

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 112 of 2009**

- Sarhuraam S/o Babulal Dewangan aged about 37 years, R/o Raja Bhojnalay, Bus Stand, Mungeli, District-Bilaspur, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh, Through : J.S. Maan, Food Inspector, Office of Director, Food and Drugs Administration, Bilaspur, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Dharmesh Srivastava, Adv.
For Respondent/State	: Mr. B. L. Sahu, PL.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****19/08/2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 11.02.2009 passed by the learned Additional Sessions Judge, Mungeli, District-Bilaspur, in Cr. Appeal No. 07/2008 whereby, the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Mungeli, vide its judgment dated 14.08.2008 in Criminal Case No. 156/1998 for the offence punishable under Section 7 (1) read with Section 16 (1) (A) (i) of Food Adulteration Act and sentenced him to undergo R.I. for 6 months with fine of Rs. 1000/-, plus default stipulation.

2. Brief facts of the case are that on 26.01.1997 at about 2.30 pm., complainant J.S. Maan, inspector, with Flying Squad Team, conducted raid in Deepak Restaurant as they had information that the said shop owner is selling adulterated Khowa. The applicant Sarhuraam Dewangan has license to sell food in the year 1997-98 and on the basis of which he is selling Khowa and sweets made of Khowa.

Complainant purchased 750 gm. Khowa by giving him cash Rs. 37.50. He made three samples of 250 gms. each, these samples were signed by local health officer and cross signed by the seller and samples were sent to the Public Analyst, Bhopal. The Public Analyst, State food Laboratory, Bhopal, sent his report. According to which, khowa was found adulterated and not favourable to standard value of Prevention of Food Adulteration Act. So getting the above said adulterated sample, permission to prosecute the owner of the shop was taken on 12.02.1998 from Deputy Director of Food and Drugs Administration, and complaint was preferred on 14.02.1998. Learned trial Court framed charge under Section 7 (1) read with Section 16 (1)(A)(i) of Food Adulteration Act against the present applicant.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 4 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 14.08.2008, learned Judicial Magistrate has convicted the accused/applicant of the offence punishable under Section 7 (1) read with Section 16 (1) (A) (i) of Food Adulteration Act and sentenced him to undergo R.I. for 6 months with fine of Rs. 1000/-, plus default stipulation. This order was appealed by the applicant and in the appeal, learned Appellate Court has affirmed the conviction and sentence of the applicant under Section 7 (1) read with Section 16 (1) (A) (i) of Food Adulteration Act. Hence, the present revision.

5. Learned counsel for the applicant submits that the learned appellate Court as well as the learned trial Court have erred in convicting the applicant. The Courts below erroneously recorded the finding which led to conviction of the applicant. He further submits that there is mandatory provision of Section 13(2) of the Prevention of Food Adulteration Act to give a notice to the applicant after getting the report from laboratory regarding adulterated food, which was not complied by

the Food Inspector. Non-compliance of the mandatory provision of the Act vitiate the entire proceedings. He next submits that the report of the specialist shows that the food does not affect any adverse influence on the health. How much quantity of the fat is less in the food (Khowa) was also not mentioned in the report. He also submits that the sample of the food was received on 26th November, 1997 and inspected on 5th January, 1998, about one month later and the food must not be in the form as it was at the time of seizure. So, the benefit of late inspection of the article may be extended to the applicant. The date of the incident is 26.11.1997 and the complaint was preferred before the trial court by the food inspector on 14.02.1998. Thus delayed complaint was preferred in spite of this permission to prosecute was given by the Deputy Director and no reason about delay was given by the food inspector. He further submits that there is no statement of any independent witness in this case and there are material contradictions, omissions and improvement in the version of the statements of the witnesses. He also submits that the offence against applicant has not been proved at any corner beyond reasonable doubt. In support of his submission he placed reliance on the decisions of High Court in the matter of Daryav Singh Vs. State of M.P. reported in 2013 (4) M.P.H.T. (381), Dadekar Yadu Vs. State of M.P. reported in 2012 (2) C.G.L.J. (496), Sonuram Kanwar Vs. State of Madhya Pradesh reported in 2008 (3) C.G.L.J. (232), Sughar Singh Vs. State and Another reported in 2018 CJ (All) 43, and in the matter of Babu Vs. State of Madhya Pradesh reported in 2006 CJ (MP) 861.

6. Learned State counsel has supported the impugned judgment.

7. I have heard learned counsel for the parties and perused the record.

8. Learned counsel for the applicant raised objection with regard to compliance of the provisions under Section 13 (2) of the P.F. Act. In the present case, the sample was taken on 26.11.1997 and the report of public analyst was issued on 05.01.1998. Prosecution sanction order was given on 12.02.1998 and complaint was filed on 20.02.1998, the

accused/applicant appeared before the trial Court for the first time on 23.03.1998. The applicant appear before the Court below after more than 4 months after taking sample, there was no point at that time for re-examination of sample because the preservative had already lost its effect and the sample must have been deteriorated at that time. Under such circumstances, it is to be observed whether a notice under Section 13 (2) of the P.F. Act was given in proper manner or not.

9. The Food Inspector, Shri J.S. Maan (PW-1) has stated about his proceeding but he did not state about notice gave under Section 13 (2) of P.F. Act.

10. In the matter of Sonuram Kanwar Vs. State of Madhya Pradesh reported in Laws (CHH) 2007 10 15 the High Court of Madhya Pradesh held in Para 6 and 7 as under :-

“6. In the matter of State of Gujarat v. Mehbub Abdulgani Kathki and another (supra), it has been held that in the absence of any positive evidence that Public Analyst report was in fact served upon accused in compliance with mandatory provisions of section 13 (2) of the Act, presumption cannot be drawn that copy of public analyst report must have been supplied only on the basis of production of postal acknowledgement. Service of notice along with report of public analyst is requirement of law as envisaged under Section 13 (2) of the Act and mere statement that the local health authority sent the notice to the accused under section 13 (2) itself would not be sufficient to prove the service of report of the public analyst to the accused.”

“7. IN the matter of State of Orissa v. Gauranga (supra) the Hon'ble Supreme Court has held that notice forwarding the public analyst report to the accused is not a mere ritual but a statutory requirement to be mandatorily observed and not only dispatch of the report but even its receipt by the accused has to be proved by the prosecution.”

11. In the light of the above principles of law laid down in the above mentioned judgments, if we examine the facts of the present case, it is evident that there is absolute non-compliance of Section 13 (2) of the

Act as there is no evidence available on record regarding dispatch of the notice under Section 13 (2) of the Act along with Public Analyst report and receipt of the same by the applicant. Learned Additional Sessions Judge was not justified in arriving at the conclusion that since the Food Inspector has stated that the notice was sent from Local health Authority to the applicant with a copy to him, thus there is complete compliance of Section 13 (2), without there being any evidence of receipt of the same.

12. In the result, the revision deserves to be allowed and it is accordingly allowed. Consequently, the impugned judgment passed by the Additional Sessions Judge, Mungeli dated 11.02.2009 confirming the conviction under Section 16 of the Act and sentencing the applicant to undergo R.I. for 6 months with fine of Rs. 1000/- recorded by the Judicial Magistrate First Class, Mungeli dated 14.08.2008 is set aside. The applicant is acquitted of the above charge. He is on bail. His bail bonds are discharged.

13. Revision is allowed.

**Sd/-
(Rajani Dubey)
JUDGE**