

Azim vs Sachin Longriya on 2 November, 2023

Author: Prem Narayan Singh

Bench: Prem Narayan Singh

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH
ON THE 2 nd OF NOVEMBER, 2023
CRIMINAL REVISION No. 5312 of 2019

BETWEEN: -

1. AZIM S/O SIRAJ BHAI JIWANI, AGED ABOUT 29 YEARS, OCCUPATION: BUSINESS C-243/6/7 GIDCE BAGODIYA DHT BARODA (GUJARAT)
2. SIRAJ S/O HASAN BHAI JIVANI, AGED ABOUT 63 YEARS, OCCUPATION: VYAPAR C-243/6/7, G.I.D.C.E. BAGODIYA, DIST BADODRA, GUJRAT (GUJARAT)
3. M/S SURAJ GRAH UDYOG C-243/6/7, G.I.D.C.E. BAGODIYA, DIST BADODRA, GUJRAT (GUJARAT)

(BY SHRI VINAYAK BALCHANDANI, ADVOCATE)

AND
SACHIN LONGRIYA OCCUPATION: FOOD SAFETY
OFFICER KHAD EVAM AUSHADHI PRASHASAN DHAR
(MADHYA PRADESH)

(NONE)

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

ORDER

This criminal revision has been filed under Section 397/401 of the Code of Criminal Procedure, 1973 by the petitioners being aggrieved by the judgment dated 16.09.2019 passed by the learned Sessions Judge (Food Safety Appeal Tribunal), Dhar in Cr.A. No.43/2018 whereby learned Judge, dismissing the appeal and affirmed the order dated 06.01.2018 passed by the learned Additional District Magistrate, District-Dhar in Case No. 43/2016 whereby the petitioner Nos. 1 Sandeep Yadav S/o Shankarlal Yadav Prop. M/s Sai Restaurant, 2-Ajeem Siraj Bhai Jiwani Partner M/s Suraj Grah Udyog, 3-Siraj Hasan Bhai Jiwani Partner M/s Suraj Grah Udyog and 4- M/s Suraj Grah Udyog, C-243/6/7, GIDC, Bagodiya, District-Badodara (Gujrat) have been imposed fine amounting to

Rs.25,000/-, Rs.50,000/-, Rs.50,000/- and Rs.50,000/- under Section 52 in violation of Section 26(1)(2)(ii), of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act').

(2) Prosecution story in brief is that on 08.09.2015 at about 12:30 p.m., Food Safety Officer, Indore reached the petitioners' firm situated at Ekta Market, In front of LIC Office, Dhar M/s Sai Restaurant and show his identity card and on complying with due formalities inspected the products, wherein it was found that the petitioners were making food product like Samosa, Kachori, Namkeen Poha & Tea and selling those items. In addition to those items, Namkeen Packets of Suraj Brand were also found to be sold. Therefore, after completing the requisite procedures took sealed sample of the four packets of Suraj Namkeen Garlic Sev Mamra and samples were sent to lab for testing and a copy of the same was sent to the petitioner for intimation. The petitioners never challenged the report till the time a complaint was filed by the Food Safety Officer.

(3) Further, show-cause notices dated 25.10.2016, 04.10.2017 and 07.12.2017 under Sections 27(1) and 52 for violating the Section 26(1)(2)(ii) of the Act, were issued to the petitioner No. 1. Thereafter, petitioner No. 1 submitted reply on 13.12.2017 and duly admitted the fact of misrepresentation on part of the petitioners. Notices dated 25.10.2016, 04.10.2017 and 07.12.2017 were also issued to the petitioner Nos. 2 & 4, but they were not present, hence, ex-parte action was taken against them, on due consideration, an order was passed against the petitioner Nos. 1 to 4 by imposing fine of amounting Rs.25,000/-, Rs. 50,000/-, Rs.50,000/- and Rs. 50,000/- under Section 52 in violation Section 26(1)(2)(ii) of the Act. Being aggrieved with the aforesaid order, the petitioner No. 2 to 4 have approached this Court by way of filing this criminal revision.

(4) Learned counsel for the petitioners submitted that the allegation against the petitioners are that they have misbranded the product and batch number and packing date have not been mentioned on the label, but petitioner No. 1 has himself admitted the fact before the concerned authority. The proceedings before the Session Judge were against the principles of natural justice. However, in course of arguments, learned counsel for the petitioners has submitted that the order of learned trial Court as well as Appellate Court has no infirmity with regard to findings that the petitioners are liable for violating the Section 26(1)(2)(ii) punishable under Section 27 of the Act. He has also confined in his argument only on the point of penalty and requested that since the petitioners are poor persons, such higher amount of fine is against the mandate of the Section 49 of the Act and therefore, he has requested to reduce the amount of penalty. Hence, the revision be allowed and the penalty imposed upon the petitioner be reduced.

(5) Learned counsel for the respondent opposed the prayer by submitting that looking to the nature of offence, no case is made out for interference, and hence the appeal be rejected.

(6) Heard learned counsel for the parties and perused the record. (7) As per Section 49 of the Act, 2006, it is the duty of the learned Adjudicating Officer to assess as to whether, on account of such contravention of the act 2006, the petitioners have gained unfair advantages and as to how much loss has been caused to any person as a result of such contravention. Section 49 of the Act which is relevant, is reproduced here as under :-

49. General provisions relating to penalty.-While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal, as the case may be, shall have due regard to the following:-

- (a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention,
- (b) the amount of loss caused or likely to cause to any person as a result of the contravention,
- (c) the repetitive nature of the contravention,
- (d) whether the contravention is without his knowledge, and
- (e) any other relevant factor.

(8) In view of aforesaid provision, the learned Adjudicating Officer is also bound to examine as to whether the contravention occurred without his knowledge or with his knowledge, as well as how much undue advantage was obtained by the petitioners by doing business with said samples. It should also be seen whether the status and turnover of the proprietor of the firm. However, the learned trial court has not contemplated the above parameters of the Act 2006, which are mandatory. Besides this, the said samples of food substances taken from the petitioners' firm were not found adulterated or unsafe for human consumption.

(9) On due consideration of the rival submissions so also the facts and circumstances of the case, this Court is of the view that both the Courts below have not committed any error in appreciation of evidence available on record and hence no infirmity is found in the impugned order passed by both the Courts below, accordingly, the same is upheld. However, looking to the submissions of the learned counsel for the petitioners, this Court is of the view that the fine amount imposed against the petitioners be reduced to Rs.25,000/-

to each of the petitioners. The petitioners are directed to deposit the fine amount, after adjusting the fine amount if already deposited within a period of one month from today till then it is directed that no coercive action shall be taken against the appellant. It is made clear that in case of default in depositing the fine amount within the stipulated period concerned authorities are at liberty to proceed against the appellant in accordance with law.

(10) With the aforesaid observations and directions, this criminal revision stands disposed off.

Certified copy, as per Rules.

(PREM NARAYAN SINGH) JUDGE Vindesh