

**(1994) 06 MP CK 0006**

**Madhya Pradesh High Court**

**Case No:** Criminal R. No. 338 of 1989

Nand Kishore

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

**Date of Decision:** June 28, 1994

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 13(1), 13(2), 14A, 16, 16(1)
- Prevention of Food Adulteration Rules, 1955 - Rule 7(3), 9A

**Citation:** (1995) CriLJ 3247 : (1994) ILR (MP) 235

**Hon'ble Judges:** D.P.S. Chouhan, J

**Bench:** Single Bench

**Advocate:** Rakesh Jain, for the Appellant; M.L. Choubey, for the Respondent

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

D.P.S. Chouhan, J.

The applicant on the basis of the complaint dated 5-2-82 was tried Under/Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act). The trial Magistrate convicted the applicant Under/Section 7(l)/16(l)(a) and sentenced him to six months" RI together with fine of Rs. 1000/-whereagainst the applicant preferred an appeal being Cr. Appeal No. 105/84 which was: dismissed by the Addl. Sessions Judge Panna on 9-6-69. The present revision is directed against the aforesaid order dated 9-6-89.

2. Learned counsel for the applicant made fivefold submissions :

(a) That as required under the law, the applicant was not supplied the report of the Public Analyst; and as such for non-compliance of the mandatory requirement of the law, the entire proceedings are vitiated;

(b) The complainant Suresh Kumar (PW 1), the Food Inspector, who was examined in the case has not stated about the sample taken by him as to whether it was the sample of the cow milk or it was the sample of she-buffalow milk; and as such, on the record, there is substantial deficiency regarding the quality of the milk as it would ultimately affect the result of the case as the fat contents in the cow milk and in the she-buffalow milk, vary.

(c) In the case, the witnesses of seizure have not supported the prosecution story but in spite of that the witnesses have not been declared hostile; and as such, their evidence has to be considered accordingly and on consideration of such evidence, the applicant is entitled for acquittal.

(d) The incident in question took place in the year 1981 and the period of 13 years has elapsed and as such, the applicant is entitled for being released on probation of good conduct under the Probation of Offenders Act, 1958.

(e) The applicant has already undergone a sentence little less than a month and in view of the decision of the Supreme Court in Braham Dass Vs. State of Himachal Pradesh, he is entitled to be released on the sentence already undergone.

3. Learned counsel for the applicant invited the attention of the Court to the complaint (Ist agasha) dated 5-2-82 which contains the description of the documents annexed with the complaint and he submitted that it contains the list of 9 documents but there port of the Public Analyst does not form part of these 9 documents. On perusal of the Istagasha, as pointed out by the learned counsel, he is correct in point of argument that the complaint does not contain the report of the Public Analyst. Thereafter the learned conseal for the applicant invited the attention of the Court to Ex. P-12 and on the basis of which, he developed his argument that the Ex. P-12 mentions for sending a copy of the report of the Public Analyst to the applicant. It is a notice Under/Section 3(2) of the Act. On the document, in the right, there is an endorsement regarding "Regd. Post" (In short Panjikrit). Learned Counsel for the applicant submitted that the prosecution has not proved that the document, mentioned in the notice was ever sent to the applicant. He submitted that the postal receipts regarding. Registry have not been produced on record. So far as the prosecution is concerned, ho postal receipt regarding sending of the same to the applicant has been produced on record. In the evidence also led by the prosecution, the prosecution has not examined the concerned person who has dispatched b the letters so as to show that he despatched the letters by registered post. The learned Govt. Advocate could not satisfy the Court as to how the fact of sending the notice to the applicant together with the report of the Public Analyst is substantiated. It is an accepted fact that there is no postal receipt regarding sending of the notice along with the report of the Public Analyst. It is also an accepted fact that the person who accepted the letter has not been examined. Thus, it is clear that the prosecution has not established the sending of the report to the applicant by registered post which, according to the learned counsel for the applicant, is a mandatory requirement

under the law.

4. In this connection, the learned counsel for the applicant invited the attention of this Court to the sub-section (2) of Section 13 of the Act which says that ON RECEIPT OF THE REPORT OF THE RESULT of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local(Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed u/s 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons, that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. The learned counsel for the applicant, in this connection invited the attention of the Court to the Rule 9-A of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules, 1955) which provides b that the Local (Health) Authority shall immediately after the institution of prosecution, forward a copy of the report of the result of analysis in Form III delivered to him under sub-rule (3) of Rule 7, by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the Food Inspector, and simultaneously also to the person, if any, whose name, address and other particulars have been disclosed u/s 14A of the Act. In the present case, the submission of the learned counsel for the applicant is that the applicant has not been sent a copy of the report of the Public Analyst either by registered post or by hand, and accordingly, he has been deprived of the opportunity of getting the sample re-examined and thus his valuable right has been robbed by the prosecution.

5. There is substance in the submission advanced by the learned counsel for the applicant. After hearing the learned counsel for the applicant and the learned Government Advocate, I find that the entire prosecution and proceedings are vitiated for noncompliance of mandatory requirement Under/Section 13(2) and Rule 9-A. Since I am satisfied with the submissions advanced by the learned counsel for the applicant, it is not necessary to deal with the other submissions as advanced by the learned counsel for the applicant.

6. The revision-application is allowed. The conviction and sentence as imposed upon the applicant Under/Section 7/16 of the Act is set aside. The applicant is on bail. His bail-bonds shall stand cancelled and sureties shall stand discharged.