

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

ON THE 16th OF JANUARY, 2024

CRIMINAL REVISION No. 4559 of 2023

BETWEEN:-

**DHARAMPAL SATYAPAL LTD. 98,
OKHALA INDUSTRIAL ESTATE, NEW
DELHI (DELHI) 110020**

.....REVISIONIST/PETITIONER

***(BY SHRI SOURABH AGRAWAL WITH SHRI
DEEPAK DHEENGARA - ADVOCATE)***

AND

**THE STATE OF MADHYA PRADESH
THROUGH SHRI NAVEEN JAIN, FOOD
SAFETY COMMISSIONER, OFFICE OF
FOOD SAFETY, DISTRICT SHEOPUR
(MADHYA PRADESH)**

.....RESPONDENT

***(BY SHRI KULDEEP SINGH – PUBLIC
PROSECUTOR)***

This revision coming on for hearing this day, the court passed the following:

ORDER

The present Criminal Revision has been preferred challenging the order dated 05.09.2023 passed by District Judge, Sheopur (M.P.) in RCA No. 74/2023.

2. Precisely stated facts of the case are that petitioner received a show cause notice from the Adjudicating Officer Sheopur, Madhya Pradesh alleging that on 5th of March, 2020 at 3:00 p.m. Food Safety

Officer Sheopur visited Ganesh Soap Industry at Shivpuri Road. The samples of Supari, Mouth Freshener, Rajnigandha Paan-Masala (100 grams) were taken as the same were not found in accordance with standards sent to laboratory Bhopal. Laboratory, Bhopal in its report declared fragmented Paan-Masala (100 grams) to be sub-standard. From the receipt dated 28.02.2020, it was revealed that the said Paan-Masala (100 grams) were purchased from Ansh Enterprises, Jagannath Bhawan, Gwalior (M.P.). On account of which a show cause notice was given to petitioner by the Court.

3. The petitioner filed its reply stating therein that the proceedings are totally misconceived, illegal and devoid of merits. He has relied upon Section 47(1)(c)(iii) of the Food Safety and Standards Act and Rule 2.4.1(10) of the Rules. He has further relied upon the report of Food Analyst and cited Section 46(3)(i) of the Food Safety and Standards Act, 2006. The petitioner pleaded that report of Food Analyst had to be sent within 14 days from the date of receipt of samples. However, the samples were not analyzed within the stipulated period as per the provision of Section 46(3)(ii) of the Act, therefore, without following the mandatory provisions, the complaint is liable to be dropped. However, vide order dated 09.08.2023 issued by the Court of Adjudicating Officer (Additional District Magistrate) District Sheopur (M.P.), the offence under Section 51 stands proved and the Court imposed penalty upon Deen Dayal Garg and Shri Santosh Kumar Gupta of Rs.50,000/- each and upon the petitioner imposed a penalty of Rs. Five Lakhs. The said amount was directed to be paid within a period of 15 days. Against the order dated 09.08.2023, petitioner filed an appeal before the Food Safty Appellate Tribunal/District and Sessions Judge,

Sheopur (M.P.). He has also filed an application for interim relief for staying the order of Adjudicating Officer, dated 09.08.2023 during the pendency of appeal. However, no relief was granted to the petitioner by observing that the petitioner failed to deposit the amount of penalty imposed upon him within a period of 15 days. Hence, the present petition is filed.

4. Learned counsel for the petitioner argued that the order impugned is perverse, illegal and against the settled principles of law. It is further argued that the Appellate Tribunal failed to appreciate that from the date of the order of Adjudicating Officer a statutory appeal to the order lies within a period of 30 days which period would only end on 16.08.2023 and thus the appeal could be filed by 15.08.2023. The appeal was filed to appellate Court within time and, therefore, interim relief could not be negated to the petitioner only on the ground that the amount of penalty had not been deposited within a period of 15 days. It is further argued that the Food Safety Officer has also erred in ignoring the mandatory provisions of Act. The order of Adjudicating Officer is also against the settled principles of law. Hence, the present revision be allowed and the order passed by courts below be set aside.

5. On the other hand, learned counsel for the respondent/State vehemently opposed the revision filed by petitioner argued that present revision is not maintainable in the light of the provision of Section 71(6) & 76 of the Food Safety and Standards Act, 2006 and prayed for dismissal of present revision.

6. Heard learned counsel for the parties, consider the arguments and perused the materials available on record.

7. In this case, Registry has raised objection with the observation

that instant revision has been filed against the order dated 05.09.2023 whereby, the appeal rejected on the ground of limitation preferred against the fine of Rs. Five Lakhs and according to Chapter 2 Rule 9(13) of the MPHC Rules, 2008, revision is not maintainable against the said order. It should be filed as a Misc. Appeal. Earlier six Misc. Appeals bearing MA No.1880/2022, MA No.1881/2022, MA No.1882/2022, MA No.1883/2022, MA No.1884/2022 & MA No.1885/2022 were filed under the provisions of Section 71(6) of the Food Safety and Standards Act, 2006 and the objections were raised, however, aforesaid six Misc. Appeals which were preferred u/S.71(6) of the Food Safety and Standards Act, 2006 were found to be maintainable.

8. The provision of Section 71(6) of The Food Safety and Standards Act, 2006 is relevant to decide the question of maintainability which reads as under;

Section 71. Procedure and powers of Tribunal

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

9. The plain reading of Section 71(6) of The Food Safety and Standards Act, 2006 reveals that any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court within

sixty days from the date of communication of the decision or order of the Tribunal to him. However, instead of filing an appeal as per the above provision, this revision is filed.

10. Learned counsel for the petitioner by citing the decision of Hon'ble Apex Court in the case of **Honnaiah Vs. State of Karnataka and Ors. [2022 SCC Online SC 1001]** argued that since this petition is filed against the interim order of learned Sessions Court, therefore, this petition is maintainable. However, the above argument of learned counsel for the petitioner is not acceptable in the light of the fact that the order was passed by the Appellate Tribunal constituted under the provisions of The Food Safety and Standards Act, 2006 under its jurisdiction and power vested in it under the provisions of the said Act. Since specific provisions are made in the Special Act for filing appeal, therefore, the provisions of the Special Act shall prevail over.

11. In view of above and in the considered opinion of this Court, present criminal revision is not maintainable.

12. Consequently, the instant petition fails and is hereby **dismissed**.

(SUNITA YADAV)
JUDGE

Vpn/-