

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.2838/2010

Anil Kumar Godha

Vs.

State of Madhya Pradesh

Shri Akhil Godha, learned counsel for the applicant.
Shri Suraj Sharma, learned counsel for the respondent/State.

ORDER

(Passed on this 24th day of October, 2017)

This application under Section 482 Cr.P.C. is filed praying quashment of complaint pending before Judicial Magistrate First, Class, Ujjain as Criminal Case No.9836/2006.

2. The brief facts giving rise to the present application are that on 17.04.2004, the Food Inspector R.C. Gupta visited the provision shop of 'M/s Surana Traders' situated at Ujjain. In pursuance of a drive during the period when 'Singhasth' was going on at Ujjain, he

obtained sample from shop of 'M/s Surana Traders', whose name appeared in the complaint as accused No.1. He purchased a tin of *suddh ghee* weighting 600 gm. At the time of purchasing of the tin, it was sealed. The seal was cut open with aid of a knife and samples were prepared for examination by public analyst. The sample was sent to public analyst and it was found adulterated.

3. During the investigation, it was informed to the Food Inspector that M/s Surana Traders purchased the tin in sealed condition from 'M/s Badshah Traders, whose name appeared in the complaint as accused No.2. When the Food Inspector approached the accused Abhijar Attar, the Manager of said M/s Badshah Traders, it was informed that he purchased the product from the present applicant, whose name appeared as accused No.3. Both, accused No.1-M/s Surana Traders and accused No.2-M/s Badshah Traders purchased the product in sealed condition with a cash memo.

4. The case of the present applicant was that under Section 14 and 14-A of Prevention of Food Adulteration Act, 1954, there was provision of selling the goods by the manufacturer to distributor or dealer with a warranty. The proviso attached to Section 14 of the Acts provided that any bill or cash memo given by the manufacturer would be deemed to be the warranty given by the manufacturer and this apart, Section 19(2) of the Act provides as under:-

“(1)-----

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves.-

(a) that he purchased the article of food.-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it”.

(3) -----”

5. It is apparent that when a product was purchased under a warranty given by the manufacturer under Section 14 of the Act and if it was sold in the same State and stored properly, the vendor has no liability under the Act.

6. According to learned counsel for the applicant, in the present case, the product was purchased by the Food Inspector in sealed condition. The seal was cut open by him. Admittedly, M/s Badshah Traders provided bill/cash memo, which amounted to warranty given by M/s Badshah Traders. As such, he is not liable if the contents of the tin were found adulterated. It was also not the case of the prosecution that the tin was not stored properly.

7. Learned counsel for the State opposed the application and prays for its dismissal.

8. Learned counsel for the applicant placed reliance on judgments of Hon'ble Apex Court in case of *P. Unnikrishnan Vs.*

Food Inspector, Palghat Municipality, Palghat, Kerala State 1995

Cr.L.J. (SC) 3638. In this case, the manufacturer was not having any license and it was alleged that the firm M/s Tajus Production was not in existence, however, the Hon'ble Apex Court observed that this fact would not affect the liability of the vendor under Section 19(2) of the Act. The Hon'ble Apex Court in Para-6 of the judgment held as under:-

“(6) As rightly contended by the learned counsel for the appellant, the High Court has not correctly appreciated the scope of section 19(2) and rule 12-a and the necessary burden to be discharged by the accused. From the facts of the case it is clear that the representative of M/s Tajus Productions, Cannanore came to the medical shop of the accused and sold the article to the accused and also gave a bill Ex. D-1 which contained the warranty signed by somebody on behalf of the firm. Admittedly the article was in sealed tins which were not tampered with a label to the effect that it was a product of M/s Tajus Productions. The accused sold it in the same manner and condition in which it was purchased by him. The further proof that the manufacturer from whom the accused purchased the article has been duly licensed, depends on the facts of each case. In every case the accused cannot be expected to verify further whether the contents of the label on the tin and those in the bill containing the warranty are correct or not. In the instant case a representative of the firm situated at Cannanore, 200 kms away, came to the shop of the accused, sold the tins with the label and also issued a bill having the warranty. The accused in turn sold the article in the same form to PW 3. At that juncture no knowledge about the non-existence of the firm could be attributed to the accused and he could not be expected to verify as to what the actual position was regarding the existence of the firm at a place which was 200 kms away. It may be that the firm was in existence and if for any reason subsequently the firm does

not exist, the accused cannot be deprived of the defence to which he is entitled to under Section 19(2). Therefore in the facts of the case, it must be held that the accused has duly discharged the burden to the extent necessary under the above-mentioned provisions”.

9. On this aspect the order passed by co-ordinate Bench of this Court in case of *Gulabchand Modi Vs. State of M.P.* reported at *2005 (I) M.P.L.J. 194* is also relevant. In para-4 of the judgment, the co-ordinate Bench observed as under:-

“From the statement of PW\1 Food Inspector R.P. Singh (Annexure-D) itself the petitioner was successful to demonstrate that he purchased the aforesaid Soyabean Oil under a written warranty (Annexure/C) from Dinesh Traders Siyaganj, Indore. On each tins the name of the manurafturer Gujrat Co-operative Oil Seeds and Gorwers Federation, Bhavnagar, Gujrat was scribed. The tins were kept, sealed in same condition and from on of the tin by breaking the seal, sample was obtained by Food Inspector. Petitioner a retailer having purchased the aforesaid Soyabean Oil under warranty, is entitled to benefit of defence under section 19 of the PFA Act. As such framing of charge against him cannot be said to be justified. Instead, he deserves a discharge under section 7/16 of PFA. Act. Directing the trial of the petitioner under Section 7/16 P.F.A. Act would be a futile exercise and abuse of process of court”.

And also the order of co-ordinate Bench in case of *Puranmal S/o Badrilal Gupta Vs. State of M.P.* and other reported at *2007 (I) M.P.L.J. 90.*

10. In the present case, liability of the present applicant is totally covered by provisions of sub-section 2 of Section 19 of the Act. It is the case of the prosecution itself that he purchased the alleged adulterated items from another seller under a valid cash memo.

There is also no allegation that the seller was selling for, which was not in existence and as such, no case is made out against the present applicant.

Accordingly, this application is allowed. The charges framed against the present applicant under Section 7(i) r/w section 16(i)(a)(i) of Prevention of Food Adulteration Act is hereby set aside. He is acquitted from charges under Section 7(i) r/w section 16(i)(a)(i) of Prevention of Food Adulteration Act.

The trial would proceed against the other accused persons.

(Alok Verma)
Judge