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**(2013) 04 MP CK 0055**

**Madhya Pradesh High Court**

**Case No:** Criminal Revision No. 985 of 1999

Parmanand Sahu

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

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**Date of Decision:** April 9, 2013

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 13(2), 16(1)(a)(i), 7(1)

**Hon'ble Judges:** N.K. Gupta, J

**Bench:** Single Bench

**Advocate:** R.K. Sahu, for the Appellant; Ajay Tamrakar, Panel Lawyer, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

N.K. Gupta, J.

The applicant No. 2 was convicted for the offence punishable u/s 7(1) read with section 16(1)(a)(i) of Prevention of Food Adulteration Act (hereinafter it will be referred to as the "PF Act") vide judgment dated 25.4.1992 passed by the Special Municipal Magistrate, Jabalpur in criminal case No. 2694/1990 and sentenced for 6 months" rigorous imprisonment with fine of Rs. 1,000/-. In criminal appeal No. 36/1992, the learned Sixth Additional Sessions Judge, Jabalpur vide judgment dated 24.6.1999 dismissed the appeal filed by the applicants in toto. Being aggrieved with the judgments passed by both the Courts below, the applicants have preferred the present revision. The prosecution's case, in short, is that, the Food Inspector Shri Hardayal Dubey (P.W. 1) who was authorized to take sample in his jurisdiction within the district Jabalpur, went to the shop of the applicants on 21.11.1980. He found that the applicant No. 2 was selling the various sweets in the shop. He asked to take sample of the sweet (Laddoo) and therefore, he purchased 1500 gms of Laddoos from the applicant No. 2. The cost of Laddoos was paid to the applicant No. 2 and a receipt was obtained. Purchased Laddoos were divided into three parts and duly

packed in polythene bags. After due packing, the seal of the local health authority was also affixed. 20 drops of formalin was also added in each packet of the sample before its packing. Thereafter, one part of the sample was sent to the public analyst and remaining two parts of the sample were deposited in the office of the local health authority. The public analyst vide its report dated 31.12.1998 (Ex. P/11) found that the sample was adulterated because the colour Metanil yellow was used in those Laddoos. Thereafter, due permission was taken for prosecution from the Deputy Director, Food and Drug Administration, Jabalpur. A complaint was filed before the concerned Additional Chief Judicial Magistrate and a notice u/s 13(2) of the PF Act was given to the applicants.

2. The applicants abjured their guilt. The applicant No. 2 did not take any specific plea in the matter but, he has stated that he was falsely implicated in the matter. However, no defence evidence was adduced.

3. The learned Special Municipal Magistrate, Jabalpur, after considering the prosecution's evidence, convicted the applicant and the co-accused for the offence as mentioned above and sentenced them for 6 months' rigorous imprisonment with fine of Rs. 1,000/-, whereas the appeal filed by the applicants was dismissed in toto.

4. During the pendency of the revision, the applicant No. 1 Sonelal has expired.

5. I have heard the learned counsel for the parties.

6. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the applicant No. 2 was not held guilty for the offence that he did not have any licence for sell of the edibles. He is held guilty for adulteration. According to the Food Inspector Shri Hardayal Dubey (P.W. 1), the applicant No. 2 was the person, who was selling the edibles from the shop and therefore, the Food Inspector took the sample from the applicant No. 2. In the Form-6, Ex. P/5 and money receipt, Ex. P/6, the applicant No. 2 appended his signature and therefore, at this stage, he cannot say that he was not selling the edibles. The procedure adopted by the Food Inspector appears to be appropriate. However, it is no where made clear that what was the procedure of mixing the preservative in the solid form of edibles i.e. Laddoos. It is no where mentioned by the Food Inspector in his memo, Ex. P/7 that he has broken the Laddoos and made the preservative homogeneous in all the three parts of the sample. Secondly, the samples were packed in polythene bags and the artificial colour could be injected in those packets, after their sealing and therefore, packing of the sample was not appropriate.

7. Food Inspector Shri Hardayal Dubey has shown the notice given to the applicants No. 1 and 2 u/s 13(2) of the PF Act and he exhibited the copy, which he received from the office of Deputy Director, Food and Drug Administration, Jabalpur as Ex. P/14 and Ex. P/15. However, no postal receipt or acknowledgement receipt were submitted before the trial Court to show that such notices were dispatched to the

applicant No. 2 or such notices were received by the applicants. Under such circumstances, it was for the prosecution to call the concerned clerk of the office of Deputy Director, Food and Drug Administration, Jabalpur to prove that a notice u/s 13(2) of PF Act was given to the applicant No. 2 and it was received to him. At least, it could be shown that the notice was sent through the post-office and a receipt of registered Dak could be shown before the trial Court to prove the dispatch of the notice but, it is a very sorry state of affair that neither any postal receipt, nor any acknowledgment receipt has been shown before the trial Court to show that compliance has been done u/s 13(2) of the PF Act. The applicant No. 2 was denied with his valuable right u/s 13(2) of the PF Act because no notice has been received by the applicant No. 2 for that provision and therefore, he was deprived to file an application to get his sample analyzed from the Central Food laboratory.

8. The lapse committed by the Food Inspector appears to be fatal and therefore, looking to the violation of the right u/s 13(2) of the PF Act, the applicant No. 2 could not be convicted for the offence of adulteration. Also, the possibility cannot be ruled out that the artificial colour was injected in the sample sent to the public analyst, before its dispatch. Under such circumstances, the applicant could not be convicted for the adulteration made in the sweets. The learned Special Municipal Magistrate, Jabalpur as well as the learned Additional Sessions Judge have committed an error of law in convicting the applicant for the offence punishable u/s 7(1) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act. Hence, it is a fit case, in which an interference is required from the side of this Court, by way of a revision, in the impugned judgments passed by both the Courts below.

9. On the basis of the aforesaid discussion, the revision filed by the applicant is hereby allowed. The conviction as well as the sentenced directed for the offence punishable u/s 7(1) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act is hereby set aside. The applicant No. 2 is acquitted from the aforesaid charges. He would be entitled to get the fine amount back, if he has deposited the same before the trial Court.

10. At present, the applicant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged. A copy of the order be sent to the trial Court as well as to the appellate Court along with their records for information and compliance.