

The State Of Madhya Pradesh vs Babulal on 9 September, 2024

Author: Gurpal Singh Ahluwalia

Bench: G. S. Ahluwalia

NEUTRAL CITATION NO. 2024:MPHC-IND:26169

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 9th OF SEPTEMBER, 2024
MISC. CRIMINAL CASE No. 10196 of 2017
THE STATE OF MADHYA PRADESH
Versus
BABULAL
Appearance:
Shri Amit Bhatia - GA for applicant/State.
Shri Sanjay Kumar Sharma - Advocate for the respondent

ORDER

1. This application under Section 482 of Cr.P.C. has been filed against order dated 22.10.2016 passed by Additional Sessions Judge, Mandsaur in Criminal Revision No.124/2016, by which, the Revisional Court has directed to send third sample to the Referral Laboratory.

2. It is submitted by counsel for applicant/State that on 18.10.2011, Mawa was seized from sweet shop of the respondent. The sample was sent to Food Analyst, Bhopal and according to the report of the Food Analyst, sample was found to be substandard. Being dissatisfied with the said report, respondent preferred an appeal under Section 46(4) of Food Safety and Standards Act, 2006 and accordingly second sample was sent to Referral Laboratory as notified by food authority for its opinion. On 24.2.2012 a report was received from the Referral Food Laboratory, according to which, seized Mawa was found to be substandard and unsafe.

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3. The Trial Court framed charges, against which, respondent preferred a Revision.

4. The Revisional Court by order dated 22.10.2016 passed in Criminal Revision No.124/2016 allowed the revision and quashed the order framing charges with a direction to decide the question of framing charges afresh after obtaining report from the referral laboratory as provided under

Section 47(1)(iii)(c) proviso of Food Safety and Standards Act.

5. Challenging the order passed by the Revisional Court, it is submitted by counsel for the State that once the Revisional Court had found that there is sufficient material to frame the charge, then should not have set aside the order framing charges by directing to send the third sample to the Referral Laboratory.

6. Per contra, the application is vehemently opposed by counsel for the respondent.

7. Heard learned counsel for the parties.

8. In the considered opinion of this Court, setting aside of the entire order dated 27.7.2016 passed by the Trial Court was not required because as per both the reports, the sample was at least of substandard quality. The Revisional Court could have set aside the order to the extent of framing charge under Section 3(ZZ) read with Section 59 of Food Safety and Standards Act, 2006 with a direction to the Trial Court to reconsider the framing of charge after receipt of the report. However, as the sample was found to be of substandard quality as per the report sent by both the laboratories, therefore, the charge under Section 3(ZX) read with Section 51 NEUTRAL CITATION NO. 2024:MPHC-IND:26169 3 MCRC-10196-2017 of the Food Safety and Standards Act, 2006 should not have been disturbed.

9. Although there was no stay in this case but it appears that the record of the Trial Court was requisitioned by order dated 3.10.2017. From the record of the Trial Court it is clear that after the matter was remanded, the Trial Court by order dated 4.11.2016 directed the competent authority to obtain the report from the Referral Laboratory as required under Section 47(1)(iii)(c) proviso of Food Safety and Standards Act, 2006. However, the respondent himself filed an application alleging inter alia that since the sample is approximately 5 years old, therefore, the authorities must clarify that whether sending of sample would be expedient in the interest of justice or not? Thereafter vide order dated 15.11.2016 it was directed that the Food Safety Officer shall inform, as to whether third sample is available or not. Thereafter, it appears that since the record of the court below was requisitioned, therefore, nothing further has taken place. Thus, the third sample was never sent to Referral Laboratory.

10. Now, 11 years have passed as the sample was collected on 18.10.2011. Since, the shelf life of Mawa is very less, therefore, now no useful purpose would be served by sending the sample, even if available, to Referral Laboratory as per provisions of Section 47(1)(iii)(c) proviso of Food Safety and Standards Act.

11. Accordingly, order dated 22.10.2016 passed by the Revisional Court is hereby set aside. The order framing charges is hereby restored. The Trial Court is directed to decide the matter on the basis of the material filed along with the charge sheet. It shall be the duty of the Trial Court to NEUTRAL CITATION NO. 2024:MPHC-IND:26169 4 MCRC-10196-2017 specifically hold as to whether the prosecution has succeeded in establishing the guilt of the respondent for offence under Section 3(ZZ) read with Section 59 of the Food Safety and Standards Act, 2006 or not?

12. Accordingly the application succeeds and is hereby allowed. Certified copy as per rules.

(G. S. AHLUWALIA) JUDGE trilok