

Tejpal vs The State Of Madhya Pradesh on 3 November, 2023

Author: Subodh Abhyankar

Bench: Subodh Abhyankar

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 3rd OF NOVEMBER, 2023
MISC. PETITION No. 6315 of 2023

BETWEEN: -

TEJPAL S/O MANOHAR SINGH RATHORE OCCUPATION:
NA R/O - M/S ORIAN SUPPORT SERVICES PVT. LTD. ,
SECTOR -1, PITHAMPUR , DISTRICT DHAR (MADHYA
PRADESH)

(BY SHRI SIDDHARTH JAIN - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH FOOD
SAFETY OFFICER DISTRICT DHAR (MADHYA PRADESH)

(BY SHRI MUKESH PARWAL - G.A./P.L.)

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

ORDER

This petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 14.09.2023 passed by the Principal District Judge/Presiding Judge, Food Safety Appellate Tribunal, Dhar, District - Dhar in MJC No.19 of 2023 whereby the petitioner's application for restoration of appeal, which was dismissed on 16.02.2023, has been rejected.

2. In brief, the facts of the case are that the petitioner is engaged in the business of providing canteen services and on 05.01.2016 certain samples were obtained from his canteen, and were sent to Food Laboratory, Bhopal where the articles were found to be mislabeled. Subsequently, final order has also been passed against the petitioner on 07.02.2017 imposing a penalty of Rs.3 lakhs, which order has been challenged by the petitioner in an appeal under Section 3.3.1 of Food Safety and Standards Act, 2006 before the designated Court, Principal District Judge/Presiding Judge, Food Safety Appellate Tribunal, Dhar, and when the matter was fixed before the said Court on 16.02.2023, since on the said date the Advocates were abstaining from work on account of call made by the M.P. State Bar Council, the appeal was dismissed as the appellant was also not present before

the Court. Subsequently, an application for setting aside the ex-parte order under Order 9 Rule 4 of CPC has also been rejected on the same ground.

3. Counsel has submitted that the appeal ought to have been restored as because the counsel for the appellant did not appear before the Appellate Court, appellant cannot be punished for his conduct, and he was also not informed by his counsel to appear before the Appellate Court. Thus, it is submitted that the impugned order be set aside and the appeal be restored for disposal on merits.

4. Counsel for the State has opposed the prayer.

5. Having considered the rival submissions and on perusal of the impugned order, this Court is of the opinion that the impugned orders are liable to be set aside as the appellant cannot be punished for the negligence of his Advocate.

6. Accordingly, the impugned orders dated 14.09.2023 and 16.02.2023 are hereby set aside and the Miscellaneous Appeal No.30 of 2021 is restored to its original number and the matter is remanded back to the Appellate Tribunal for its decision afresh on merits.

7. Petitioner/Appellant is directed to appear before the Appellate Court on 04.12.2023.

8. With the aforesaid, the petition stands disposed of.

(SUBODH ABHYANKAR) JUDGE Pankaj