

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 371 of 2009**Order Reserved on : 08.08.2019Order Delivered on : 24.10.2019

- Rudra Pratap Singh S/o Shri Hiramani Singh Proprietor :
Radheshyam Kirana Store, Haldibari, Chirmiri District
Korea (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : The Food Inspector, O/o
Food and Medicine Administration, Ambikapur, District
Surguja (C.G.)
- The Proprietor/Partners/Manager, ARKAY Products
Private Limited, 95-Ranital, Jabalpur (M.P.)

---- Respondents**And****CRR No. 372 of 2009**

- Durga Prasad Agrawal S/o Late Laxman Dasji Agrawal
Proprietor : Laxman Das & Sons Kirana Stores, Railway
Station Road, Haldibari District : Korea (C.G.)

----Applicant**Versus**

1. State of Chhattisgarh Through : The Food Inspector, O/o
Food and Medicine Administration Ambikapur, District
Surguja (C.G.)
2. The Proprietor/Partners/Manager, ARKAY Products
Private Limited, 95-Ranital, Jabalpur (M.P.)

---- Respondents

For Applicant : Shri N. Naha Roy, Advocate

For Respondents : Smt Reena Singh, P.L.

Hon'ble Smt. Justice Rajani Dubey**CAV order****24/10/2019**

1. Since both the criminal revisions arise out of the common order, they are being disposed of together by this common order.
2. The instant criminal revisions have been preferred against the order dated 31.07.2009 passed by the 4th Additional Sessions Judge (FTC), Ambikapur, District Surguja in Criminal Appeal No.159/2007 confirming the judgment and order dated 30.11.2007 passed by Judicial Magistrate First Class, Ambikapur in Criminal Case No.94/2005.
03. Brief facts of the case are that on 16.07.1984 at about 2.45 pm, Ram Singh (PW/1), Food Inspector, along with two members of flying squad inspected the retail grocery shop of applicant Rudra Pratap Singh in CRR No.371/2009, where he found that one container of ARKAY Brand biscuits was kept for selling along with edible oil, spices, coconut, jugglery, gram, tea leaves, biscuits, rice and wheat etc. The Food Inspector purchased sample of 1500 grams of ARKAY Brand biscuits for Rs.23.75/- for testing in presence of witnesses, receipt of which (Ex.P/4) was also issued, thereafter, biscuits were divided into three equal parts and kept in three clean, deodorise polythene bags, sealed properly and obtained signature of applicant Rudra Pratap Singh and gave notice

under Ex.P/5. Applicant Rudra Pratap Singh stated that he had purchased the said ARKAY brand biscuits from Durga Prasa Agrawal (applicant in CRR No.372/2009), proprietor of Laxman Das & Sons Kirana Store, Haldibari, District Korea (C.G.) and showed receipt thereof vide Ex.P/6. A sealed packet of the sample purchased by the Food Inspector was sent to the Deputy Director, Food and Drug Administration, Ambikapur, through a registered parcel and sent the notice of Form-6 on 17.07.1984 to appellant Durga Prasad Agarwal and also to Proprietor/Partner/Manager of biscuit maker ARKAY Product Private Limited, 95 Ranital, Jabalpur vide Ex.P/14. A Public Analyst's investigation report dated 13.09.1984 received through Deputy Director, Food and Drug Administration, Local Health Officer, Ambikapur, according to which, the biscuit does not confirm to the standards laid down under Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules, 1955'). Thereafter, a complaint was filed against the applicants before the learned Chief Judicial Magistrate First Class, Ambikapur, charges were framed against them under Section 7(1) read with Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act, 1954).

04. So as to hold the applicants guilty, the prosecution examined as many as 02 witnesses. Statements of the applicants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them

in the prosecution case, pleaded innocence and false implication. The applicants were also examined one defence witness to substantiate its case.

05. Vide judgment and order dated 30.11.2007 the trial Magistrate has convicted the applicants under Section 7(1) read with section 16(1)(a) of the Act, 1954. The judgment of the trial Court has been duly affirmed by the appellate Court vide impugned judgment dated 31.07.2009, hence this criminal revision.

06. Learned counsel for the applicants submits that the public analyst report, on the basis of which the applicants have been convicted, is not proper and not in accordance with the manner as prescribed in the Appendix B. In the report of the Public Analyst, it is mentioned as under:-

*“Ash insoluble in dil HCL - 0.4%
Alcoholic (90% alcohol) Acidity
of extracted fat (as oleic acid) - 0.844%.”*

Whereas, as per the Appendix-B, the same should have been as under:-

*“Ash insoluble in dil HCL (**on dry basis**) -
0.4%
Acidity of extracted fat (as oleic acid) -
0.844%.”*

Thus, from the above, it is evidently clear that the test by the Ppublic Analyst should have been **on dry basis** and the same has not been mentioned in the report.

07. He further submits that the acidity of extracted fat was found in the report within the maximum prescribed standard, the first parameter should have been scrutinized strictly and as the test was not done properly, the benefit of doubt ought to have given to the applicants. Learned counsel also submits that merely opinion by the Public Analyst that the sample was not to the standard laid down in the Rules, 1955, is not sufficient to convict the applicants and prior to that it was the duty of the prosecution to ensure that the report of Public Analyst was just and proper under the law. The report of the Public Analyst is also not credible for the reason that it does not show that the ingredients were exceeded against the maximum prescribed standard, and therefore, is not admissible in evidence. It is next submitted that the Food Inspector (PW/1) himself stated in his examination that when he took the sample for test, the cap of container was intact, which clearly indicates that the seal was put by the ARKAY Biscuit Pvt. Ltd and the same was not tampered with by the applicants, and therefore, no adulteration was made by them. Most importantly, the defense witness namely Kedar Nath Agrawal, who was also a panch witness, has categorically denied the seizure of sample of biscuits. In support, learned counsel placed reliance on the decision of Hon'ble Supreme Court in the matter of **Umrao Singh Vs. State of Haryana**¹ and **Norton Mal Vs. State of Rajasthan**².

1 LAWS (SC) 1981 467

2 1995 Supp (2) SCC 581

08. On the other hand, learned counsel for respondents support the impugned judgment of conviction and order of sentence.

09. Heard learned counsel for the parties and perused the material available on record.

10. In a case of food adulteration, the Public Analyst report keep much importance. In this case, the report of public analyst is Ex.P/20, the contents thereof reads thus:-

*“Ash insoluble in dil HCL - 0.4%
Alcoholic (90% alcohol) acidity
of extracted fat (as oleic acid) - 0.844%.”*

Ram Singh (PW/1) - Food Inspector, who is also the Investigating Officer, has admitted in his cross-examination that it is true that no one can tell that the seized article is according to the standard or not. He has also admitted that the tin container picked up by him was intact and for the first time the seal of it was opened before him.

11. The most important aspect of the matter is that the report (Ex.P/20) does not show anywhere that what is the prescribed standard of ash insoluble, alcohol and extracted fat (as oleic acid) and what deficit was found in the biscuits. The Hon'ble Supreme Court in the matter of **Nortan Mal** (supra) held that “the functions of the Public Analyst being that of an expert, his word in that regard in the normal circumstances is to be given considerable weightage. But the same cannot be

put on the pedestal of being the gospel truth. The statute has plenty of flexibility in which the court can fish to arrive at a proper solution. The adulteration found in the instant case being marginal, the possibility of there being an error of judgment in analysis and the matter being very old, as mentioned at the outset, we think it would be unsafe to uphold the conviction of the appellant as was recorded by the High Court in reversal of that of the trial court who had initially acquitted the appellant of the charge. In this view of the matter, we allow the appeal, set aside the conviction and sentence of the appellant and acquit him of the charge”.

12. In this case also, the incident is said to have taken place in the year 1984 and now 35 years have rolled by after the incident. Further, the important aspect of the matter which is required to be taken into consideration is that the Public Analyst report (Ex.P/20) do not show that what was the prescribed standard of seized article and what deficit was found in the same so as to arrive at conclusion that the seized article was really not up to the standard laid down under the Rules, 1955 and it was hazardous to the human being. The report simply says that the sample does not confirm to the standards laid down under the Rules, 1955. Furthermore, it is the admission of the Investigating Officer that the seal of the container was intact and biscuits was a company made, therefore, there was any hardly chance for the applicants to have the biscuits adulterated.

13. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the applicants in the crime in question and for that the benefit of doubt has to go to the applicants. The trial Court and the appellate Court while convicting and sentencing the accused/applicants have not considered the evidence of the prosecution in its true perspective and thereby committed error in convicting them.

14. In view of what has been discussed above, the findings recorded by the Courts below cannot be sustained in the eye of law and are liable to be set aside. The aforesaid criminal revision are thus allowed, judgment impugned is set aside and the applicants stand acquitted of the charge levelled against them. The applicants are reported to be on bail, their bail bonds shall stand discharged.

15 Appeal is thus allowed.

Sd/-

(Rajani Dubey)
JUDGE

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