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MCRC-7072-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 15th OF JUNE, 2026MISC. CRIMINAL CASE No. 7072 of 2016*SHARAN BIHARI AGRAWAL AND OTHERS**Versus**M.K. GUPTA*

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Appearance:

Shri Shivendra Pandey - Advocate for the petitioner.

None for respondent.
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WITH

CRIMINAL REVISION No. 1703 of 2016*SHARAN BIHARI AGRAWAL AND OTHERS**Versus**M. K. GUPTA*

.....
Appearance:

*Shri Shivendra Pandey - Advocate for the petitioners.**Shri Devendra Kumar Shukla - Advocate for the respondent.*
.....

ORDER

Since M.Cr.C. No. 7072/2016 and Criminal Revision No. 1703/2016 arise out of the same prosecution under the Prevention of Food Adulteration Act, 1954, involve common parties, facts and questions of law, both matters were heard analogously and are being decided by this common order to avoid conflicting findings and for the sake of judicial convenience.

2. The applicants in M.Cr.C. No.7072/2016 have invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal



Procedure seeking quashment of Criminal Case No.534/2005 pending before the learned Judicial Magistrate First Class, Satna arising out of a complaint filed under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954. In Criminal Revision No.1703/2016, the very same applicants have challenged the order dated 19.02.2016 passed by the learned JMFC, Satna in Criminal Case No.6035/2007 whereby charges were framed against them under Sections 7 and 16(1)(a)(i) and 16(1)(a)(ii) of the Act of 1954.

3. The facts, briefly stated, are that on 14.07.2004 the respondent/Food Inspector inspected the pantry car of Varanasi-Pune Gyan Ganga Express. During inspection one Brahmprakash was found present in the pantry car and represented himself to be the Manager of M/s R.K. Enterprises, the catering contractor. It was alleged that Brahmprakash disclosed the names of applicant Nos.1, 2 and 3 as partners of the said firm. During inspection approximately two kilograms of coriander powder was found stored in an open container. Suspecting adulteration, the Food Inspector served notice in Form VI and purchased 750 grams of coriander powder for analysis. The sample was divided into three equal parts and sealed in accordance with the procedure prescribed under the Act and the Rules. One part was forwarded to the Public Analyst, Bhopal and the remaining parts were deposited with the Local Health Authority.

4. According to the prosecution, the report of the Public Analyst indicated that the coriander powder was adulterated. Thereafter sanction for prosecution was obtained on 27.04.2005 and a complaint was filed before the learned JMFC, Satna against Brahmprakash and the present applicants for



offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act. The complaint and accompanying documents have been filed as Annexure A-1 in both matters.

5. The applicants have placed on record the deposition and cross-examination of the complainant/Food Inspector dated 17.03.2015 as Annexure A-2 and the deposition and cross-examination of witness Rajesh Kumar as Annexure A-3. The applicants have further relied upon partnership deeds filed as Annexure A-4 to contend that applicant Nos.1 and 3 were not partners of M/s R.K. Enterprises on the date of inspection. In Criminal Revision No.1703/2016, the order framing charges dated 19.02.2016 has been filed as Annexure A-5.

6. Learned counsel appearing for the applicants submitted that the entire prosecution against the applicants is an abuse of the process of law. It was argued that except for a bald statement allegedly made by Brahmprakash, there is no material on record to demonstrate that the applicants were in charge of or responsible for the conduct of business of M/s R.K. Enterprises at the relevant time. It was contended that neither the complaint nor the evidence recorded before the trial Court contains any specific allegation attributing any overt act to the applicants. Learned counsel further submitted that the partnership deeds filed as Annexure A-4 clearly demonstrate that applicant Nos.1 and 3 were not partners of the firm on the date of inspection and, therefore, fastening criminal liability upon them is wholly unsustainable.

7. It was further argued that the mandatory provisions contained in Section



13(2) of the Prevention of Food Adulteration Act have not been complied with. Learned counsel submitted that the valuable statutory right conferred upon an accused to seek examination of the sample by the Central Food Laboratory was denied to the applicants because the prosecution failed to establish proper service of the Public Analyst's report along with the requisite notice contemplated under Section 13(2) of the Act. Reliance was placed upon various decisions of the Hon'ble Supreme Court holding that the right under Section 13(2) is a valuable right and non-compliance thereof vitiates the prosecution.

8. Learned counsel for the respondent/Food Inspector opposed the petitions and submitted that the complaint discloses a *prima facie* case. It was contended that the pantry contractor was M/s R.K. Enterprises and the applicants were shown as persons connected with the said concern. It was further argued that questions regarding partnership, management and responsibility for the conduct of business are matters of evidence which ought to be adjudicated during trial and not in proceedings under Section 482 Cr.P.C. or in revision against an order framing charge. It was submitted that the Public Analyst's report clearly established adulteration and, therefore, the prosecution deserves to proceed in accordance with law.

9. Heard learned counsel for the parties at length and perused the material available on record.

10. At this stage, it is appropriate to notice the relevant statutory provisions. Section 7 of the Prevention of Food Adulteration Act, 1954 reads as under:



"No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-

- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority [in the interest of public health];
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.
- [(vi) any adulterant.]"

11. Section 16(1)(a) of the Act provides punishment for any person who manufactures for sale, stores, sells or distributes any adulterated article of food in contravention of Section 7.

12. Section 13(2) of the Act provides:

"On receipt of the report of the result of the analysis under subsection (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory."

13. The provision of section 13(2) is mandatory in nature. The right conferred upon an accused to have the counterpart sample examined by the Central Food Laboratory is a valuable and substantive right because the



certificate issued by the Central Food Laboratory supersedes the report of the Public Analyst and is treated as conclusive evidence regarding the quality of the sample.

14. Upon careful scrutiny of the complaint (Annexure A-1), this Court finds that there is no specific averment explaining the role of the present applicants in the conduct of the business of M/s R.K. Enterprises at the relevant point of time. The complaint merely proceeds on the basis of information allegedly supplied by Brahmprakash. No document demonstrating the constitution of the firm or the responsibility of the applicants for day-to-day affairs has been referred to in the complaint.

15. The evidence available in Annexures A-2 and A-3 also does not disclose any material establishing direct participation of the applicants in the alleged offence. Significantly, the partnership deeds filed as Annexure A-4 prima facie indicate that applicant Nos.1 and 3 were not partners at the relevant time. The prosecution has not produced any contrary material to dislodge this assertion.

16. More importantly, from the record placed before this Court, there is no satisfactory material demonstrating compliance with the mandatory requirement of Section 13(2) of the Act. The prosecution has not established that copies of the Public Analyst's report along with intimation regarding the right to seek examination by the Central Food Laboratory were duly served upon the applicants in the manner contemplated by law. The denial of such statutory right causes serious prejudice to the defence and strikes at the root of the prosecution itself.

17. The learned Magistrate, while framing charges vide order dated



19.02.2016 (Annexure A-5), appears to have proceeded primarily on the premise that the applicants had not moved an application for examination of the sample by the Central Food Laboratory. However, before drawing such conclusion, it was incumbent upon the prosecution to establish due compliance with Section 13(2) and proper communication of the statutory right to the accused persons. In the absence of such foundational compliance, the reasoning adopted by the trial Court cannot be sustained.

18. The inherent jurisdiction of this Court under Section 482 Cr.P.C. is intended to prevent abuse of the process of Court and to secure the ends of justice. Where continuation of criminal proceedings would amount to miscarriage of justice and where basic statutory safeguards have not been complied with, interference by this Court becomes necessary.

19. In the considered opinion of this Court, continuation of the prosecution against the present applicants despite absence of specific material regarding their liability and despite apparent non-compliance with the mandatory provisions of Section 13(2) of the Act would amount to abuse of the process of law.

20. Consequently, M.Cr.C. No.7072/2016 is **allowed**. Criminal Case No.534/2005 pending before the Court of Judicial Magistrate First Class, Satna arising out of the complaint filed under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, insofar as it relates to the present applicants, is hereby quashed. As a necessary consequence, Criminal Revision No.1703/2016 is also allowed. The order dated 19.02.2016 passed by the learned JMFC, Satna in Criminal Case No.6035/2007 framing charges against the applicants under Sections 7 and 16(1)(a)(i) and 16(1)(a)(ii) of the



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Prevention of Food Adulteration Act, 1954 is set aside. The applicants stand discharged from the aforesaid charges.

21. Both matters stand disposed of accordingly.

(HIMANSHU JOSHI)
JUDGE