

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**  
**SINGLE BENCH: HON'BLE SMT. JUSTICE ANJULI PALO**

**Criminal Revision No.246/2002**

Manohar

**VERSUS**

State of M.P. & another

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Shri Prakhar Trivedi, learned counsel for the applicant.

Shri Ramesh Kushwaha, learned Panel Lawyer for the respondent-  
State.

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**( O R D E R )**  
**Passed on:27.06.2017**

This revision under Section 397 r/w 401 of Code of Criminal Procedure, 1973 has been filed by the applicant/accused against the judgment dated 25.02.2002 passed by learned Additional Sessions Judge, Burhanpur in Criminal Appeal No.27/2002 affirming the judgment dated 24.12.2001 passed by J.M.F.C., Burhanpur in Criminal Case No.373/87, whereby the applicant/accused has been convicted under Section 16(1)(A-1) of the Food Adulteration Act and sentenced to undergo rigorous imprisonment for six months with fine of Rs.1000/-.

2. Brief facts of the case are that on 24.12.86 Food Inspector, Shri S.I. Meer took a sample of groundnut oil from the shop named Jaibhawani Trading Company, which belongs to the father of appellant's Bhagchand, following the rules. The sample obtained from the appellant sealed, packed and seized accordingly

and sent for examination to FSL. As per FSL report, seized sample of oil was found below standard and adulterated. Thereafter, notice was given to the applicant and complaint was filed against the applicant under Section 16(1)(A-1) of the Food Adulteration Act.

3. Learned trial Court found that the Food Inspector is the competent authority to take sample. After following the rules, sample has been purchased by him from the applicant's shop Jaibhawani Trading Company. The applicant signed Exhibit P/2 Form No.6, receipt Exhibit P/3 and slips affixed on 3 samples of cooking groundnut oil and Panchnama. Therefore, on the basis of testimony of S.I. Meer, the applicant was found guilty and convicted under Section 16(1)(A-1) of Food Adulteration Act. He was sentenced to undergo R.I. For six months along with fine of Rs.1000/-.

4. Appeal was filed by the applicant before the learned Second A.S.J., Burhanpur. The learned First Appellate Court has appreciated the evidence and after considering the judgment of trial Court, affirmed the conviction and sentence.

5. This revision has been filed mainly on the grounds that on the date of incident the applicant was a minor, not the owner of the shop or aforesaid Company. This important fact has been overlooked by the Courts below. The shop from where the alleged oil was seized does not belong to him.

6. Learned counsel for the applicant further claim that the respondent no.2/Food Inspector was not competent to take samples from the applicant and his entire action is against law. Learned

Courts below committed error of law in convicting the applicant only on the basis of evidence of the Food Inspector. Hence, it is prayed to set aside the judgment of Courts below and request for acquittal from charges under Section 16(1)(A-1) of Food Adulteration Act.

7. Heard learned counsel for the parties.

8. Perused the record.

9. In case of **State of M.P. vs. Narayan 1991 (1) C.Cr.J. at P 70**, it was held that in a revision, reference to the evidence is not to be freely made, but only when it becomes necessary for appreciation of the question raised.

10. Regarding the competency of Food Inspector I.S. Meer (PW/1), he has deposed that as per the Government Notification (Exhibit P/1) dated 01.08.1983, he was authorized to take sample. Exhibit P/1 shows the name of S.I. Meer (PW/1) as a Member of District Flying Squad, District Khandwa. His appointment letter (Exh. P/11). His training diploma (Exh. P/12) and P/13 and original authority letter (Exh. P/14). These documents have not been challenged during his cross-examination except for the procedure.

11. In the light of aforesaid documents, it is proved that Food Inspector S.I. Meer (PW/1) was competent to take sample from the applicant under Section 20(1) of Food Adulteration Act, 1954.

12. With regard to the age of the applicant. Admittedly, the applicant was about 18 years on the date of

commission of the offence i.e. (24.12.86). The trial Court dealt this question in para 9 of impugned judgment on the basis of his date of birth certificate, he was held 17 years 1 month 17 days old. At the relevant time the age of minor was less than 18 years. In the case of **Ramalingam vs. State 1988 FAJ 194**, it is held that the man who directly sells under provision of Food Adulteration Act is primarily responsible, unless the circumstances so warranted that he was not and could not have been responsible and aware of the adulteration.

13. S.I. Meer (PW/1) has specifically deposed that when he came at shop of Jaibhawani Oil Trading Company, the applicant was present there and was selling the groundnut oil, he purchased 375 ml. of groundnut oil from the applicant and paid the price to the applicant. For the corroboration of his testimonies Exhibit P/2 to P/5 have been filed by the prosecution, all those documents have been signed by the applicant.

14. In examination of accused at question no.7, the applicant has stated that he was present at his father's Jaibhawani shop, at the time of the incident. In question No.28, he again answered that his father went to purchase vegetables and he was sitting at his place to look after the shop. He explained his occupation as oil shop, in his

examination/statement under Section 313 of Cr.P.C. which establish that the applicant was incharge of the shop.

15. It is not necessary that only the shop owners are entitled to sell their products, sometimes their servants look after their business. In case of **Badri Vs. State 1965 (15) ILR 820**, it is held that, it is not necessary under the law the person who sells adulterated article should himself be the owner thereof the gravamen of the charge under Section 16 of the Act. The Sale of adulterated article and the ownership of the article is wholly immaterial for the consideration of the question about the sale.

16. It is true that no independent witness has been examined in support of the testimony S.I. Meer (PW/1). Now a general practice that the public witnesses do not cooperate with Food Inspector while taking sample and preparing documents. As per Section 134 of Indian Evidence Act conviction can be based on testimony of a sole witness. Number of witnesses are not required to prove any fact. Only the quality of evidence has to be taken for consideration. S.I. Meer (PW/1) had no enmity with the applicant, he followed the procedure and rules in obtaining the sample oil. After public analyst examination the aforesaid sample of oil was found adulterated in report (Exh. P/9). In which it is also found that the seals on sample container were intact. The seals on cover of sample container as well as on the outer

cover of sample parcel were also intact and tallied with the specimen impression of seal given on copy of memorandum forwarded separately.

17. In case of **Babulal Vs. State of Gujrat AIR 1971 SC 1277**, the Apex Court held that it is not a rule of law that the evidence of Food Inspector cannot be accepted without corroboration. The evidence of the Food Inspector alone if believable can be relied on for proving that the samples were later on required by law. Procedure for sample taken is elaborately deposed by Food Inspector (PW/1) S.I. Meer which has not been challenged by the learned counsel for the applicant. [**See also Ramalingam Vs. State 1988(1) (FAC) 256 (Madras), K.A. Muhammed Kunhi & another Vs. Food Inspector Kasaragod Circle 1988(1) (FAC) 365 and State vs. Sajjan Singh, 1990 (2) FAC 227 (MP)**].

18. In para 12 of the impugned judgment, it is properly held that the aforesaid sample of oil is not found as per the standard of purity prescribed in Prevention of Food Adulteration Rules Clause 17.23. Under the sanction order Exh. P/10 and after being given the notice to the applicant under Section 13(2) of Food Adulteration Act along with copy of Exh.P/9, the complaint was filed by S.I. Meer (PW/1) against the applicant. Aforesaid complaint has not been

denied by the applicant in his statement under Section 313 of Cr.P.C.

19. It is now settled that when the appellate forum is in agreement with the reasons assigned by the lower Courts, then it is not necessary to rewrite those reasons. There is no scope of re-appreciation of the evidence unless this Court finds perversity in the finding as well as gross error in appreciation of the evidence. **(See State of Gujrat Vs. Manojbhai Basarmal 2008 FAJ 144 at page 14)**

20. In this case sample found below standard. Solitary evidence of Food Inspector rightly relied on. Provision of Section 13(2) of 1954 Act also complied with. No possibility of changing sample taken by the Food Inspector. The evidence of Food Inspector can be accepted without corroboration.

21. On the above discussion and in the light of principle laid down by the above cases, this Court does not find any illegality or perversity in the findings of the Courts below. With the testimony of S.I. Meer (PW/1) and the documents, the prosecution successfully proves the fact that the alleged adulterated oil was purchased from the applicant at his father's shop which was found below standard. Hence, the applicant is properly held guilty for committing the offence punishable under Section 16(1)(A-1) of Food Adulteration Act.

22. With regard to sentence, the mandatory provisions of Section 16(1) clearly say that the seller of an adulterated food article injurious to human health should in no case, get sentenced for less than six months of imprisonment and fined Rs.1000/- which has rightly been imposed by the Courts below in the case. When the statute specifically provide for imposition of minimum sentence for an offence, the Courts must impose the minimum sentence for that offence which is grave socio-economic crime for his personal ill-gotten benefit with the backing of the country's health. Whereas the criminals like the applicant continuously without any hesitation go on selling sub-standard goods with the sole purpose of gaining unlawfully at the cost of the nation. Therefore, such crime should not be lightly taken up. **[See the cases of Radhey Shyam vs. State of U.P. 1997 CrLJ 2702 at page 2704 and Pepsi Foods vs. Special Judicial Magistrate 1998 (28) Corp. L.A. 4 at page 15, 16].**

23. At present, the applicant is on bail. He is directed to surrender immediately before the concerned trial Court to undergo the remaining sentence, failing which the trial court shall take appropriate action.

24. Accordingly, this revision is dismissed.

25. Copy of this order be sent to both the Courts below for information and compliance along with its record.

Rj.

**(Smt. Anjali Palo)  
Judge**