(2005) 01 MP CK 0021

Madhya Pradesh High Court

Case No: Criminal Revision No. 856 of 1999

Anil Kumar Jain		APPELLANT
	Vs	
State of Madhya Pradesh		RESPONDENT

Date of Decision: Jan. 10, 2005

Acts Referred:

- Evidence Act, 1872 - Section 65
- Prevention of Food Adulteration Act, 1954 - Section 13, 13(2), 16(1)
- Prevention of Food Adulteration Rules, 1955 - Rule 22

Citation: (2005) CriLJ 4722 : (2005) 3 MPLJ 83

Hon'ble Judges: U.C Maheshwari, J

Bench: Single Bench

Advocate: Amit Dubey, for the Appellant; J.K. Jain, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

U.C. Maheshwari, J.

This revision petition has been directed against (he judgment dated 21-5-1999, passed by Sessions Judge, Raisen in criminal appeal No. 117/1998 whereby the judgment dated 19-11-1998 passed by Chief Judicial Magistrate, Raisen, by which the present applicant was found guilty u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act (In brief "Act") and sentenced for six months rigorous imprisonment with fine of Rs. 1000/-(One thousand), and in default of payment of fine further one month R.I., has been upheld.

As per prosecution case on 15-10-1991, Shri R. K. Singh, Food Inspector (P.W. 1.) went to village Badi in weekly market where the applicant was running a shop in the market from which said Food Inspector on his inspection bought catechu, which

having a dictionary meaning ''betel-nut'' also. In respect of purchase a notice (Ex. P. 4) was given and in response of it after payment the said substance was taken from the applicant by the receipt of Ex. P.5. Panchnama was also prepared and subsequently form No. 7 with the impression of seal the sample was sent to the Public Analyst, which report Ex. P. 13 dated 25-11-1991 was received in which it was found that the seized substance does not confirm the standard prescribed under the Rules.

After obtaining the sanction Ex. P. 15 dated 16-1-1992 the prosecution was initiated and notice u/s 13 of the said Act was sent to the applicant. After holding trial the trial Court convicted the applicant, which was upheld by the appellate Court as said above. Hence this revision.

This revision petition was pending since 1999 for admission, so with the consent of the parties this revision petition is heard finally after admission.

Learned Counsel of the applicant Shri Amit Dubey has submitted that in Panchnama (Ex. P.6) it has not been mentioned that the seized said substance was catechu (edible) while the standard is prescribed under the Rules in relating to only catechu (edible); Therefore, it cannot be said that seized substance was selling for edible purposes and in support of this he cited a reported case Naveen Kumar Chauhan v. State of Andhra Pradesh (1989) 2 PFAC 50 (AP), in which it is held :

"Shri Padmanabha Reddy, learned Counsel appearing for the petitioner, rightly urges that there is absolutely no proof whatsoever that what was seized from the petitioner by P.W. 1, the Food Inspector, Visakhapatnam was catechu (edible). Ex. P.1, the notice in Form 6, served upon the petitioner by P.W. 1, merely reads that what was seized from him was catechu. No further description of catechu as seized was set out in Ex. P.1. The report of the analyst reads that what was analysed was catechu. The plea of the petitioner at the trial was that what was seized from him was catechu (non-edible) and suggestions to that effect were made in the cross-examination of P.W''s 1 to 3. It cannot therefore be said that there is any conclusive proof that what was seized from the petitioner was catechu (edible). It is not denied that Item A-21, included in the Appendix B, of the Prevention of Food Adulteration Rules, prescribes a standard only for catechu (edible). No standard is prescribed under the rules for catechu (non-edible)."

Besides the above submission counsel of the applicant has also submitted that in the panchnama (Ex. P.6) it was not mentioned that polythene bags were clean before taking the sample. Therefore, prescribed procedure was also not complied with. His another submission was that Rule 22 of Food Adulteration Rules provides requisite quantity of sample was not taken. As per item No. 37 of Rule 22 prescribed quantity of sample is 200 grams. In the present case only 450 grams catechu was taken and same divided into three parts, so only 150 grams sample was sent to Public Analyst and in this manner the mandatory provision was also violated by the

prosecution. He has further submitted that as per Section 13(2) of the said Act no notice was served over the applicant and about sending the notice no admissible evidence was led and the Court below has by relying on the secondary evidence came to conclusion against the applicant.

On the other hand learned Government Advocate Shri J. K. Jain, supported the judgment of the Courts below and prayed for dismissal of this revision.

Having heard the learned Counsel of the parties, I am of the considered view that this revision petition deserves to be allowed for the following reasons;

So far as first submission of the applicant is concerned I have perused Panchnama (Ex. P.6) in which it is not mentioned that the seized substance was in possession of the applicant for selling purpose as edible item. So, it cannot be said safely that the said substance was selling by the applicant for edible purpose and in rebuttal of the said cited case no other legal position was submitted by the respondent. Therefore, the principle laid down in the above cited case is profitable to the applicant and I conclude that the seized substance was not seized by the Food Inspector as catechu (edible). In view of this no standard is prescribed for simple or plain catechu and applicant cannot be held guilty.

So far as other submissions is concerned, it is clear from Panchnama (Ex. P-6) that the samples were taken in clean and dry polythene bags. Therefore, I have not found any substance in this submission.

I have also found some substance in the submission of the applicant that Section 13(2) of the said Act was not complied because Ex. P-16 was sent by the registered post but the original postal receipt was not produced instead only photo copy was submitted and proved without any permission of the Court u/s 65 of the Evidence Act. As such without proof of original document such evidence is not reliable. Therefore issuance of notice is also doubtful. For the shake of argument if it is accepted that notice was sent to the applicant then concerning registers in original were not produced or proved only some copies were exhibited on record, which are also secondary evidence. On this count also issuance of notice is doubtful. Besides this service of notice was not proved by submitting acknowledge due receipt and why it could not be submitted. For this no explanation was put forward by the prosecution. Therefore, it is clear that Section 13(2) of the said Act was not complied. Consequently, the applicant is entitled to get the benefit of non-compliance of this also.

In view of the above said premises, I am of the considered view that this revision petition deserves to be and is allowed. The judgments of the Courts below and conviction of the applicant is hereby set aside. Bail bond of the applicant is hereby cancelled, and if any amount of fine is deposited by him be refunded to the applicant.

Revision petition is allowed.