

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.280 of 2003 (O&M)
Date of decision: 14.01.2015**

Ram ChanderPetitioner

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN.

Present: Mr. Rahul Vats, Advocate
for the petitioner.

Ms. Trishanjali Sharma, AAG, Haryana.

JITENDRA CHAUHAN J. (Oral)

Appellant, namely, Ram Chander, has filed this revision against the judgment dated 30.01.2003, passed by the learned Additional Sessions Judge, Fatehabad, vide which the petitioner was convicted under Section 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter called the PFA Act) and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- or in default of payment of fine to further undergo rigorous imprisonment for a period of 1½ months.

The brief facts of the case in hand are that, on 31.05.1991, Teja Singh, Government Food Inspector (hereinafter referred to as GFI) inspected the premises of the accused/appellant at Subzi Mandi, Fatehabad. The accused was having 40 bottles of sweetened carbonated water in his factory. GFI disclosed his identity and desired to purchase 9 bottles of sweetened carbonated water from him on payment of necessary price for the purpose of analysis. He served notice Ex.PA, upon the accused to this effect which was signed by the accused/appellant. Dr. Mohar Singh, S.M.O, Civil Hospital, Fatehabad, had also accompanied GFI at that time. GFI purchased 9 bottles of sweetened carbonated water vide receipt Ex.PB for a sum of Rs.6.75 ps, from the accused. Thereafter, the contents of the abovesaid 9 bottles were put in a dry and clean jug. After mixing the whole contents properly. GFI divided the sweetened carbonated water into three equal parts and put it into three dry and clean bottles. The bottles were stoppered, securely fastened and then wrapped in strong thick paper which was secured by means of paper strips bearing code number and twine. The bottles were sealed. One sealed sample was sent to the Public Analyst, Haryana, Chandigarh and other sealed bottles were handed over to Local Health Authority. One copy of memorandum and specimen impression of seal was sent to the Public Analyst, Chandigarh

separately through registered post. GFI also prepared the spot memo Ex.PC which was attested by Dr. Mohar Singh. The sample was analysed by the Public Analyst, Haryana, Chandigarh and vide his report Ex.PF, he opined that the sample was free from sugar whereas it should have contained at least 5.0% and that it gave saccharine 172 PPM against the maximum prescribed standard of 100 PPM.

After the receipt of the report of the Public Analyst, Sh. Teja Singh, GFI instituted the present complaint.

The petitioner/accused was ordered to be summoned to face trial by the learned Sub-Divisional Judicial Magistrate, Fatehabad vide his order dated 09.08.1991.

In the pre-charge evidence, the complainant Teja Singh, Government Food Inspector (GFI) appeared as PW-1.

Thereafter, vide order dated 24.09.1993, charge under Section 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954, was framed, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined, the complainant Teja Singh as PW1, Dr. Mohan Singh, the then, Senior Medical Officer, Fatehabad, as PW2, Khushi Ram GFI as PW3 and Jagdish Chander, Clerk in the office of Civil Surgeon, Hisar as PW4.

Thereafter, the prosecution evidence was closed.

After the conclusion of evidence of prosecution, the statement of appellant-accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence which the prosecution produced against him was put to him to tender explanation for the same. The appellant-accused pleaded his innocence and he also stated that he has been falsely implicated in the present case. However, in defence evidence the accused produced Jagdish Chander, Clerk Office of Civil Surgeon, Hisar as DW1.

The learned trial Court, after hearing learned counsel for the parties and after appreciating the evidence on record, convicted the petitioner-accused under Section 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter called the PFA Act) and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- or in default of payment of fine to further undergo rigorous imprisonment for a period of 1½ months.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 30.01.2003, the accused/petitioner has preferred the present appeal, which was admitted on 13.02.2003.

The learned counsel for the petitioner/accused refers to

the result of the sample collected by the complainant, namely, Teja Singh, which reads as under :-

“The sample is free from sugar whereas it should contain at least 5.0%. It also gives Sacharine 172 PPM against the maximum prescribed standard of 100 PPM.”

It is further contended that in view of the provisions of Section 16-A of the Act, this case was to be tried in a summary manner whereas, the procedure of the warrant case in contravention of the provisions of Section 16-A (ibid) was adopted by the learned trial Court. Therefore, it is asserted that it is a case of deliberate non-compliance of the provisions of Section 10(7) of the Act. Since, the mandatory provisions of Section 10(7) of the Act was deliberately violated in the present case, so on this ground alone, the accused-petitioner ought to have been acquitted. He further contends that the incident took place on 31.05.1991 and the petitioner is now about 82 years old. He is totally bed-ridden and is not able to move. He cites **“Birbal Vs. State of Haryana”, 2002(2) Crimes (SC) 72, “Nand Lal Vs. State of Uttarakhand” 2010(2) RCR (Criminal) 581, “Sher Singh Vs. State of U.T., Chandigarh” 2003(2) RCR (Criminal) 826 and “Ganesh Maity Vs. U.T., Chandigarh” 2003 (1) RCR (Criminal) 418.** He submits that in view of the judgments passed by Hon'ble Apex Court and keeping in view the age and

health of the petitioner, he deserves to be released on probation. The sample of the sweet soda water though was not found as per the prescribed standard i.e. deficiency of sweetener, but the same was not found to be injurious to health.

On the other hand, learned State Counsel has supported the judgment passed by learned trial Court and states that the petitioner does not deserve any leniency as the sample was found not as per norm prescribed by the Act and there being minimum sentence prescribed in the Act. Admittedly, the accused-petitioner is about 82 year old and is confined to bed, but keeping in view the nature of offence no leniency could be shown to him. He had committed the offence against the whole society.

I have heard the learned counsel for the parties and have gone through the paper-book and the record carefully with their able assistance.

In the instant case, Teja Singh, Government Food Inspector(hereinafter referred to as 'the GFI') inspected the premises of the accused/appellant at Subzi Mandi, Fatehabad. The accused was having 40 bottles of sweetened carbonated water in his factory. GFI purchased nine bottles of sweetened carbonated water from him on payment of necessary price for the purpose of analysis. The sample was analysed by the Public Analyst, Haryana, Chandigarh

and vide his report Ex.PF, he opined that the sample was free from sugar whereas, it ought to have contained at least 5.0% and that it gave saccharine 172 PPM against the maximum prescribed standard of 100 PPM. In the instant case, the prosecution had filed the amended complaint. First complaint is Ex.PG and the second amended complaint is Ex.PG/1, but there is no provision for filing the amended complaint. As per the averments in the complaint, the sample was sent to the Public Analyst on 01.06.1991, but it is made out from the statement of DW-1,, Jagdish Chander, that sample was again sent to the Public Analyst on 13.06.1991, on the ground that first sample was leaked out. The learned State counsel contends that the complaints have been amended in compliance of the judgment of this Court in case “*Sadhu Ram Vs. State of Haryana*” 1990(1) FAC 200. The petitioner is now about 82 years old. He is bed-ridden and is not able to move. The sample of the sweet soda water was not found as per the prescribed standard but the same was not found injurious to health.

In “*Umrao Singh Vs. State of Haryana*” AIR 1981 SC 1723, it has been held that for adequate and special reasons, the sentence under Section 16 (1) (a) (i) of the Act could be awarded lower than the minimum prescribed under the Act.

The sample was drawn on 31.05.1991. The complaint

was lodged on 09.01.1999. The petitioner is not a previous convict. Admittedly, the petitioner is aged about 85 years. At this stage, it would be harsh and unjust to send him to jail. Therefore, keeping in view the facts and circumstances, nature of offence, antecedents of the petitioner, this Court feels that the ends of justice would be fully met if the sentence is reduced to the period already undergone.

While upholding the judgment of conviction, the order of sentence is modified and reduced to the period already undergone by the accused-petitioner. However, the same shall be subject to payment of enhanced fine of Rs.11,000/-, with the Chief Judicial Magistrate concerned, within three months from today, failing which, this appeal will be deemed to be dismissed without further notice.

14.01.2015

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(JITENDRA CHAUHAN)
JUDGE

Referred to Reporter-Yes.