

Shri Amit vs The State Of Madhya Pradesh on 23 January, 2024

Author: Pranay Verma

Bench: Pranay Verma

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IN THE HIGH COURT OF MADHYA PRADESH

AT I N D O R E

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 23rd OF JANUARY, 2024

WRIT PETITION No. 1659 of 2024

BETWEEN: -

SHRI AMIT S/O VINOD KUMAR SANGHVI
JAIN, AGED ABOUT 36 YEARS, OCCUPATION:
BUSINESS 33, INDUSTRIAL AREA, NEEMUCH
(MADHYA PRADESH)

(BY SHRI VINAYAK BALCHANDANI - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH FOOD
SAFETY OFFICER SHRI SANJEEV KUMAR
MISRA FOOD AND DRUG ADMINISTRATION,
NEEMUC (MADHYA PRADESH)

(BY SHRI MUKESH PARWAL - GOVT. ADVOCATE)

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

ORDER

1. By this petition preferred under Article 226 of the Constitution of India the petitioner has challenged the order dated 08.01.2024 passed by the adjudicating authority under the Food Safety and Standards Act, 2006 (here-in-after referred to as "the Act, 2006") has rejected the application for summoning the Food Analyst to be examined as a defence witness.

2. The facts in brief are that the petitioner is facing trial under Section 68 of the Food Safety and Standards Act, 2006. The petitioner is running a firm in the name of Sanghvi Traders at Industrial Area, Neemuch. On 16.01.2021 the Food Safety Officer took the sample of coriander whole, blue star

apple green colour, orange colour etc. and sent the samples to the State Food Laboratory, Bhopal and after receiving the reports filed a complaint before the adjudicating authority for imposing penalty against the petitioner along with the other co-accused.

3. The petitioner after cross-examining the Food Safety Officer preferred an application before the adjudicating authority for examination of Food Analyst, State Food Laboratory, Bhopal which has been rejected by the impugned order. It has been held as under :-

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4. Learned counsel for the petitioner at the outset has placed reliance upon the decision of this Court in Jaypal Das V/s. State of M.P. 2006 (2) MPHT 118 and W.P. No.3114/2023 Vinit Goyal V/s. State of M.P. decided on 22.09.2023.

5. Per contra, learned counsel for the respondent supported the impugned order passed by the adjudicating authority.

6. In Vinit Goyal (supra) it has been categorically held by this Court in paragraph No.3 as under :-

"3. It is correct that under sub-section (1) of section 293 of Cr.P.C. any document or report submitted by the expert may be used as evidence in any inquiry, trial or other proceedings under the Cr.P.C., but under sub-section (2) the expert can be summoned and examined as to the subject matter of his report. U/s. 68 (Chapter X) of the Act of 2006, for the purposes of adjudication under this Chapter, the adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on such inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence. The Adjudicating Officer shall have the powers of a civil court. Rule 3.1 of Chapter 3 of the Rules of 2011 deals with adjudication proceedings. On receipt of an application for adjudication from the Food Safety Officer, the Adjudicating Authority shall commence inquiry proceedings under rule 3.1.1. For holding an inquiry for the purpose of adjudication u/s. 68 of the Act as to whether any person(s) has/have committed contravention of any of the provisions of

the Act referred to in rule 3.1.1. (5) herein or the rules or regulations in respect of which the offence is alleged to have been committed, the Adjudicating Authority shall, in the first instance, issue a notice to such person or persons giving him or them an opportunity to make a representation in the matter. Sub-rule (9) of rule 3.1.1 provides that the Adjudicating Officer shall give an opportunity to such person or persons to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date. Therefore, under this provision, the person who is being prosecuted u/s.

68 of the Act of 2006, an statutory right has been given to produce the document as he considers it relevant to the inquiry. The petitioner in order to provide his innocence filed an application for summoning the expert whose report is being relied upon by the Food Safety Officer against him. The Adjudicating Authority has not assigned any reason while rejecting the said application. The Appellate Tribunal has remanded the matter for fresh adjudication after giving an opportunity of hearing. Learned Adjudicating Authority has failed to exercise the jurisdiction vested on him."

7. In the present case also it is evident that the petitioner in order to prove his innocence filed an application for summoning the expert whose report is being relied upon by the Food Safety Officer against him. The adjudicating authority ought to have allowed the application preferred by the petitioner and should have summoned the expert whose report is being relied upon by the Food Safety Officer. The reasons given by the adjudicating authority for rejection of the application of the petitioner are neither germane nor are having any bearing upon the prayer as made by the petitioner in his petition.

8. As a result, the petition deserves to be and is hereby allowed. The impugned order dated 08.01.2024 passed by the respondent is set aside. The adjudicating authority is directed to allow the application filed by the petitioner and call the Food Analyst for the purpose of cross-examination in defence by the petitioner.

9. The petition is accordingly allowed and disposed off.

(PRANAY VERMA) JUDGE ns