

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 451 of 2017**

State of Chhattisgarh, Through : Shri K.N. Mishra, Food Inspector,
District Flying Squad & Food and Drugs Administration, Bilaspur,
District Bilaspur (C.G.)

---- Petitioner**Versus**

Jaiswal Kirana Stores, Main Road Jarhagaon, District Bilaspur
(Presently District Mungeli) Through : Its Proprietor Manoj Jaiswal,
S/o Ramdhun Jaiswal, aged about 41 Years, R/o Jarhagaon, District
Mungeli (C.G.)

---- Respondent

For State/ Petitioner : Mr. Lav Sharma, Panel Lawyer.

For Respondent : Mr. Shakti Singh Thakur, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****05/10/2018**

1. Heard on I.A. No. 01/2017, application for condonation of delay in filing the petition which is supported with an affidavit of Dr. Ajay Shankar Kannoje.
2. On due consideration and for the reasons mentioned in the application, the same is allowed and delay of 106 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 06.09.2016 passed by Judicial Magistrate First Class, Mungeli (C.G.) in Criminal Case No. 1315/2014, wherein the said court acquitted the respondent for commission of offence under

Section 16(1) and 16 (1) (ii) of the Prevention of Food Adulteration Act, 1954 (for short “the Act, 1954”) in contravention of Section 7 of the Act, 1954 for keeping adulterated Arhar Dal to sell on 27.06.2002 at 12.00 a.m at Jarhagaon, District- Mungeli (C.G.).

5. To substantiate the charge, the prosecution examined as many as 4 witnesses. K.N. Mishra (PW-4) is retired Food Inspector who took sample of Arhar Dal from the respondent and sent the same to Public Analyst and as per report of Public Analyst, the seized Arhar Dal was found adulterated.
6. In the present case, an application was made before the trial court on 21.08.2003 for sending the second part of sample to Central Food Laboratory for examination and the trial court ordered that the second part of the sample be produced before the court, but the same was not produced. Order-sheet dated 10.09.2003 of the trial court clarifies that no sample was received.
7. Section 13 (2A) & (2B) is reproduced as under:-

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A),

the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

8. In the present case, the trial court required that the second part of the sample be submitted before the court vide order dated 21.08.2003 as per section 13(2A) of the said act. Director, Food and Civil Supplies was under obligation to forward the second part of the sample to the court within a period of 5 days from receipt of requisition, but it appears that the second part of the sample was not produced before the court that is why the same is not sent to Director, Central Food Laboratory for reanalysis of the article in question.
9. When report of Public Analyst is challenged before the trial court, the said report was not final, therefore, sample ought to have been sent for examination by Central Food Laboratory, but that is not done in the present case which caused serious prejudice to the respondent, therefore, the trial court is right in holding that the charge leveled against the respondent is not established.
10. The trial court has elaborately discussed the factual aspect of the matter and as per the trial court, there is material

irregularity in taking sample from respondent. The trial court after evaluating the entire evidence has recorded judgment of acquittal. After reassessing the evidence, this Court has no reason to record contrary finding. It is not a fit case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.

11. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge