

Kailash Jain vs The State Of Madhya Pradesh on 16 January, 2024

Author: Prem Narayan Singh

Bench: Prem Narayan Singh

1
IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH
ON THE 16th OF JANUARY, 2024
CRIMINAL APPEAL No. 14945 of 2023

BETWEEN: -
KAILASH JAIN S/O SHRI RAMESHCHANDRA JAIN,
AGED ABOUT 40 YEARS, OCCUPATION: BUSINESS R/O
KAILASHKIRANA STORES BERCHHA GAON ROAD
WARD NO. 14 BERCHHA MANDI DISTT. SHAJAPUR
(MADHYA PRADESH)

(BY SHRI YOGESH KUMAR GUPTA, ADVOCATE)

AND
THE STATE OF MADHYA PRADESH FOOD SAFETY
OFFICER OFFICE OF THE DESIGNATED OFFICER FOOD
AND DRUG ADMINISTRATION SHAJAPUR (MADHYA
PRADESH)

(BY MS. VINITA DWIVEDI, PANEL LAWYER)

This appeal coming on for orders this day, the court
following:

ORDER

This criminal appeal has been filed under Section 71(6) of the Food Safety and Standard Act, 2006 by the appellant being aggrieved by the judgment dated 20.04.2023 passed by the learned Principal District & Sessions Judge, District-Shajapur in Cr. A. No.17/2021 whereby learned Judge, dismissing the appeal and affirmed the order dated 14.01.2021 passed by Additional District Magistrate & Adjudicating Officer, District-Shajapur in Case No.7B-121/2020-21 whereby the appellant been imposed with a fine of Rs.1,00,000/- under Sections 3(1)(zx) & 26(2)(ii)(v) of Food Safety and Standard Act, 2006 and Rule 2.1.1 (10) of Food Safety and Standards Regulation, 2011 read with Sections 51 & 58 of Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act').

2 . Prosecution story in brief is that on 31.07.2019 at about 1.30 pm, Food Safety Officer reached the appellant's shop Kailash Kirana Stores, and complying with due formalities inspected the products in presence of the independent witnesses, wherein it was found that Subhag Agmark Desi Ghee was being sold out and stored for sale for human consumption, therefore, after completing the requisite procedures took 4 packets of Subhag Agmark Desi Ghee (500 ml each) as samples with the consent of the FBO Kailash Jain and complainant also filed all the information on form VA and took the acknowledgement of the appellant on other copy. Thereafter, alleged samples were divided into four parts for sample and separately sealed with slip No. SK/SJR/27/2019/55579 and was wrapped up by thick paper on each sample and all samples were sealed separately with brass seal. Samples were sent to lab for testing and on receipt of report.

3 . Appellant received a notice from Learned Additional District Magistrate, Shajapur under Rule 2011 of Food Safety and Standard Act, 2006. Thereafter, appellant submitted his reply in written statement and subsequently, on due investigation, an order was passed against the appellant by imposing a fine of Rs.1.00 lakh under Section 49 of 'the Act'. Appellant preferred an appeal under Section 70 of 'the Act', which was rejected by the learned Additional Sessions Judge by confirming the order of the Learned Additional District Magistrate. Being aggrieved with the same, the appellant has approached this Court.

4 . Learned counsel for the appellant submitted that the appellant has purchased and product from branded company and original bill was also taken. The proceedings before the Additional District Magistrate were against the principles of natural justice. Further counsel submitted that the appellant is a small shopkeeper and totally depended on his shop for earning his livelihood. The appellant being a poor person, such higher amount of Rs.1,00,000/- as penalty is against the mandate of Section 49 of the Act, therefore, counsel prayed that looking to the financial condition of the appellant, the appeal be allowed and penalty imposed against the appellant be reduced from Rs.1,00,000/- to Rs.50,000/-.

5 . Learned Govt. Advocate 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 . 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 appellant, this Court is of the view that the fine amount imposed against the appellant be reduced from Rs.1,00,000/- to Rs.50,000/-. The appellant is 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.

8. With the aforesaid observations and directions, criminal appeal stands disposed off.

Certified copy, as per Rules.

(PREM NARAYAN SINGH) JUDGE Vindesh