

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1386 of 1999**

1. State of MP through Collector, Rajnandgaon
2. Food Inspector, through Food & Drugs Cosmetics Act, Rajnandgaon.

---- Appellants**Versus**

1. S. Guja, S/o. Gopal Guha, aged 55 years, Through RC Flour Mill Pvt. Ltd. Village Devoda, PO Dhanod, Distt. Rajnandgaon **(Deleted)**
2. Santosh Kumar Rungta, S/o. Dhanshyam Rungta, aged 45 years
3. Sanjay Kumar Rungta, S/o. Dhanshyam Rungta, aged 40 years,
No.2 & 3 Ganjawara, Durg. Distt. Durg

---- Respondents

For the appellants/State : Shri Prasoon Bhaduri, Govt. Advocate
 For the respondents : Shri Akhil Mishra, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****18.4.2018.**

1. This appeal is directed against the judgment of acquittal dated 05.5.1998 passed by Sessions Judge, Rajnandgaon in Criminal Appeal No.01/1998 wherein the said Court set aside the judgment of conviction and order of sentence passed by Chief Judicial Magistrate, Rajnandgaon in Criminal Case No.626/1996 convicting the respondents for commission of offence under Section 16(1)(a) (i) of the Prevention of Food Adulteration Act, 1954 and sentenced them to undergo rigorous imprisonment for one year and to pay fine of Rs.2000/- each with default stipulations.

2. In the present case, complaint was made before the trial Court by Food Inspector on the ground that on 29.11.1990 respondent S. Guha was selling *maida* in the shop and sample was taken by the said Inspector and after examination by Public Analyst it was found to be adulterated. The seized articles were sent to Central Food Laboratory which also confirmed the adulteration.

3. As per the case of the prosecution, sample was taken from respondent S. Guha, but during the pendency of this appeal he died and his name has been deleted from the list of respondents.

4. Learned counsel for the State would submit that all the respondents are directly concerned with the working of the flour mill and therefore, they are guilty for the offence of adulteration. In the present case, samples were taken from S. Guha. The prosecution is under obligation to establish that respondents Santosh Kumar Rungta and Sajay Kumar Rungta are either partners of the partnership firm under which the said flour mill is working or they are the nominees of the company under which the said flour mill is working. As per Section 17 of the Act 1954, the offence under this Act committed by the company – the person, if any, who has been nominated under sub-section (2) to be in charge of and responsible for the company for the conduct of the business of the company is liable for the act of the company. But no document is filed before the trial Court to establish that said flour mill is conducted by the company and Santhosh Kuamr and

Sanjay Kumar are the nominees of the said company. Again there is no document to establish that the said flour mill is conducted by any partnership firm or propriety and respondents Santosh and Sanjeev are active partners of the said firm or proprietors conducting the business. In absence of any substance regarding the fact that the said flour mill is conducted by the Company or partnership firm/propriety, respondents Santosh Kumar and Sanjay Kumar cannot be prosecuted for any act committed by S. Guha in selling any adulterated food articles.

5. For the prosecution under Adulteration Act 1954 it is essential that there should be a sanction by the authority for the prosecution of the person charged for adulteration. In the present case, sanction order was filed before the trial Court alleged to be issued by Dy. Director, Food Department Rajnandgaon vide order dated 36/PFA/92 Rajnandgaon dated 16.6.1992, but the same sanction order was filled in a proforma and that too in a mechanical manner. This cyclostat proforma filled by some other person and Dy. Director has just signed on it. In the said sanction order it is not mentioned that the authority has gone through the report of Public Analyst or the report of Central Food Laboratory which was basis for prosecution. It appears that the authority has signed in the sanction order without any serious application of mind and without looking to the report of Public Analyst or the Central Food Laboratory, therefore, the First Appellate Court was right in holding that the authority has not properly applied its mind

before granting sanction order and the same is not to be acted upon. If the sanction order is excluded from the file prosecution for offence of adulteration cannot be proceeded with as per Section 20 of the Act.

6. On overall assessment of the material, the finding of the first appellate Court is not liable to be disturbed invoking the jurisdiction of the appeal.

7. Accordingly, the appeal is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE