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(2003) 04 MP CK 0053

Madhya Pradesh High Court

Case No: Criminal Revision No. 459 of 2001

Hiraram and Others	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision: April 24, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245(2), 397, 401
- Prevention of Food Adulteration Act, 1954 - Section 16, 2, 23, 7
- Prevention of Food Adulteration Rules, 1955 - Rule 32

Citation: (2003) 3 MPHT 168 : (2004) 2 MPJR 284

Hon'ble Judges: Sugandhi Lal Jain, J

Bench: Single Bench

Advocate: Surendra Singh and A.K. Dubey, for the Appellant; Alka Pandya, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.L. Jain, J.

This is a revision u/s 397/401 of the Code of Criminal Procedure (2 of 1974) (hereinafter referred to as the "Code") against the order dated 27-3-2001, passed by J.M.F.C., Narsinghpur, in Criminal Case No. 285/96, dismissing the petition u/s 245 of the Code filed by the petitioners.

Tersely, the facts of the case necessary for the disposal of the present revision petition are as follows :--

The petitioners are being prosecuted in the Court of J.M.F.C., Narsinghpur, for the offences, punishable u/s 7/16 of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act") for alleged violation of Rule 32 (e) of Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the "Rules").

The case of the prosecution is that on 26-4-95 Food Inspector, R.P. Rai visited the shop of petitioner No. 1, Hariram and purchased 200 gms. of Tata Filtered Coconut Oil. After completing necessary formalities one of the samples was sent to the Public Analyst, Bhopal for analysis. Public Analyst, vide its report dated 6-7-1995 found the sample to be misbranded as defined in Section 2(ix)(k) of the Act. Copy of report of Public Analyst has been filed with the revision petition as Annexure-B. The reason for finding the sample as misbranded is that the label on the container was not in accordance with Rule 32 (e) of the Rules which reads thus :--

"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:--

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(e) A distinctive batch number or lot number or code number, either in numericals or alphabets or in combination, the numericals or alphabets or their combination, representing the batch number or lot number or code number being proceeded by the words "Batch No., or Batch, or Lot No., or Lot or any distinguishing prefix:

Provided that in case of canned food, the batch number may be given at the bottom or on the lid of the container, but the words "Batch No." given at the bottom or on the lid, shall appear on the body of the container."

The petitioners moved an application before the Magistrate trying the case contending that Rule 32 (e) of the Rules has been declared to be ultra vires as it is beyond rule making power u/s 23(1)(d) of the Act, therefore, no offence is committed and the complaint filed by the Food Inspector deserves to be quashed.

Learned Trial Magistrate by the impugned order rejected the application on the ground that this aspect of the matter shall be decided on merits after evidence is recorded. It is against this order that the petitioners have filed this revision petition.

I have heard Shri Surendra Singh, learned Senior Counsel with Shri A.K. Dubey, appearing for the petitioners and Ku. Alka Pandya, learned Government Advocate for the State, and gone through the documents filed with the petition.

The contention of Shri Surendra Singh, learned Counsel for the petitioners is that no prosecution could be launched against the petitioners for the alleged violation of Rule 32 (e) of the Rules framed under the Act inasmuch as the said rule has been declared by the Supreme Court as ultra vires in the case of Dwarka Nath v. M.C.D., 1972 FAC 1. In my

opinion this statement of learned Counsel for the petitioners merits acceptance.

Following the decision of the Supreme Court in the case of Dwarka Nath (supra), in Lipton India Ltd. v. The State of Himachal Pradesh FAC 1991 (1), Bharat Arora and Ors. v. The State 2000(1) FAC 41, Ajit singh v. The State of Punjab and Ors. 2001(1) FAC 12 and Babulal v. State of M.P. 1992 FAJ 139, it has been held that Rule 32 (e) of the Rules is ultra vires being beyond rule making powers u/s 23 of the Act.

In my opinion, the case in hand is squarely covered by the decision of Supreme Court in Dwarka Nath (supra) and the judgments of other High Courts including Madhya Pradesh High Court. As Rule 32 (e) of the Rules has been declared to be ultra vires, its violation cannot be said to be an offence and the finding of the Public Analyst that the article was misbranded cannot be allowed to stand. Hence, the learned Magistrate committed an error in rejecting the application for discharge of the petitioners.

Consequently, the revision is allowed. The impugned order dated 27-3-2001 is set aside and the petitioners stand discharged u/s 245(2) of the Code.