

**(2000) 11 AHC CK 0139**

**Allahabad High Court**

**Case No:** Criminal Revision No. 557 of 1986

Khushi Ram Rathore and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Nov. 27, 2000

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 11(1), 16(1)

**Citation:** (2001) 2 ACR 1758

**Hon'ble Judges:** Virendra Saran, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Virendra Saran, J.

Khushi Ram Rathore and Balak Ram Rathore have preferred this revision against the judgment and order dated 18.3.1986 of Sri Khem Singh, Special Judge (Dacoity Affected Area)/ Additional Sessions Judge, Farrukhabad, dismissing Criminal Appeal No. 135 of 1985 against the judgment and order dated 29.6.1985 of Sri V. K. Maheshwari, Munsif-Magistrate, convicting and sentencing the applicants u/s 16(1)(c) of the Prevention of Food Adulteration Act, 1954 (for short the Act) and sentenced them to six months" R.I. and a fine of Rs. 1,000.00 each and in default of payment of fine the applicants have been sentenced to further three months" R.I.

2. The prosecution case is that on 20.6.1984 at about 5 p.m., Sri M.P. Tiwari, Head Food Inspector in the presence of Sri N. L. Verma, and Sri Om Prakash visited the shop of the applicants in Kasba Nawabganj in the district of Farrukhabad. The applicants were present at the shop. There were some packets of compat (sugar toffee) in a pouch of polythene at the shop. The Head Food Inspector asked the applicants to give three packets of compat to him as sample. The applicant Khushi Ram gave three packets. However, when the Head Food Inspector asked them to disclose the name of the manufacturer and the name of the whole-seller, there

came a refusal and suddenly, the packets were snatched. The Head Food Inspector was pushed out of the shop and applicant Balak Ram locked the shop.

3. At the trial, the applicants denied their guilt. The courts below accepted the prosecution case and convicted and sentenced the applicants as mentioned above. The applicants have now come up in revision before this Court.

4. I have heard Sri R. K. Saxena, learned Counsel for the applicants and learned State counsel.

5. It is conspicuous to note that the own case of the prosecution is that the applicants did give the sample. At the same time, it is also clear that no notices were given to the applicants u/s 11(1) of the Act. In the absence of the notice and any other writing on the spot, I am left with the solitary uncorroborated evidence of Sri M.P. Tiwari, Head Food Inspector. The two witnesses who are present on the spot, namely, L. N. Verma and Om Prakash have been withheld from the witness box. In a case where there is not even a shred of documentary evidence regarding happening of the date, it is not safe to rely on the ipse dixit of the Head Food Inspector who is obviously interested in seeing that the case, results in conviction. In the totality of the circumstances, it is not possible for me to rely upon the uncorroborated testimony of Sri M.P. Tiwari and hold both the applicants, who are real brothers, guilty. The case against the applicants is not free from reasonable doubt.

6. Accordingly, this revision is allowed. The conviction and sentences passed against the applicants are set aside. The applicants are acquitted. The applicants are on bail. They need not surrender. Their bail bonds are discharged. Fine if paid by the applicants shall be refunded to them forthwith.