

# Manoj Singh Jadon vs The State Of Madhya Pradesh on 30 May, 2022

**Author: Deepak Kumar Agarwal**

**Bench: Deepak Kumar Agarwal**

(1) Criminal Appeal No.94 of  
2022

IN THE HIGH COURT OF MADHYA PRADESH,  
AT GWALIOR

BEFORE  
HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL

CRIMINAL APPEAL No. 94 of 2022

Between:-

MANOJ SINGH JADON S/O SHRI HAIBRAN SINGH JADON ,  
AGED ABOUT 31 YEARS, VILL. CHACHIHA MUNDRAVAJA PS  
BAAGCHINI, TEH. JAURA (MADHYA PRADESH)

.....APPELLANT

(BY SHRI SANJAY KUMAR BAHIRANI, ADVOCATE )

AND

THE STATE OF MADHYA PRADESH COLLECTOR MORENA

1.

(MADHYA PRADESH)

FOOD SAFETY OFFICER FOOD ADMINISTRATION

2. DEPARTMENT COLLECTOR PREMISES DISTT MORENA

(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI R.K. AWASTHI, PUBLIC PROSECUTOR FOR STATE )

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Reserved on : 07.04.2022  
Delivered on : 30.05.2022  
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This appeal coming on for hearing this day, Hon'ble Shri Justice Deepak Kumar Agarwal passed the following:

(2) Criminal Appeal No.94 of The appellant has filed this appeal under Section 71(6) of the Food Safety and Statdard Act, 2006 being aggrieved by the judgment dated 6.1.2021 passed in Criminal Appeal No.70/2021 by the Food Safety Tribunal/District Judge, Morena, whereby appeal filed by the Food Safety Officer, respondent No.2, has been allowed and fine of Rs. two lacs has been imposed on the appellant.

2. Brief facts of the case are that on 5.10.2014 Food Safety Officer, Savita Saxena, District Morena on the information of SDM Jaura, Shri Dinesh Singhvi raided one dairy. ADM Jaura, SDO(P) Shri Sonakiya, Naib Tahsildar Shri Chandramohan Sharma along with police force were present there. The Food Safety Officer was informed that dairy belongs to Manoj Jadaun and he ran away from the premises. Thereafter, in the present of witnesses and officers she inspected the daity. From dairy 5 empty plastic drum, 8 empty Cam of plastic, two bags of glucose, 10 packets of milk powder, 20 empty Tin of refined along with one washing machine were found. Outside the dairy, one empty tanker was parked. She took sample of glucose powder, skimmed milk powder and unknown chemical by adopting due procedure. She (3) Criminal Appeal No.94 of thereafter set the sample for analysis. Other samples were kept in the office of designated officer, Morena. Report of sample of skimmed milk was found within the norms and sample of Gold Glucose Powder and unknown chemical was found as adulterant. Afterwards, complaint under the aforesaid Act has been presented before the Adjudicating Officeer, Morena. Adjudicating Officer after recording of evidence of Food Safety Officer and other witnesses acquitted the appellant from the charges of adulteration. Against this, State has filed appeal. The Tribunal/District Judge by judgment dated 6.12.2021 passed in Criminal Appeal No.70/2021 allowed the appeal of the State and fined the appellant under Section 51 to the tune of Rs.two Lacs.

3. This appeal has been filed on the ground that the First Appellate Court has not appreciated the evidence of Food Safety Officer properly. During inspection no independent witness was called, despite it is mandatory as per provisions of Section 38(7) of the Act. Besides this, at the time of inspection the appellant was not there. Offence under Section 26(2) is punishable under Section 57 despite this the appellant has been convicted under Section 151 of the Act. Sample was taken on 5.10.2014 but was (4) Criminal Appeal No.94 of sent for chemical analysis beyond the prescribed period of 14 days.

4. We have to see whether the First Appellate Court by allowing the appeal of respondent has committed any illegality.

5. As per Food Safety Officer, Smt. Savita Saxena, she was posted as Food Safety Officer from October, 2013 in the office of Deputy Director, Food and Drugs Administration, Morena. On 5.10.2014 she had gone in a dairy situated at village Jaura, District Morena. On the dairy along with her SDM Jaura, SDOP Shri Sonkiya, Naib Tehsildar Chandramohan Sharma and other administrative officers along with Police officers were present. She was informed that the said dairy is of appellant Manoj Singh Jadon, who ran away from the premises. Thereafter, in the presence of

witnesses and officers she conducted the inspection of the dairy. During inspection she found that five empty plastic drum, eighty plastic Can, one chemical Can, two glucose bar, ten packet milk powder, twenty empty refined tin, one washing machine for which pipes were joined so that after mixing chemical milk substance can be manufactured. Outside the aforesaid dairy one empty milk contained was also kept. From one bag 1200 gm. glucose powder, two packets kholkar, two kg.skimmed milk (5) Criminal Appeal No.94 of powder and one litre unknown chemical were added and was taken for chemical analysis. The sample was put into four parts, sealed by brown paper in which seal of firm was put. Thereafter, intimation as per 5-A was affixed on the premises. Property was seized, one part of sample along with memorandum and specimen of seal by registered parcel were sent for chemical analysis in the Bhopal Laboratory.

6. The remaining sample were kept in the office of designated officer. As per designated Officer in front of him the above chemical analysis report sample of glucose powder and unknown chemical was found not upto the standard. After taking prosecution sanction, complaint under the aforesaid Act was file.

7. During cross-examination, she has stated that whenever she goes for checking she makes entry in her diary. But today, she has not come with diary. She got training during service. On the date of incident at 12.00 in the noon, SDM gave her information. She reached the spot along with Sample Assistant Hemant Kasyap. When she reached on the spot Police Officials and Administrative Officers were already present. It is true that there was no sign board. People present on the spot stated that dairy is of present (6) Criminal Appeal No.94 of appellant Manoj Jadon. In the building of diary, there was one or two rooms along with courtyard. She did not made any panchanama regarding residence of appellant. She denied that she never went on the spot and never inspected the premises. During inspection, 1 1/2 to 2 hours have taken.

8. The chemical was in one Can and glucose powder was in sample bags. She cannot tell the name of Manufacturer of Flood milk powder. In sample form she has not written the name of manufacturer. She is having no knowledge that whether the appellant was having any food license. She had not seized the container parked outside. She has not taken the photographs. She denied that during inspection no independent witnesses were present. Besides this, no questions were put forth before this Food Safety Officer. The questions put to her during cross-examination has been answered by her satisfactorily.

9. On going through the examination in chief and cross- examination, this Court is of the opinion that on the date of incident, on the information she reached on the spot. She was informed that dairy is of appellant Manoj Singh Jadon, who ran away from the premises of the dairy. The chemical, glucose (7) Criminal Appeal No.94 of powder, skimmed milk powder and other articles were seized and the sample was sent for chemical analysis and as per the chemical analysis, glucose powder was found substandard.

10. After aforesaid discussion, this Court is of the opinion that by allowing the appeal of the respondent/State and by imposing fine of Rs.2,00,000/- upon the appellant for violating the provision of Section 26(2)(ii) of The Food Safety and Standards (Licensing and Registration of Food

Business) Regulation, 2011 made under The Food Safety and Standard Act, 2006, learned First Appellate Court has not committed any mistake. However, looking to the fact that appellant is first offender, fine of Rs.2,00,000/- appears to be on higher side. Hence, by partly allowing this appeal this Court is inclined to reduce fine amount from Rs. 2,00,000/- to Rs.50,000/-.

11. Consequently, this appeal is allowed in part and disposed of.

(Deepak Kumar Agarwal) Judge ojha YOGENDR A OJHA 2022.05.31 12:56:09 +05'30'