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**(2011) 07 MP CK 0053**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Criminal Revision No. 74/05

Nemichand

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision:** July 28, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 245, 245(2), 397, 401
- Prevention of Food Adulteration Act, 1954 - Section 16(A)(1), 2, 7
- Prevention of Food Adulteration Rules, 1955 - Rule 32, 32(1)

**Citation:** (2011) ILR (MP) 2896 : (2012) 2 MPHT 206

**Hon'ble Judges:** Giriraj Das Saxena, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

G.D. Saxena, J.

This revision petition u/s 397/401 of the Code of Criminal Procedure 1973 preferred by the Petitioner/accused is directed against an order dated 6th December 2004 passed in criminal case No. 490/2003 by the Judicial Magistrate First Class, Gwalior (M.P.), dismissing thereby the application u/s 245(2) of Code of Criminal Procedure of the Petitioner-accused for his discharge from the alleged offence, the stage of framing charge.

2. In brief, the facts of the case are that on 21st January 1992, from the shop of Petitioner situated at Gwalior Trade Fair Ground, the Food Inspector duly authorized, purchased sample of 450 gm. of " Vital " Pure Refined Cooking oil (Soya Oil) from open ten of 10 Kg. for the purpose of examination under Prevention of Food Adulterations Act. The sample was divided into three parts and were sealed as per Rules/Law. One sample was sent to State Food Laboratory Sagar. The Report from Public Analyst State Food Laboratory reveals that the sample contravenes the

Rule 32(a) of the PFA Rules 1955. After completing all formalities, the complaint was filed before the court of Judicial Magistrate First Class, Gwalior.

3. The contention of the learned Counsel for the Petitioner/ accused is that the impugned order dated 06th December 2004 is against the law/rules and the principles of natural justice. The provisions of Rule 32(a) of the Rules 1955 are not applicable to present case because the sample was collected from the open tin, containing 10 Kg oil. It is submitted by the counsel that there was no chance for the Petitioner-accused to show the name, address of the manufacturer of the sold item. On such evidence, if not rebutted, the accused can not be punished and there was no justification to continue the criminal proceeding against the accused. Hence, it is prayed for discharge the Petitioner-accused, at previous stage of charge.

4. Learned Panel Lawyer for the State, on the other hand, supported the impugned order and prayed for dismissal of the revision.

5. Heard the learned Counsel for the parties and also perused the record of the trial Magistrate vis-a-vis the law with relevant rules applicable to the case.

6. On perusal of the record of the trial court, it transpires that as per report dated 13th February, 1992 of the Public Analyst the article seized contravenes the Rule 32(a) of the PFA Rules 1955. In this manner, the accused is found violating the provisions of Rule 32(a) of the Prevention of Food Adulteration Rules 1955 and thereby committed the offence u/s 7(v), punishable u/s 16(A)(1) of the PFA Act, 1954.

7. In the case of State of Maharashtra v. Pravin Virjang Gala 1999 (1) FAJ 25, the High Court of Maharashtra held as under:

Therefore, what this definition clause requires is that for an article of food to come within the scope of Section 2(ix)(e) false claim about its contents must be made upon the label or otherwise. As stated above it is undisputed and made out from the panchnama dated 10-9-1986 that the tin did not have any labels. There is no averment in the panchnama that any such labels indicating that the tins had refined cotton seed oil were there. In fact through the evidence of Sharad Kulkarni, the Food Inspector, it has come from the record that the edible oil was kept for sale in two loose tins which were having no labels and it was the accused who disclosed that the oil was refined cotton seed oil.

8. At this juncture, it would be useful to reproduce Section 2(ix) of the Act, which runs as is below:

Section 2(ix).-"misbranded"- an article of food shall be deemed to be misbranded

(a) if it is imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;

(b) if it is falsely stated to be the product of any place or country;

- (c) if it is sold by a name which belongs to another article of food;
- (d) if it is so colored, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;
- (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;
- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;
- (j) if it contains any artificial flavouring, artificial coloring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made there under;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made there under;

9. Rule 32(1) of the Prevention of Food Adulteration Rules 1955 is as follows:

32. Package of food to carry a label. -Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label-

- (a) the name, trade name or description of food contained in the package.

10. Section 245 of Code of Criminal Procedure is as follows:

S.245 When accused shall be discharged

(1) xxxxx

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

11. On bare perusal of the complaint and the documents filed alongwith the complaint, it clearly shows that on 21st January 1992 at Gwalior trade Fair Ground, from the shop of Petitioner, the Food Inspector duly authorized, purchased sample 450 gm. "Vital " Pure Refined Cooking oil (Soya Oil) from open tin of 10 Kg. for the purpose of examination under the Prevention of Food Adulteration Act. Thereafter, the sample was divided into three parts and were sealed as per Rules/Law. The one sample was sent to the State Food Laboratory Sagar. The Report from Public Anaylist State Food Laboratory opined that the sample contravenes Rule 32(a) of the Rules 1955. The evidence collected during investigation shows that the Food Inspector purchased the sample of 450 gm. of "Vital " Pure Refined Cooking oil (Soya Oil) from open tin of 10 Kg. for the purpose of examination under the Prevention of Food Adulteration Act from the vendor. Under the circumstances, to ascertain whether the provisions of Rule 32(a) of the Rules 1955 are violated by the Petitioner-accused and the rule governs the case, he sought an inquiry from the Public Analyst, which was not answered by him. In the instant case except giving the properties of the seized oil, there is no definite opinion given by the Public Analyst as to what type of oil was seized and it is merely stated that the sample was mis-branded. In the set of facts, the decision rendered in the case of State of Maharastra (supra) shall fully cover the case.

12. In that view of the matter, the prosecution has failed to establish the case against the Petitioner-accused beyond reasonable doubt.

13. Consequently, by allowing the revision petition, the order dated 06th December 2004 is hereby set aside and accused is discharged, prior to the stage of charge.