citation : (1996) CriLJ 1252 : (1995) ILR (MP) 697

Hon'ble Judges : P.N.S. Chouhan, J

Bench : Single Bench

Advocate : Ranjan Banerjee, for the Appellant; P.D. Gupta, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.N.S. Chouhan, J.—The petitioners and one other were tried on charge u/s 7(1) (3) read with Section 16(1)(a) (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter the Act) in Criminal Case No. 229/88 by Judicial Magistrate First Class, Chhatarpur, who acquitted one accused and convicted the petitioners on the said charge and sentenced them to six months R.I. and and fine of Rs. 1,000/- which is the statutory minimum punishment provided in the Act. The petitioners went up in appeal. The same being Criminal Appeal No. 10/89 was dismissed by IInd Addl. Sessions Judge, Chhatarpur on 3-4-92 against which the present revision has been filed.

2. Briefly stated the facts are that the petitioners were carrying Ghee in a Bus which was suspected to be adulterated. Therefore, the Food Inspector after serving notice of his intention to take sample out of it took the sample in accordance with the procedure laid down and the same was sent for analysis to the Public Analyst. Public Analyst's report is Ex. P-10 to the effect that the sample did not confirm with the standard of purity laid down under the Act. The defence version was that the sample was not meant for sale. It was being carried

for personal use at the time of an impending marriage. The two Courts below held the evidence of the Food Inspector as reliable. It was also held that the two accused from whose possession the sample was taken were not entitled to acquittal on the ground of non-compliance of the requirement of Section 13(2) of the Act read with Rule 9-A of Rules framed thereunder as the said Rule was directory and not mandatory. Reliance was placed in this behalf on Food Inspector, Nagarpalika, Mandsaur v. Devilal 1985 Jab LJ 195, a Full Bench judgment of this Court.

3. The restricted jurisdiction of Court while exercising revisional powers is too well known to be delineated here. Therefore, the attempt on the part of the learned counsel for the petitioners that this Court should reappreciate the evidence of the Food Inspector and come to a different finding than what the two Courts below have held cannot be accepted. As revisional Court this Court is competent to correct any jurisdictional error or perversity in appreciation of evidence which may have resulted in miscarriage of justice, but it is not empowered to sit as a Court of appeal and reappreciate the evidence on record. Admittedly the evidence of Food Inspector is there and has been held to be reliable by the two Courts below and since no perversity or unreasonableness in the approach of the subordinate Court could be demonstrated, it will have to be accepted that their conclusions as to the reliability of the said witness stands concluded.

4. Great emphasis was laid on the alleged non-compliance of the provisions of Section 13(2) of the Act and on basis of State of M. P. v. Kalyan Mal Agrawal 1984 MPLJ 339 it was argued that the petitioners are entitled to acquittal on assumption of prejudice having been caused to them by such non-compliance. It appears the Courts below also stated on the assumption that there was such non-compliance, but perusal of the evidence of the Food Inspector shows that he has stated that a copy of the report of Public Analyst was after filing of the complaint in the Court, sent to the accused persons by the local health authority. True it is that he is not elaborated as to the mode by which the said copy was sent and no Officer from the Office of Local Health Authority was examined in this behalf. But the evidence of the Food Inspector to the above effect does not deserve to be brushed aside as he was a person intimately associated with the office of the Local Health Authority in such matters. The case cited above was decided by a Singal Bench whereas in a Full Bench case cited by the Appellate Court below, namely, Food Inspector, Nagarpalika, Mandsaur v. Devilal 1985 LLJ 195 (FB) the matter has received close scrutiny and the Court held thus:

"The purpose of Section 13(2) of the Act and Rule 9-A of the Rules is substantially the same i.e., to inform the person from whom the sample was taken of the report of the Public Analyst so that if it is so desired he may take steps to get the sample analysed by the Central Food Laboratory.

If the Public (Health) Authority fails to inform the vendor of the sample as required by Section 13(2) of the Act it cannot be held that he loses the right to

apply to the Court to get the sample kept by the local (Helath) Authority analysed by the Central Food Laboratory. The object of the Act is to obtain the conviction of a person dealing in adulterated food, so that the mischief of adulteration of the articles of food is prevented. The authorities concerned are vested with powers to enforce the provisions of the Act and certain duties are also imposed upon them so that the interests of the vendors of articles of food are safeguarded. If a person has adulterated an article of food he must suffer the consequences of his misdeed and he should not be allowed to escape the consequences of his act merely because of the negligence of those to whom Public duties are entrusted unless their negligence has caused prejudice to him.

The provisions of Section 13(2) of the Act and Rule 9-A of the Rules are not mandatory and directory and the non-compliance thereof per se is not fatal to the prosecution case."

Reliance in this behalf was placed on Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others, contra view taken in Food Inspector v. Ranglal Gujar 1982 LLJ 777 Nathusingh v. State of M. P. 1982 L LJ 895. was overruled. The authority cited by the learned counsel must therefore, be held to be over-ruled by implication by the said Full Bench judgment. Admittedly in instant case, the accused persons never asked the Court to get the sample of Ghee taken from them analysed by the Central Food Laboratory. In the facts and circumstances of the case, it is to be held that as stated by the Food Inspector copy of the report of Public Analyst was sent to the accused persons and they were well aware of it. That is why even after appearing before the Court they did not think it fit to make a request for sending of their sample of Ghee to the Central Food Laboratory. It has, therefore, to be held that neither total non-compliance of Section 13(2) of the Act has been proved in this case nor is there any question of prejudice having been caused to the defence for its presumed non-compliance.

5. It was then urged that as admitted by the Food Inspector in his evidence (para 6) that petitioner Mijajilal was not present at the scene of the occurrence initially and had come there subsequently and, therefore, it should have been inferred that the prosecution of Mijajilal was incompetent. There is no merit in the submission. As stated by the Food Inspector (PW-1), petitioner Uma Prasad and one Ramesh Prasad were travelling in the Bus when the Food Inspector intended to take sample of Ghee and both of them had admitted that they were taking the Ghee to Banda for sale. Panchanama (Ex. P-2) shows that Uma Prasad had disclosed that he did not have any licence for dealing in Ghee and that the Ghee being carried by them belonged to him and Ramesh Prasad in half and half share. Petitioner Mijajilal is brother of Ramesh Prasad. It appears that subsequently when he came on the spot he owned the responsibility for the Ghee belonging to Ramesh Prasad and that is why instead Ramesh he has signed the relevant papers prepared by the Food Inspector, namely, Exs. P-1, P-2 and P-3. Therefore, the mere fact that Mijajilal came later when the sample was being taken will make no difference as to his criminal liability in this behalf as Ramesh

Prasad has already been acquitted by the trial Court on the ground that his signatures were not there on the aforesaid documents.

6. It was lastly argued that more than 10 years have passed and, therefore, the sentence may be reduced. Reliance was placed on Braham Dass Vs. State of Himachal Pradesh, . Considering the accumulation of the work in this Court and the over increasing graph of litigation it appears inevitable that cases will get disposed of only after a considerable lapse of time. Therefore, merely on the ground of lapse of time since the crime was committed if this Court was to interfere in the statutory minimum punishment awarded in crimes of this nature, it will not be in the interest of justice and the very purposes of providing a statutory minimum punishment will get frustrated. Therefore, no reduction in the sentence is warranted.

7. In result, this revision fails and is hereby dismissed. The petitioners are on bail and are directed through their counsel to appear before C. J. M., Chhatarpur on 2nd of November, 1995 to hear the result of this revision and undergo the remaining sentence.