

**HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR**

**S.B.: HON. SHRI S.C.SINHO, J.**  
**Criminal Revision No.162/1998**

Laxman Lal

**VERSES**

The State of Madhya Pradesh

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Shri Manish Datt, Advocate for the applicant.

Shri G.S. Thakur, P.L. for the respondent/State.  
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**ORDER**

23/02/2011

1. This criminal revision under Section 397/401 of the Code of Criminal Procedure has been filed being aggrieved by the impugned judgment dated 28.01.1998 passed by 10th Additional Sessions Judge, Bhopal in Criminal Appeal No.169/1997 arising out of judgment dated 22.11.1997 passed by C.J.M., Bhopal in Criminal Case No.3484/1996, whereby the applicant has been convicted under Section 7(1) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and sentenced to R.I. for 6 months with fine of Rs.1000/- in default of payment of fine further R.I. for 2 months.

2. According to prosecution case on 09.02.1995 at about 11:00 a.m. the applicant was selling sweets in Azad Restaurant located at T.T. Nagar. Shri R.K. Singh, Food Inspector after disclosing his identity to the applicant purchased 1.5 kilogram Barphi with silver leaf vide receipt Ex.P-4 and paid him Rs.30/-. Thereafter he divided it into 3 equal parts and kept in three dried and clean boxes in accordance with the prescribed rules. Thereafter the boxes were closed and sealed. The panchnama Ex.P-6 of the proceeding was prepared in presence of the

witnesses and one of the sample was sent to the public analyst and the copy of the seal was also separately sent to the public analyst. The remaining two boxes of sample were deposited in his office and Ex.P-10 was obtained from the office. Public Analyst report is Ex.P-11 by which it has been opined that sample does not conform to the standard prescribed because aluminum leaf was not permitted and thus it was adulterated. A copy of the report Ex.P-11 was sent to the applicant by office with covering memo Ex.P-14. Shri Singh after taking necessary sanction from the office filed the complaint case before C.J.M., Bhopal on 09.05.1985.

3. Before the trial Court on behalf of the prosecution only PW-1 Shri R.K. Singh was examined. On behalf of applicant no defence witness was examined. Applicant has submitted that he has been falsely implicated.

4. Learned C.J.M. relying upon the evidence of Food Inspector R.K. Singh held that all the requisite steps of procedure were followed and sample was adulterated and eventually convicted and sentenced the applicant as mentioned above. The appeal preferred by the applicant challenging the judgment of conviction passed by C.J.M. was dismissed by 10th Additional Sessions Judge, Bhopal.

5. Learned counsel for the applicant has challenged the conviction of the applicant only on one count that the report of public analyst Ex.P-11 was not received by applicant.

6. Learned counsel for the State has submitted that Shri R.K. Singh has stated that aforesaid public analyst report was sent to him by registered post and his statement should be believed.

7. From perusal of the record it reveals that Shri R.K. Singh has simply stated in para 18 of his statement that public analyst report was sent to applicant by registered post but Food Inspector has neither filed the postal receipt nor the acknowledgment. In **Rameshwar Dayal Vs. State of U.P., 1996 SCC (Cri) 75** it has been held by the Supreme Court that the right conferred upon the accused under Section 13(2) of the Act to get his own sample examined by the Central Laboratory, is a very valuable right. I am therefore satisfied that serious prejudice has been caused to the applicant in this case because of the non-supply of the Public Analyst report, as required under Section 13 (2) of the Act.

8. Applicant has even not admitted in his accused statement that aforesaid report was received by him. Thus he is taking this objection from the initial state that the public analyst report was not received by him. Thus there is non-compliance of provision of Section 13(2) of the Act. Thus, both the courts below have committed a mistake while convicting the applicant because there is non-compliance of Section 13(2) of the Act.

9. In the result, this criminal revision is allowed. The impugned judgment dated 28.01.1998 is hereby set aside. The applicant is acquitted from the charge under section 7(1) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act. He is on bail. His bail bonds are discharged.

(S.C. Sinho)  
Judge