

Ashish vs Nagar Palika Nigam on 14 August, 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 14th OF AUGUST, 2023
CRIMINAL REVISION No. 2500 of 2021

BETWEEN: -

ASHISH S/O SHRI DAULAL SHARDA, AGED ABOUT 39
YEARS, OCCUPATION: BUSINESS 64, SHIKSHAK NAGAR
(MADHYA PRADESH)

(BY SHRI VINAYAK BALCHANDANI, ADVOCATE)

AND

NAGAR PALIKA NIGAM COMMISSIONER THROUGH
LAKHAN SHASTRI, KHADHYA SURAKSHA ADHIKARI,
NAGAR PALIKA NIGAM INDORE (MADHYA PRADESH)

(BY SHRI MANU MAHESHWARI, ADVOCATE)

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

ORDER

(1) At the very outset, it emerges before the Court that the original record of trial Court i.e. competent authority and the file of Revisional Court have not been called till date even after specific order dated 09.07.2022 & 22.09.2022 and an explanation dated 26.07.2022 has been given by the competent authority that due to fire accident, the records were burnt and till date could not be restored. Hence, the matter is being heard and decided only on the basis of available records at the request of both parties, as both the parties are also ready to argue the matter on the basis of available record only.

(2) This criminal revision has been filed under Section 397/401 of the Code of Criminal Procedure, 1973 by the petitioner being aggrieved by the judgment dated 27.03.2021 passed by the learned Seventeenth Additional Sessions Judge, Indore in Cr.A. No.323/2018 whereby learned Judge, dismissing the appeal affirmed the order dated 09.10.2018 passed by District Magistrate, District Indore in Case No.73/B-121/Food Safety/2017-18 whereby the petitioner has been imposed under Sections 23, 26(1), 26(2)(ii), 26(2)(V), which are punishable under Sections 52 and 58 and fine of

Rs.80,000/- under Section 49 of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act').

(3) Prosecution story in brief is that on 28.03.2018 at about 3-30 p.m., Food Safety Officer, Indore reached the petitioner's shop Tea Traders, 81, Siyaganj, Indore and on complying with due formalities inspected the products, wherein it was found that the petitioner was storing and selling the Tea items, therefore, after completing the requisite procedures took sealed sample of the four packets of Tea Leaf. Samples were sent to lab for testing and a copy of the same was sent to the petitioner for intimation. The petitioner never challenged the report till the time a complaint was filed by the Food Safety Officer.

(4) Petitioner received a notice from Learned Additional District Magistrate, Indore under Rule 2011 of Food Safety and Standards Act, 2006. Thereafter, petitioner has duly admitted the fact of misbranding on part of the petitioner in front of the Adjudicating Authority and subsequently, on due investigation, an order was passed against the petitioner by imposing a fine of Rs.80,000/- under Sections 51, 58 & 49 of 'the Act'. Against which, the petitioner has preferred an appeal, which was rejected by the learned Additional Sessions Judge by confirming the order of the Learned District Magistrate. Being aggrieved with the same, the petitioner has approached this Court by way of filing this criminal revision.

(5) Learned counsel for the petitioner submitted that the allegation is against the petitioner that he has misbranded the product and license number has not been mentioned on the label, but he has himself admitted the fact before the concerned authority. The proceedings before the Additional District Magistrate were against the principles of natural justice. However, in course of arguments, learned counsel for the petitioner has submitted that the order of learned trial Court as well as Appellate Court has no infirmity with regard to findings that the petitioner is liable for violating the Section 49 of the Food Safety and Standards Act, 2006. He has also confined in his argument only on the point of penalty and requested that since the petitioner is a poor person, 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.

(6) 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.

(7) Heard learned counsel for the parties and perused the record.

(8) 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 petitioner has 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.

(9) 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 petitioner 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 petitioner's firm were not found adulterated or unsafe for human consumption.

(10) 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 petitioner, this Court is of the view that the fine amount imposed against the petitioner be reduced to Rs.40,000/-.

The petitioner is directed to deposit the remaining 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.

(11) With the aforesaid observations and directions, criminal appeal stands disposed off.

Certified copy, as per Rules.

(PREM NARAYAN SINGH) JUDGE Vindesh