

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 460 of 2007

Vinod Gupta

Applicant

Versus

State of Chhattisgarh

Respondent

Post for pronouncement of the order on 08.11.2019

**Sd/-
JUDGE**

2. Facts of the case in brief are that on 24.08.99 at about 1.00 p.m., Food Inspector K.N.Mishra, along with his Flying Squad Team reached the Khowa Mandi and seized 92 kgs. Of Khowa from the possession of the applicant and after completing all the formalities, prepared three samples of 250 grams. Each, signatures were obtained by Local Health Officer, sealed and sent to the Public Analyst, Bhopal. The report of the Public Analyst, Bhopal was received and according to while, the quantity of fat content was less as per the standard prescribed. After getting sanction, the Food Inspector filed a complaint before the Chief Judicial. Magistrate, Bilaspur, against the applicant under Section 16(1)(A)(i) of the Prevention of Food Adulteration Act.

3. Before the trial court, prosecution has examined five witnesses. Statement of the accused under Section 313 Cr.P.C. was recorded in which he denied the charges levelled against him and took the plea of false implication in the case.

4. The Chief Judicial Magistrate, Bilaspur by order dated 05.05.07 convicted the applicant under Section 7(1) and 16(1)(A)(1) of the Food Adulteration Act and sentenced him with fine of Rs. 300/- with default stipulation. Prosecution filed appeal for enhancement before the Appellate court and the appellate court allowed the appeal of the prosecution and after enhancing the punishment sentenced him to undergo RI for 6 months with fine of Rs. 1,000/- with default stipulation. Hence, the present revision filed by the applicant.

5. Counsel for the applicant submits that both the courts below have erred in law in convicting the applicant. He submits that the

findings recorded by the courts below are not in accordance with law. He further submits that there is mandatory provision of Section 13(2) of the Prevention of Adulteration Act which has also not been followed. Non-compliance of the mandatory provisions of the Act vitiates the entire proceedings but the trial court has failed to look into the same. He further submits that report of the Public Analyst shows that the Food (Kowa) does not affect any adverse influence on the health because the standard quantity of fat in the Khowa has not been mentioned and the sample of the food was received on 30th August 1999 and inspected on 23.09.1999 i.e. after about one month after it was sent for analysis. He submits that the sample sent for analysis cannot remain in the same form as has been seized and sent after sealing and therefore it would be the basis for acquittal of the applicant. It is submitted that the date of incident is 24.08.1999 and the complaint was filed on 12.10.2000 before the trial court. There is a delay of one year in preferring the complainant and sanction to prosecute the case was given by the Deputy Director on 05.09.2000 and there was no explanation given for such a long delay. Counsel for the applicant has placed his reliance in the matter of **Daryav Singh Vs. State of MP (2013(4) MPHT, 381)**. In the present case, there is no independent witness and there are material contradictions and improvement in the version of the statement of the witnesses. The offence against the applicant has not been proved beyond reasonable doubt. The accused was not in custody and he shall be required to attend the court to hear the judgment pronounced under Section 353 (C) Cr.P.C. but the judgment was pronounced in absence of the applicant.

6. On the other hand, State counsel however supports the judgment impugned.

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

8. Before the trial court, Food Inspector K.N.Mishra, (PW-2) has stated the procedure followed while making seizure, sample and seal of the adulterated food in detail. In the matter of **Daryav Singh Vs. State of MP**, the High Court has held as under:

“ 12. As discussed about, it is nowhere proved that the applicant received a notice under Section 13 (2) of the PF Act and when he appeared before the Trial court for the first time the sample was already deteriorated and therefore, right of the applicant to get the sample re-examined was violated. Violation of that right is fatal in the present case. In the light of the order passed by the Single Benches of this Court in the cases of Satish (supra) and Mohd. Maksud (supra), due to violation of right of the applicant under Section 13 (2) of the PF Act, he could not be convicted for the offence of adulteration. For mixed milk of cow and buffalo standard is fixed in Article A-11.01.11 in the Appendix “B” of the Prevention of Food Adulteration Rules, 1955 by which the fat percentage should not be less than 4.5 % whereas percentage of solid not fat should be 8.4% whereas, in the present case the fat percentage was found to be 3.1% and solid non fat was found to be 5.33 % and it is apparent that the milk was added with the water and therefore the percentage of fat as well as solid non fat was reduced. However, since the right of the applicant under Section 13 (2) of the PF Act was violated, he could

not be convicted for adulteration of the milk and therefore, the learned Chief Judicial Magistrate as well as the learned Sessions Judge have committed an error of law in convicting the applicant for the offence of adulteration.

9. Non-compliance of Section 13 (2) of the Act reads as under:

“On receipt of the report of the result of the analysis under sub-*section* (1) to the effect that the article of *food* is *adulterated*, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of *food* was taken, and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward in such manner as may be prescribed, as copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of the may make an application to the Court within a period of ten days from the date of report of the copy of report to get the sample of the article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory.”

10. In the present case also it is nowhere proved that the applicant received notice under Section 13 (2) of the PF act and when he appeared before the trial court for the first time (on 13.10.2000) the sample was already deteriorated and therefore right of the applicant to get the sample re-examined was violated. Due to violation of right of

the applicant under Section 13(2) of the PF Act, he cannot be convicted for the offence of Food Adulteration Act.

11. On the basis of aforesaid discussion, the revision succeeds. Conviction and sentence awarded to the applicant under Section 16(1)(A)(i) of the Prevention of Food Adulteration Act is set aside. Applicant is acquitted of the above charge against him.

Sd/-

(Rajani Dubey)
Judge