

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR  
BENCH, JAIPUR.

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J U D G M E N T

Hathi Ram Vs. State of Raj. & ors.

S.B.CRIMINAL REVISION PET. NO.  
315/1993 AGAINST THE JUDGMENT  
DATED 13.10.93 PASSED BY  
SESSIONS JUDGE, SAWAIMADHOPUR IN  
CR. APPEAL NO. 9/90.

Date of Order : January 30<sup>th</sup>, 2006.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.Nemi Chand Sharma, for the petitioner.  
Mr. Arun Sharma, Public Prosecutor.

BY THE COURT:

1. This revision petition is directed against the order dated 13.10.1993 passed by learned Sessions Judge, Sawaimadhupur in criminal appeal no. 9/90 whereby the learned Sessions Judge dismissed the appeal upholding the conviction and sentence of the accused Hathi Ram vide order dated 31.3.90 under Sec.7/16 of the Prevention of Food Adulteration Act, 1954 (herein after referred to be as "Act of 1954") to six months simple imprisonment and a fine of Rs. 1000/- and in default of payment, the petitioner should further undergo for one month simple imprisonment.

2. According to the prosecution, on 18.8.1986 at about 1.30 Pm, Sh. Ranjeet Singh, Food Inspector, Sawaimadhopur made a survey at the shop of accused Hathi Ram and took a sample of "Maida" sold by said accused which was sent for examination by Public Analyst. The report of said Public Analyst is marked as Ex.P-10, and according to said report, sample was found adulterated due to the insect infestation. The details of the said report are given in Ex.P/10 dated 29.8.1985 which are quoted herein below as under:

"Moisture (when determined by heating at 130-133°C for 2 hours).....10.95%  
Total ash (on dry weight basis).....0.79%  
Ash insoluble in dilute HCL (on dry weight basis).....0.03%  
Gluten (on dry weight basis)..... 9.32%  
Alcoholic acidity (with 90% alcohol) expressed as H<sub>2</sub>SO<sub>4</sub> (on dry weight basis)..... 0.18%  
Rodent hair and excreta..... Nil  
Insect infestation..... 25 living weevils and 1050 living Maggots per Kg. Found present.

The sample is adulterated as it does not conform to the prescribed standards and due to the insect infestation."

Thereupon the said accused filed an application for sending the said samples for further investigation by Central Food Laboratory in accordance with Sec. 13(2) of the Act of 1954.

3. According to the learned counsel for the petitioner, said application was even allowed by the trial court on 10.3.87 and the second sample of said Maida was directed to be called from Chief Medical & Health Officer, Karauli. However, the counsel appearing before the trial court was directed to deposit packing and incidental expenses in accordance with rules. It may be noticed that there is no requirement of payment of any fees by the accused for the purpose of second examination in accordance with Sec. 13(2) of the Act of 1954, therefore, said condition as learned counsel for the petitioner contends, was wrongly imposed and said second sample was never sent for examination by the Central Food Laboratory. On the contrary, it has come in the impugned order that on 27.7.88, the trial court was informed by the accused that he does not want to send the samples upto Central Food Laboratory. However, according to the learned counsel for the petitioner, this was fatal for the prosecution for not sending the said samples for re-examination by the Central Food Laboratory.

4. Learned counsel for the petitioner has also raised a point that trial in the present case was conducted by learned A.P.P. without any general or special order as required by Sec.20 of the Act of 1954.

5. Learned Public Prosecutor has failed to point out any special or general order regarding conducting the trial by A.P.P. However, this court is of the view that this point need not be gone into for the purpose of deciding the present case. But as contended by learned counsel for the petitioner, not sending the second sample for re-examination by the Central Food Laboratory in accordance with Sec. 13(2) of the Act, which gives a vital right to the accused to get the sample re-examined by the Central Food Laboratory, is fatal for the prosecution in the present case. In absence of any stipulation in the provisions of Sec. 13(2) of the Act requiring the accused to deposit the fees, for the said purpose, the condition imposed by the trial court was obviously incorrect and could not be insisted upon.

6. Therefore, in the opinion of this court, the conviction of the accused cannot be sustained only on this ground.

7. Accordingly, this revision petition is allowed. The petitioner is acquitted of the offence under Sec. 7/16 of the Act of 1954 and the bail bonds furnished by him are discharged.

(DR.VINEET KOTHARI)J.

S.Rawat/-