

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.01.14 17:32
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CRM No. A-1134-MA of 2010 (O/M)

Date of decision : 9.1.2015

Union of Territory of Chandigarh

..... Appellant

Versus

Arun Kumar Pandey

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rajeev Sharma, Additional P.P. for the appellant.

Mr. Arnav Sood, Advocate (Amicus-Curiae),
for respondent.

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

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KULDIP SINGH, J. (ORAL)

Impugned in the present appeal is the judgment dated 16.4.2009, passed by the learned Additional Sessions Judge, Chandigarh, vide which appeal filed by Arun Kumar Pandey (respondent/accused) against the judgment and order dated 5.2.2005, passed by the learned Chief Judicial Magistrate, Chandigarh, was allowed and the conviction of the accused/appellant under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (in short 'the Act') was set aside and the accused/appellant was acquitted of the charges framed against him.

The short facts, which need to be reproduced for the purpose of disposal of present appeal, are that on 25.4.1997, the Food Inspector visited the flour mill of the accused, namely, M/s A.R.M. Roller Flour Mills, 42, Industrial Area-I, Chandigarh. There, 10 kg. of wheat flour was found for public sale. The Food Inspector purchased 400 grams of the flour on payment. On examination, the Public Analyst reported that the sample contains five living and four dead insects and it gives ash insoluble in dilute Hcl. 0.26% against the maximum prescribed standard of 0.15% and grit 0.20% and its taste is also gritty and, therefore, it is unfit for human consumption. Accordingly, the prosecution was launched against the accused.

Accused, on appearance, opted for examination of the second sample from the Central Food Laboratory (in short 'CFL'). The CFL submitted a different report.

Learned Chief Judicial Magistrate, Chandigarh, after going through the evidence of the prosecution and the defence evidence, convicted and sentenced the accused to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-, in default thereof, to further undergo imprisonment for one month. The said judgment and order was set aside in the appeal, vide order dated 16.4.2009, passed by the learned Additional Sessions Judge, Chandigarh.

Respondent-Union Territory, Chandigarh, being not satisfied with judgment passed by the learned Additional Sessions

Judge, Chandigarh, has come up before this Court by way of present appeal.

A perusal of the judgment of the learned Additional Sessions Judge, Chandigarh, dated 16.4.2009 shows that as per the admitted position of law, under Section 13(3) of the Act, the report of CFL will supersede the report of the Public Analyst. Therefore, only the report of the Central Food Laboratory is to be examined. Both the report were examined in length by the learned Additional Sessions Judge, Chanidgarh, and it was observed as under :-

“14. The sample of Atta in this case concededly, was taken on 25.4.2007, which on analysis as per report Ex.PD of Public Analyst was found to contain five living and four dead insects. It gave ash insoluble dilute Hcl. 0.26% against the maximum prescribed standard of 0.15% and grit 0.20%. Its taste was also gritty. Moisture at the time of analysis was 9.76%. When the second part of the sample was analyzed by the Director Central Food Laboratory, Pune, report of which is on file Ex.PF, did not find any insects and sample was declared having 0.07% of more in alcoholic acidity than the prescribed standard. As per Ex.PF the same was not declared adulterated. There was difference in the percentage of moisture level of the sample analyzed firstly by the Public Analyst on 15.5.97 report of which is Ex.PD and then by Director Central Food Laboratory on 2.9.97 report of which is Ex.PF. Thus, it is clear that the alcohol acidity increases with the passage of time. Learned counsel for the appellant has placed reliance on Anil Kumar and another vs. State of HP 1995(2) FAC 87. In this case the

Director, Central Food Laboratory recorded that there were three live insects and seven dead insects along-with 11 dead insects larva. Again there is in the report of the Director that these insects were detected after microscopic examination. In so far as the standard of alcoholic acidity was concerned, the Director has very specifically mentioned in his report that this alcoholic acidity was subject to increase from the date of drawl of sample and its ultimate analysis in the laboratory, meaning thereby, that increase, if any in alcoholic acidity could be attributed to the lapse of time which took place between taking of the sample and the analysis by the Director. This aspect of the opinion appears to be correct one, inasmuch as on 23rd day of June, 1981, when the Public Analyst analyzed the sample, the alcoholic acidity was found to be 0.08% within the prescribed limit and the Director analyzed the sample on 24th of October, 1981, say after a period of about five months after the taking of the sample and the likelihood of alcoholic acidity have been increased on the basis of the opinion given by the Director himself could not be ruled out.”

So far as the reasoning given by the learned Additional Sessions Judge is concerned, there is no ground to differ with the same. In the report of the CFL (Ex.PF), no living or dead insects were found. The alcoholic acidity was found more in the report of the Central Food Laboratory. The learned Additional Sessions Judge, Chandigarh, has taken the view that this alcoholic acidity was due to passage of time. He has also taken note of the fact that the report of the Public Analyst was dated 15.5.1997 and that the report

of the Director, Central Food Laboratory was dated 2.9.1997. As per the report of the Central Food Laboratory (Ex.PF), the sample was not declared as adulterated. Once, the report of the Central Food Laboratory supersedes the report of the Public Analyst and the sample is not found adulterated and the increase in the alcoholic acidity is attributed due to passage of time in examining the second sample, therefore, there is no ground to differ with the view taken by the learned Additional Sessions Judge, Chandigarh. It is an established law that if the Court below takes one of the two possible views, the appellate Court is not to interfere with the judgment of acquittal. Therefore, I do not find any illegality or infirmity in the judgment dated 16.4.2009, passed by the learned Additional Sessions Judge, Chandigarh.

The order dated 9.6.2014, passed by the learned Chief Judicial Magistrate, Chandigarh, declaring the respondent/accused as a proclaimed offender for non appearance before this Court, is also set aside.

The present appeal is accordingly dismissed.

(KULDIP SINGH)
JUDGE

9.1.2015
sjks