

Vineet Goyal vs The State Of Madhya Pradesh on 22 September, 2023

Author: Vivek Rusia

Bench: Vivek Rusia

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W.P. No.3114/2023

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 22nd OF SEPTEMBER, 2023

WRIT PETITION No. 3114 of 2023

BETWEEN: -

VINEET GOYAL S/O SHRI VIMAL GOYAL, AGED ABOUT 38 YEARS,
OCCUPATION: BUSINESS R/O KHASRA NO. 608, GRAM KANAWATI
PARGANA NEEMUCH (MADHYA PRADESH)

.....PETITIONER

(SHRI VINAYAK BALCHANDANI, LEARNED COUNSEL FOR THE
PETITIONER.)

AND

THE STATE OF MADHYA PRADESH FOOD SAFETY OFFICER SHRI
SANJEEV KUMAR MISHRA FOOD AND DRUGS ADMINISTRATION,
NEEMUCH (MADHYA PRADESH)

.....RESPONDENTS

(SHRI KUSHAL GOYAL, LEARNED DY. ADVOCATE GENERAL FOR THE
RESPONDENT/STATE.)

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

ORDER

The petitioner has filed the present petition challenging order dated 30.1.2023 whereby the Adjudicating Authority under the Food Safety and Standards Act, 2006 (hereinafter referred to as "the Act of 2006" for short) has rejected the application for summoning the Food Analyst to examine as defence witness.

1. Facts, in short, are that the petitioner is facing trial u/s. 50, 51,

- : 2 :-

52, 57(1)(2) and 58 of the Act of 2006. Vide order dated 10.6.2021 penalty of Rs. 1.00 Lakh was imposed upon the petitioner. The petitioner challenged the said punishment order by way of an appeal before the Appellate Tribunal. Vide judgment 31.1.2022 the Appellate Tribunal has set aside the order and remanded the matter back to the Adjudicating Authority to decide afresh after giving an opportunity of hearing to the petitioner. After the remand, the Food Safety Officer has been examined. Thereafter, the petitioner filed an application seeking examination of the Food Analyst of State Food Laboratory, Bhopal in defence. The said application was opposed by the prosecution agency and vide order dated 30.1.2023 learned Adjudicating Authority has dismissed the application without assigning any reason. Hence, the present petition before this Court.

2. After notice, respondent has filed the reply submitting that on 3.12.2020 at about 7.30 pm. the Inspection Team conducted an inspection in which wheat was found to be Sortex Clean on the spot. When the team reached on the first floor of the Sortex Machine, wheat was being polished after cleaning with a Saffron coloured solution in an stainless steel tank. The wheat was found adulterated by shining and colouring artificially. Said wheat was packed in different packets to supply and sale in different districts of M.P. and other States also. During the search 40 kg. of Saffron colour solution and 1 Kg. Of Saffron non-edible colour were found on the spot. Thereafter samples of the food grain (wheat) and other articles were drawn and were sent to the State Food Testing Laboratory. After receiving the investigation report from the Laboratory, as per Rule 46(4) of the Food Safety and Standards Rules, 2011 (hereinafter referred to as "the Rules of 2011")

- : 3 :-

for short) notice was sent to the petitioner. As per report given by the Food Analyst, wheat was tested and the colour test was done under FSSAI (2.0) Manual 1.2, 1.3, and 1.4 as per Clause 2.4.6(2). The partner of the petitioner's firm M/s. Darshil Agro vide letter dated 25.12.2020 confirmed the receipt of the report on 23.12.2020 and stated that they do not want to file any appeal in any Laboratory and requested for closure of the matter. In compliance of the order dated 10.6.2021 Rs. 1.00 Lakh has been deposited, therefore, nothing remains to be adjudicated now. It is further submitted that Section 293 of the Cr.P.C. gives power to the Court to summon and examine any expert as to the subject matter of his report, hence the accused has no right to submit an application for calling any expert. Hence, this petition is liable to be dismissed.

After having heard the learned counsel for the parties, I have perused the material available on record.

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

- : 4 :-

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.

4. In view of the foregoing discussion, this petition deserves to be and is hereby allowed. The impugned order dated 30.1.2023 is hereby set aside. Learned Adjudicating Authority is directed to allow the

- : 5 :-

application filed by the petitioner and call the Food Analyst for the purposes of cross-examination by the defence. Petition stands disposed of.

(VIVEK RUSIA) JUDGE Alok/-

Date: 2023.09.25 10:10:34 +05'30'