

(2012) 02 MP CK 0022
Madhya Pradesh High Court
Case No: Criminal A. No. 1484 of 1997

State of M.P.

APPELLANT

Vs

Bhajan Lal

RESPONDENT

Date of Decision: Feb. 16, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 378
- Prevention of Food Adulteration Act, 1954 - Section 13(2), 16(1)(a)(i), 7(1)

Citation: (2012) ILR (MP) 2199

Hon'ble Judges: U.C. Maheshwari, J

Bench: Single Bench

Advocate: Pramod Kumar Chourasia, P.L. for the State, for the Appellant; Abhinav Dubey, for the Respondent

Final Decision: Dismissed

Judgement

U.C. Maheshwari, J.

1.This appeal has been preferred u/s 378 of Cr.P.C. on behalf of State of Madhya Pradesh being aggrieved by the judgment dated 26.3.1997, passed by Chief Judicial Magistrate Raisen, in criminal Case No. 599/1986, acquitting the respondent Bhajan Lal, from the charge of Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (in short "the Act"). The facts giving rise to this appeal in short are that on dated 18.9.1986, at about 8.30 in the morning, the respondent carrying the milk on his bicycle for selling was intercepted by the Food Inspector, D.V. Kelkar at Bus Stand, Gairatganj and after giving his introduction, expressed his desire to take the sample of the milk for chemical analysis under the Act. In continuation after giving the notice in the Form No. 6, he purchased 750 Ml. milk with it's receipt of consideration of Rs. 3/- from the respondent. In presence of the panch witnesses, such milk was sealed in three different bottles with equal quantity, Such bottles were sealed in accordance with the prescribed rules of the aforesaid Act. Thereafter,

in accordance with the provision of the Act, one sample was sent to the State Public Analysis while, remaining two samples were kept with the Office of Health authority Raisen. On chemical examination by the Public Analysis, such milk was found to be adulterated. On receiving such report, after obtaining the requisite sanction from the concerned authorities, the complaint was filed by the said Food Inspector against the respondent for his prosecution under the aforesaid offence. It is also stated in the complaint that before filing the same, the requisite notice of Section 13(2) of the Act was also sent to the respondent. In response of summons after appearance of the respondent in the matter, the plea of the aforesaid section of the Act was recorded against him. He abjured the guilt on which, the trial was held. On appreciation of the evidence, the respondent was acquitted from the alleged charge on which, the State has come to this Court with this appeal.

2. Shri Pramod Chourasia, learned Panel Lawyer, after taking me through the record of the trial Court argued that the case of the prosecution has been duly proved by the Food Inspector D.V. Kelkar (P.W. 1) in his deposition by exhibiting all the requisite papers. In view of such evidence, there was no occasion for the trial Court to extend the acquittal to the respondent mere on some technical grounds that milk was not made homogeneous before taking the sample and also before packing the same in the bottles. According to him the trial Court also committed error in holding that in the lack of postal receipt or the acknowledgment due receipt, the service of the notice of Section 13(2) of the Act on the respondent could not be deemed to be served. According to counsel, on such technical ground, the case of the prosecution could not be discarded by the trial Court and prayed to convict the respondent by setting aside the impugned judgment of his acquittal by allowing this appeal.

3. On the other hand Shri Abhinav Dubey, learned appearing counsel of the respondent after taking me through the seizure memo of the milk (Ex. P.5) said that, mere perusal of the same, it is apparent that before purchasing the milk or subsequent to it, while filling the same in the bottles, the same was never made homogeneous by the Food Inspector D.V. Kelkar, or any other person. In the lack of making the milk homogeneous, the seized milk from the Can could not be deemed to be a representative sample of the entire milk, carried the respondent on his bicycle. So, in the lack of representative sample of the entire milk of the cane, the trial Court has not committed any error in extending the acquittal to the respondent. He further argued that after receiving the report of Public Analyst, in which the seized sample was found to be adulterated or contrary to the prescribed standard then, in that circumstances, the intimation regarding filing of the impugned complaint against the respondent with the intimation of his right to get examine the second sample from the Forensic Laboratory, ought to have been given and served on the respondent by the food Inspector, as per provision of Section 13(2) of the Act because, it is a valuable right of the accused like respondent to get examine the second sample from the Central Food Laboratory and if according to provision, such service of notice has not been proved by the Food Inspector or the

State either by exhibiting the postal receipts of the registered post for sending such notice to the respondent or it's acknowledgment due receipt signed by the respondent then mere on imagination, it could not be assumed that such notice was send and duly served on the respondent. So, in the lack of such material evidence of the service of such notice (Ex. P/11), the trial Court has not committed error in acquitting the respondent and prayed for dismissal of this appeal.

4. Having heard the counsel at length, keeping in view the arguments advanced, I have carefully gone through the record of the trial Court as well as the exhibited papers.

5. It is apparent from the seizure memo of the alleged milk (Ex. P.5) prepared in presence of the witnesses by the Food Inspector D.V. Kelkar (PW-1), that before taking such sample of milk from the Can or after taking the same in some pot by said Officer, the same was not made homogeneous. So, in such premises the milk filled-up and sealed in three bottles, out of them one bottle was sent to the public analyst on chemical examination the milk of such bottle was found to be adulterated, could not be treated to be representative sample of the entire lot of the milk carried by the respondent in the alleged Can. In such premises the respondent was entitled to extend the acquittal. My this approach is based on various decisions of the apex Court as well as of this Court holding that the sample of substance should be. taken out after making the entire lot of milk to be homogeneous. So far as the question relating to service of notice u/s 13(2) of the Act is concerned, there is a mandatory provision under such Section that if the sample of seized substance, on chemical examination by Public Analyst is found to be adulterated then after receiving such report of Public Analyst as per prescribed procedure after obtaining the requisite sanction of prosecution the complaint should be filed against the accused by the official of the State under intimation to the accused like respondent regarding his right to get examine the second sample from the Central Food Laboratory within the prescribed period. Although, as per record, the copy of such notice has been placed and proved on record as (Ex. P./11), but by which method and the procedure it was sent to the respondent and in which manner it was served, the same have not been proved on the record by the prosecution. Even, the concerning dispatch register showing the dispatch of such notice or any postal receipt showing the same was sent through registered post to the respondent have neither filed nor proved on the record. In the lack of such dispatch register or the postal receipt, it could not be assumed that such notice was sent or served on the respondent or otherwise, in any case, for the sake of argument if it was deemed that such notice was sent through registered post then, in the lack of acknowledgment due receipt signed by the respondent, it could not be assumed that such notice was duly served on him. In the lack of the evidence regarding proper service of such notice, the trial Court has not committed any error in drawing the inference that the respondent has been deprived from his valuable right to get examine the second sample from the Central Food Laboratory on account of non-service of the notice of

Section 13(2) of the Act on him. In the aforesaid premises, I have not found any perversity, infirmity, error or anything contrary to the propriety of the law in the impugned judgment acquitting the respondent from the charge of Section 7(1) read with Section 16(1)(a)(i) of the Act. Consequently, by affirming the impugned judgment of the trial Court, the appeal of the State is hereby dismissed. The bail bond of the respondent is hereby discharged.