



IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

CIVIL REVISION No. 1102 of 2024

*MS SWASTIK TRADERS THROUGH JAYESH BHAI MIRANI AND  
OTHERS*  
*Versus*  
*THE STATE OF MADHYA PRADESH*

---

Appearance:

*Shri Akash Sharma, learned counsel for the petitioner.*

*Ms. Mradula Sen, learned Govt. Advocate for the respondent/State.*

---

Heard on : 14.08.2025

Pronounced on : 28.08.2025

---

ORDER

With the consent of the parties, heard the matter finally.

2. This Civil Revision is preferred under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 being aggrieved by the order dated 18.10.2021 passed by learned Principal District Judge & Appellate Tribunal under Food and Safety Standards Act, 2006 District Neemuch whereby appeal was partly allowed, fine was set aside as well as the matter was remanded back to the Additional District Magistrate/Adjudicating Officer, Neemuch for giving opportunity to produce documents.

3. The short facts leading to the present controversy, are that an inspection has been conducted by the Food Inspector at shop named as Vijay



Agency, in front of Shiv Mandir, Neemuch where the various samples have been taken including *pan parag* which was sent to the Food analysts for checking the standard of the product and after found it as not standard, permission has been sought for starting prosecution as well as the said has been filled in which Ld. Additional District Neemuch has fined the petitioners of Rs. 1,00,000/- each vide order dt. 18.10.2021.

4. By challenging the aforesaid order petitioners had filed Civil Appeal vide RCA/60/2021 which was partly allowed vide order dated 08.07.2024 and the fine has been set aside and the matter has been remanded back to the Ld. Additional District Magistrate/Adjudicating Officer considering that there are various flaws and faults in the Ld. Additional District Magistrate/Adjudicating Officer order and procedures for which the benefits cannot be granted to the petitioners and though the matter has been remanded back with guidance to cure the faults and flaws.

5. Learned counsel for the petitioner argued that vide impugned order, directions were given to the trial Court, the same have not been complied with. The learned Appellate Court ought to have consider that there are flaws caused by the Adjudicating Officer and once the statements have not been admitted though the benefit must be availed to the petitioners. He also argued that the Adjudicating Officer has not complied with the law and procedure prescribed by the law due to which the petitioners failed to prove their case and the same has been admitted by learned Appellate Court too. Learned Appellate Court has also directed to produce the original copies of the photocopies and exhibits the same whereas such directions should not be



granted in the appeal as the learned trial Court has guided the respondent which is not sustainable in the eyes of law. He further argued that the learned Appellate Court has not considered that Rule 46(4) of Food Safety and Standards Act, 2006 (hereinafter referred to as "the Act, 2006") petitioners right to appeal the food analysis report, has been violated and in light of that, no case has been made against the petitioners. Therefore, it is prayed that the present revision be allowed by setting aside the impugned order dated 18.10.2021.

6. On the contrary, learned Govt. Advocate for the respondent opposed the prayer and contended that the appellate Court has passed the impugned order by appreciating each and every aspect of the case. Hence, the present revision deserves to be dismissed.

7. In the back drop of the rival submissions, the conundrum of the case is as to whether the order of Appellate Court remitting back the case to trial Court for taking original photographs, certified evidence letter by affording sufficient opportunities after conclusion of entire trial is incorrect in the eyes of law and facts ?

8. I have heard the learned counsel for the parties and perused the record.

9. From the perusal of the order of learned Appellate Court, it is found that the prosecution has not produced the original panchnama dated 27.08.2018, original report of Food Analyst dated 08.05.2020, original memo to Food Analyst dated 27.09.2019, original tax invoice dated 18.09.2019 alongwith charge sheet and witness sheet of only witness



Sanjeev Mishra (Food Inspector) has also not been signed by the Upper Collector. It also appears that some other documents have also not been annexed properly. The prosecution has failed to comply with provisions of Sections 46(4) of the Act, 2006 read with Sections 2.4.2, 2.4.5, 2.4.6 of Food Products Standards and Food Additives Regulations, 2011 (in short "the Act, 2011") complied. The learned appellate Court has pointed out some other defects of investigation. Further, it is mentioned by the learned appellate Court in the judgment that on the ground of some technical grounds on the part of prosecution, the petitioners cannot be benefited, rather it would be appropriate to remit the case back to the trial Court for affording opportunity to prosecution to adduce the material documents.

10. Now the question arises as to whether such type of observation can be passed for remanding the case for a fresh trial ?

11. On this aspect, the law laid down in the case of **Mussuddin Ahmed vs. State of Assam**, reported in (2009) 14 SCC 541, wherein Hon'ble Apex Court has observed that owing to weakness of prosecution case and after considering other circumstances, the Hon'le Apex Court opined that prosecution failed to prove its case against the appellant beyond reasonable doubt and accordingly, the appellant was acquitted. However, in the aforesaid precedent, Hon'le Apex Court has neither remanded the case to the trial Court for a fresh trial nor established any principle with regard to remanding the criminal matters. In addition to that such type of observations made by first Appellate Court in the case at hand, certainly influence the view of the trial Court, which does not suit the principle of the criminal



jurisprudence.

12. Likewise, the observation of Hon'ble Apex Court rendered in **Satyajit Banerjee and Ors. vs. State of West Bengal and Ors.**, (2005) 1 SCC 115, is also worth to be quoted here :-

"Since strong reliance has been placed on the Best Bakery Case (**Zahira Habibulla Sheikh vs. State of Gujarat- Gujarat Riots Case**), it is necessary to record a note of caution. That was an extraordinary case in which this Court was convinced that the entire prosecution machinery was trying to shield the accused i.e. the rioters. It was also found that the entire trial was a farce. The witnesses were terrified and intimidated to keep them away from the court. It is in the aforesaid extraordinary circumstances that the court not only directed a de novo trial of the whole case but made further directions for appointment of the new prosecutor with due consultation of the victims. Retrial was directed to be held out of the State of Gujarat.

The law laid down in the 'Best Bakery Case' in the aforesaid extraordinary circumstances, cannot be applied to all cases against the established principles of criminal jurisprudence. Direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence. In Best



Bakery case, the first trial was found to be a farce and is described as 'mock trial.' Therefore, the direction for retrial was in fact, for a real trial. Such extraordinary situation alone can justify the directions as made by this Court in the Best Bakery Case(supra)."

13. In view of the aforesaid judgment, the matter can be remitted only in extra ordinary and exceptional circumstances for a *de novo* trial and only to prevent and avert the miscarriage of justice.

14. In view of the aforesaid settled proposition, it is crystal clear that the present case can be remanded back to the trial Court for re-trial only in exceptional conditions and only to eschew the miscarriage of justice. In the case at hand, learned appellate Court has not assigned any reasons as to how the miscarriage of justice is going to happen against any party. The learned appellate Court has also not disclosed anything by which it can be assumed that the trial Court has proceeded with the trial in the absence of jurisdiction or trial has been vitiated by any illegality or irregularity.

15. It is remarkable that in this case prosecution has not produced the original panchnama dated 27.08.2018, original report of Food Analyst dated 08.05.2020, original memo to Food Analyst dated 27.09.2019, original tax invoice dated 18.09.2019 alongwith charge sheet and witness sheet of only witness Sanjeev Mishra (Food Inspector) has also not been signed by the Upper Collector. Here, it is also pertinent to mention that in this case, in light of Section 46(3) of the Food Safety and Standards Act, 2006, the Food



**Analyst did not submit analysis report within prescribed time i.e. 14 days.** It is clarified that the prosecution cannot be given any opportunity to correct the deficiencies in its case and both the parties are equal before the Court.

16. Accordingly, the revision petition is allowed and the impugned order of First Appellate Court is set aside to the extent of remanding the case for a fresh trial to the learned trial Court and in sequel thereof, having remitted the case, the learned appellate Court is directed to decide the appeal on the basis of material available on record and the submissions of both the parties, in accordance with law.

17. Both the parties are directed to appear before the appellate Court on 15.10.2025.

18. Pending I.A(s), if any stands disposed of.

19. Consequently, Civil Revision stands disposed of.

20. Let the fine, as deposited by the petitioners be released in their favour.

21. A copy of this order be sent to learned appellant Court as well as to the learned trial Court for necessary compliance.

(ALOK AWASTHI)  
JUDGE

Vindesh