

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR

S.B.: HON. SHRI S.C.SINHO, J.
Criminal Revision No.1110/1998

Dhannu Ram

VERSES

State of Madhya Pradesh

Shri Anil Verma, Advocate for the applicant.

Shri Sameer Chile, G.A. for the respondent/State.

ORDER

22/02/2011

1. This criminal revision under Section 397/401 of the Code of Criminal Procedure has been filed being aggrieved by the impugned judgment dated 17.09.1998 passed by II Additional Sessions Judge, Shahdol in Criminal Appeal No.42/1998 arising out of judgment dated 17.02.1998 passed by J.M.F.C., Kotma in Criminal Case No.437/1989, whereby the applicant has been convicted under Section 7(1)/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/-.

2. According to prosecution case on 27.01.1982 at about 10:00 a.m. applicant was taking milk for selling. On query by H.C. Rawat (PW-1) Food Inspector applicant informed him that he is taking buffalo milk for selling. After disclosing his identity Shri Rawat, Food Inspector purchased 660 milliliter buffalo milk for Rs.2.65 paise. Thereafter the Food Inspector divided the milk in three parts and filled in three dried, clean and orderless bottles. Thereafter the bottles were closed airtight and sealed in accordance with the prescribed rules. The panchnama in this regard Ex.P-3 was prepared and sent one of the sample to the

Public Analyst and copy of the seal was separately sent to Public Analyst by registered post. He deposited the remaining two sealed bottles of sample in the office of Local Health Authority. The public analyst report Ex.P-8 received by which it has been opined that sample does not conform to the standard prescribed for buffalo milk. The sample was received by public analyst on 01.02.1982 and the report was submitted on 19.02.1982. A copy of public analyst report along with the covering letter Ex.P-10 was sent to the applicant by post and Ex.P-9 is the postal receipt. PW-2 R.S. Tamrakar, U.D.C. in the office of Local Health Authority has appeared as PW-2 who has specifically stated that aforesaid report was sent to the applicant.

3. Before the trial Court on behalf of the prosecution PW-1 H.C. Rawat, Food Inspector and PW-2 R.S. Tamrakar, U.D.C. in the office of Local Health Authority were produced. However, on behalf of applicant no defence witnesses was examined. The learned trial Court relying on the evidence of Shri H.C. Rawat (PW-1) and R.S. Tamrakar (PW-2) held that all the requisite steps of procedure were followed and sample was found adulterated and eventually convicted and sentenced the applicant as mentioned above. The appeal preferred by the applicant challenging the judgment of conviction passed by J.M.F.C., Kotma was dismissed by II Additional Sessions Judge, Shahdol.

4. Learned counsel for the applicant Shri Anil Verma has challenged the conviction of the applicant only on two counts that sample was not a representative sample as required under Section 14 of the Act as before obtaining the sample the milk

was not stirred so as to make it homogeneous and further copy of public analyst report was not received by applicant, as such the conviction and sentence of the applicant is bad in law.

5. Learned counsel for the State opposed the contention made by the learned counsel for the applicant and justified the finding of conviction arrived at by the courts below.

6. On perusal of the record, it is apparent that before the trial Court complainant/Food Inspector Shri H.C. Rawat (PW-1) and R.S. Tamrakar (PW-2) have appeared as witnesses in support of the prosecution case. Food Inspector Shri Rawat has deposed in para 1 of his examination in chief that stirring was done only once by him before obtaining sample of milk so as to make it homogeneous. This fact is also not mentioned by him in his panchnama Ex.P-3 prepared on the spot. In this regard learned counsel for the applicant has placed reliance on **Dharamchand v. Food Inspector, 1985 F.A.J. 455 M.P. and Satyendra Gupta vs. Mohanlal 2007(III) MPWN 11** where it is held that if the collected sample was not representative sample then applicant is entitled for acquittal. Thus, both the courts below have committed a mistake while convicting the applicant because the sample taken from the milk stored for sale by the applicant without proper stirring and making it homogeneous was not representative sample and it was clear violation of Rule 14 of the Prevention of Food Adulteration Rules, 1955.

7. Apart from this there is only Ex.P-10 covering memo and Ex.P-9 postal receipt on record but there is no acknowledgment

or dispatch register to prove that public analyst report Ex.P-8 was received by the applicant.

8. 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.

9. In the result, this criminal revision is allowed. The impugned judgment dated 17.09.1998 is hereby set aside. The applicant is acquitted from the charge under section 7(1)/16(1) (a)(i) of the Prevention of Food Adulteration Act. He is on bail. His bail bonds are discharged.

(S.C. Sinho)
Judge

Psm