

Vikas vs Indore Nagar Palik Nigam Indore on 21 May, 2024

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
CRIMINAL REVISION No. 3379 of 2021

BETWEEN: -

VIKAS S/O SHRI MANGILAL JAIN OCCUPATION:
BUSINESS PROPRIETOR JAIN MITHAI BHANDAR 16 A.B.
ROAD MALHAR GARDEN KE SAMNE (MADHYA
PRADESH)

(SHRI AKASH SHARMA, ADVOCATE)

AND

INDORE NAGAR PALIK NIGAM INDORE THR. FOOD
SAFETY OFFICER VIVEK GANGRADE INDORE
(MADHYA PRADESH)

(SHRI MANU MAHESHWARI, ADVOCATE)

Heard on :14.5.2024

Pronounced on: 21.05.2024

This revisions coming on for orders this day, the court
ORDER

1.With the consent of both the parties, the matter heard finally.

2.This criminal revision has been filed under Section 397 (2) of the Code of Criminal Procedure, 1973 by the petitioner being aggrieved by the judgment dated 09.11.2021, passed by the 17th Additional Sessions Judge, Indore, in Cr.A.No.100076/2014, whereby learned Judge has partly allowed the appeal and modified the order dated 23.5.2012 by reducing the fine amount from Rs. 3,00,000/- to Rs. 2,00,000/- and affirmed the remaining part of the order passed by the learned Adjudicating Officer/Additional Collector, District- Indore, in Case No. 04/2012 whereby the petitioner has been imposed fine amount of Rs.3,00,000/- under Sections 52 and 58 of Food Safety and Standards Act, 2006 in violation of Sections 23, 26(2)

(ii), of Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act').

3. Prosecution story in brief is that on 17/10/2011, the complainant-Food Safety officer visited the premises of appellant and Purchased pre-packed poly packets of Navrang Mixture for examination from food laboratory and such purchased sample of Namkeen was sent by complainant to Analyst, State Food Laboratory, Bhopal and as per report of food analyst, the sample of Navrang Mixture was found Mis-branded. The respondent/appellant was served with a notice regarding misbranded item in terms of rule 3.1.1. (6) of the Food Act and thereafter, on the basis of report of food Analyst, the complainant has filed a complaint against the appellant/respondent for violation of sections 23, 26 (1), 26 (2) (ii) (V) of Food Safety and Standards Act, 2006. The Adjudicating officer has tried matter and finally held guilty the petitioner for the violation/infringement of sections 23, 26 (1), 26 (2) (ii) (V) punishable under sections 52 & 58 of Food Safety & Standard Act, 2006. The adjudicating officer has imposed a fine of Rs. 300000/- for the offence committed by the petitioner. Against which, the petitioner has preferred an appeal, which was partly allowed by reducing the fine amount from Rs. 3,00,000/- to Rs. 2,00,000/- and affirmed the remaining part of the order. Being aggrieved with the same, the petitioner has approached this Court by way of filing this criminal revision.

4. Learned counsel for the petitioner submitted that the petitioner has misbranded the product and batch number and packing date have not been mentioned on the label, but petitioner has himself admitted the fact. The proceedings before the Additional Collector 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 violation of the Act. 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.

5. Learned counsel for the respondent has opposed the prayer by submitting that looking to the nature of offence, no case is made out for interference, and hence the present petition be rejected.

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

7. 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. The relevant portion of Section 49 of the Act 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.

8. 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. However, the learned trial court as well as the learned Appellate Court has not contemplated the above parameters of the Act 2006, which are mandatory. As per the law laid down, the learned Trial Court as well as the Appellate Court are bound to consider the effect of said misbranding on human life. Learned Courts below have not given any finding regarding the fact that due to the misbranding, the food sample has become unsafe for human consumption. On this aspect, the law laid down in the case of Nemi Chand vs State of Rajasthan (2016) 2 AICLR 479 and the case of Harish Dayani Vs. State of Madhya Pradesh 2020 (M.P.) 144 and also the case of Purushottam Vs. State of Madhya Pradesh (CRR No. 3324/2019, passed on 19.7.2019), in this regard have been considered.

9. 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. 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 from Rs. 2,00,000/- to Rs.50,000/- . The petitioner is directed to deposit the remaining fine amount, after adjusting the fine amount if already deposited within a period of 60 days from today till then it is directed that no coercive action shall be taken against the petitioner. 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 petitioner in accordance with law.

10. With the aforesaid observations and directions, criminal revision stands disposed of.

Certified copy, as per Rules.

(PREM NARAYAN SINGH) JUDGE VD