

Kailash Jain vs The State Of Madhya Pradesh on 6 February, 2024

Author: Vijay Kumar Shukla

Bench: Vijay Kumar Shukla

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA
ON THE 6th OF FEBRUARY, 2024
CRIMINAL APPEAL No. 14944 of 2023

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

(BY SHRI YOGESH KUMAR GUPTA - ADVOCATE)

AND
THE STATE OF MADHYA PRADESH FOOD SAFETY
OFFICER FOOD AND DRUG ADMINISTRATION DISTT.
SHAJAPUR (MADHYA PRADESH)

(BY SHRI SAGAR MULEY - P.L.)

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

ORDER

Heard on I.A. No.18038/2023, which is an application for condonation of delay.

2. For the reasons stated in the application and considering the fact that the appeal is arising out of conviction, the application is allowed and the delay is condoned.

3. With the aforesaid, I.A. No.18038/2023 is disposed off.

4. Counsel for the appellant submits that under the similar facts and circumstances, a Criminal Appeal filed by the present appellant has been partly allowed and the fine amount has been reduced from Rs.1,00,000/- to Rs.50,000/-. He referred the order dated 16/1/2024 passed in Cr.A No.14945/2023.

5. The aforesaid submission is not disputed by the counsel for the State.

6. 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 13.04.2023 passed by the learned Principal District & Sessions Judge, District-Shajapur in Cr. A. No.18/2021 whereby learned Judge, dismissed the appeal and affirmed the order dated 14.01.2021 passed by Additional District Magistrate & Adjudicating Officer, District-Shajapur in Case No.8B-121/2020-21/Food Safety/2021 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').

7 . 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 Dholpur Fresh Desi Ghee was being sold out and stored for sale for human consumption, therefore, after completing the requisite procedures took 4 packets of Dholpur Fresh 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. RFD/SJR/23/2019/55593 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.

8 . 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.1,00,000/- 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.

9 . 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/-.

10 . 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.

11. Heard learned counsel for the parties and perused the record.

12. 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.

13. With the aforesaid observations and directions, criminal appeal is partly allowed and stands disposed off.

Certified copy, as per Rules.

(VIJAY KUMAR SHUKLA) JUDGE PK