

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 14th October, 2009*
Judgment Delivered on: 22nd October, 2009

+ **CRL.R.P.241/2001**

BAL KISHAN Petitioner
Through: Ms. Anita Abraham, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Ms. Fizani Husain, APP.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 7.9.1992 at about 2 PM and again at 3 PM from the masala stall on the patri adjacent to the shop no.17, Shastri Market, Narela, Delhi two samples of chilli powder were taken, one from an open container and the other from an open polythene bag having no label declaration. This masala stall was being run by the petitioner Bal Kishan.

2. The first sample taken was the subject matter of complaint case no. 36/1992 dated 28.5.1992; the Investigating Officer being Sh.V.P.S.Chaudhary. The second sample was the subject matter of complaint no.46/1992 dated 10.6.1992; the Investigating Officer being Smt.Suniti Kumar Gupta.

3. The samples were sent to the Public Analyst for testing. In complaint case no.36/1992 vide report dated 24.2.1992, the sample was found adulterated as it contained abundance of foreign starch and coloured with an unpermitted oil soluble coaltar dye; further A.I.H. exceeded the prescribed maximum limit of 1.3%. Vide report of the same date i.e. report dated 24.2.1992 in complaint case no.46/1992, the sample was found adulterated as the sample contained abundance of foreign starch and coloured with an unpermitted oil soluble coaltar dye.

4. Bal Kishan was prosecuted under the Prevention of Food Adulteration Act (hereinafter referred to as the PFA Act). Three witnesses were examined in each of the two complaint cases.

5. In complaint case No.36/1992 Gopal Singh, the LHA was examined as PW-1; the Food Inspector V.P.S. Chaudhary was examined as PW-2 and Public Analyst Sh.R.P.Gupta was examined as PW-3.

6. In complaint case No.46/1992 Sh.Gopal Singh, the LHA was examined as PW-1; Food Inspector Suniti Kumar Gupta was examined as PW-2 and Mr.R.P.Guaba, public Analyst was examined as PW-3.

7. All the aforementioned witnesses were official witnesses and deposed in the said capacity. The petitioner in spite of opportunity did not exercise his right under Section 13 (2) of the PFA Act. Bal Kishan in his respective statements under Section 313 Cr.P.C. had stated that his signatures had been obtained on blank papers under threat and coercion.

8. The trial judge vide a common judgment dated 13.10.1997 held the accused guilty for having violated the provisions of Section 2 (ia) (a) (j) (m) of the PFA Act and Rules and convicted him under Section 7 read with Section 16 (1) (1A) of the said Act. He had been sentenced to undergo RI for one year and to pay a fine of Rs.2000/- in each case; in default of payment of fine to undergo SI for three months.

9. In appeal the additional sessions judge vide judgment dated 4.4.2001, dismissed the appeal; no modification was made in the sentence either as the court held that the Magistrate had given the minimum punishment which is prescribed for such an offence. The sentences had been directed to run concurrently in both the complaint cases.

10. It is this judgment which is the subject matter of this present revision petition.

11. The scope of the revisional powers of a court under Section 397 read with Section 401 of the IPC is limited. Two courts below have given a concurrent finding of fact. Interference is called for only in those cases where the correctness, legality or propriety of any finding, sentence or order is under challenge.

12. It is in the light of these principles that this court will appreciate the arguments addressed before it.

13. On behalf of the petitioner, it has been submitted that this is a clear case of malafides; the complainant had within a span of one hour lifted two samples of chilli powder i.e. at 2 PM and thereafter the

second sample at 3 PM. The same health officer i.e. Gopal Singh had accompanied the two respective Food Inspectors; Gopal Singh had accompanied V.P.S.Chaudhary at 2 PM and thereafter at 3 PM he had accompanied Suniti Kumar Gupta; it appears that the health officer had no other work except to in one way or the other falsely malign and implicate the petitioner; the ulterior motive and purpose of the health officer is writ large. It is further submitted that the two samples taken at two different times were not representative samples and this is borne out from the evidence of the respective food inspectors. Attention has been drawn to the testimony of Gopal Singh who had appeared as PW-1 in both the complaint cases. In complaint case no. 36/1992 he had deposed that the chilli powder was lifted after mixing with the help of a clean and dry big spoon; in complaint case no. 46/1992 when the sample was lifted one hour later, PW-1 has deposed that before taking the sample the food inspector had mixed the contents of the chilli powder with the help of a Karchhi lying in the plastic bag. It is submitted that at 2 PM PW-1 had used a big spoon to take out the sample and at 3 PM a Karchhi had been used; where had the spoon disappeared? To the same effect is the version of the health inspectors i.e. V.P.S.Chaudhary and Suniti Kumar Gupta examined as PW-2 in their respective complaints; samples not having been homogenized they were not representative, benefit of doubt has accrued in favour of the petitioner entitling him to an acquittal. In the alternative, the last submission addressed is on the sentence which has been imposed upon the petitioner; it is

submitted that even in those cases where a minimum punishment has been prescribed the court may in an appropriate case reduce the sentence. For this proposition reliance has been placed upon a judgment of this court reported in Subhash Chand vs. State 112 (2004) DLT 98 as also another judgment reported in N.Sukumaran Nair vs. Food Inspector 1995 CrI.L.J. 3651.

14. On the perusal of the record, it is noted that there is no discrepancy in the versions of any of the witnesses examined by the prosecution. It is not in dispute that there is no bar for taking more than one sample from a vendor on a particular day. It is also not the case of the petitioner that the sample was taken from the same container; one was taken from an open container and the other was taken from an open polythene bag having no label declaration. Both the samples were admittedly adulterated and did not conform to the standards as laid down in the PFA Act and the Rules. Respective Food Inspectors i.e. V.P.S. Chaudhary and Suniti Kumar Gupta as also the health officer Gopal Singh had categorically deposed that the sample had been taken after properly mixing the same with a clean and dry spoon which was rotated in all directions thoroughly and properly in the first instance and the second sample was taken with a dry and clean Karchhi after mixing the contents of the chilli powder. The receipt of selling the samples to the food inspectors has been duly signed by the petitioner; this has not been disputed; his bald defence that he was coerced to sign blank papers did not surface at the time of the cross-examination of the witnesses of the

prosecution; it is an afterthought. The samples had been taken after a proper mixing and homogenization. They were representative samples.

15. Both the courts below have appreciated the evidence in the correct perspective and nothing has been brought on record which could in any manner discredit either the oral version of the said witnesses or assail the documentary evidence which includes the report of the public analyst opining the samples to be adulterated.

16. The conviction of the petitioner calls for no interference.

17. However, the sentence imposed upon the accused deserves a modification. The offence is related to the year 1992 i.e. almost 17 years from date. The petitioner is a first offender; he has suffered a long and protracted trial; besides mental agony of trial, he has also suffered incarceration of almost seven months out of the sentence of one year which has been imposed upon him. The fine stands deposited.

18. In Haripada Das vs. State of W.B. and Anr. 1999 CrL.L.J. 603 the Supreme Court in the four appeals preferred before it, while maintaining the conviction of the appellant in three of the appeals, modified the sentence under Section 16 (a) (i) of PFA Act and reduced it to the sentence already suffered by him. In Subhash Chand (supra), the petitioner had been convicted under Section 16 (1) (1A) of the PFA Act and had been sentenced to undergo RI for one year and to pay a fine of Rs.3000/-; in the said case the sentence had been modified and he had been sentenced to undergo RI for the period

already undergone by him; i.e. a period of incarceration of eight months and the fine had been enhanced from Rs.3000/- to Rs.10000/.

19. The petitioner is on bail. No useful purpose would be served in sending him back to jail. He has a clean record and has re-built his roots in society. It would be unjust to unroot him at this stage. In this background, the ends of justice would be well met if the petitioner who has suffered a sentence of almost seven months is sentenced to undergo the sentence already undergone by him. He is, however directed to pay a fine of Rs.10,000/- which be paid within a period of three weeks, failing which he shall suffer the remaining sentence as imposed vide order of sentence dated 4.4.2001.

20. The petition is disposed in the above terms.

(INDERMEET KAUR)
JUDGE

22nd October, 2009
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