

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

Criminal Revision No.2590 of 2006

Date of Decision:-19.11.2015

Subhash Chander

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. N.C. Kinra, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA J.(Oral)

Petitioner has filed the present revision petition against the judgment dated 14.12.2006 passed by learned Addl. Sessions Judge, Sonapat, whereby his appeal against the judgment of conviction and order of sentence dated 14.10.2005 passed by learned Sub Divisional Judicial Magistrate, Gohana, was dismissed.

Learned Sub Divisional Judicial Magistrate, Gohana, vide judgment dated 14.10.2005, held the petitioner guilty of offence punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (for brevity, "the Act") and sentenced him to undergo rigorous imprisonment for a period of one year and a fine of Rs.2000/- and in

default of payment of fine to further undergo simple imprisonment for a period of two months.

The judgment dated 14.10.2005 passed by learned Sub Divisional Judicial Magistrate, Gohana, was made the subject matter of appeal before the learned Addl. Sessions Judge, Sonapat, who vide order dated 14.12.2006, while maintaining the conviction of the petitioner, reduced the sentence from one year to six months and to pay a fine of Rs.2000/- under section 16(1)(a)(i) of the Act.

Briefly stated, the prosecution case is that on 30.09.1996, the then GFI (Govt. Food Inspector), Gohana, Shri A.N. Sharma, accompanied by Dr. Shayam Sunder Gupta, Medical Officer of CHC Gohana, inspected the premises of the accused-petitioner Subhash Chander located at Railway Road, Gur Mandi, Gohana at about 2.00 P.M. and found him in possession of about 03 kilograms of '*Moong Dal*' for public sale contained in a wooden rack. After serving notice on prescribed Form-VI (Ex. PA) GFI Shri A.N. Sharma demanded a sample of *Moong Dal*. 600 grams of *Moong Dal* was purchased. After mixing the whole contents properly and making them uniform for analysis purchased, for an amount of Rs.14.40 vide receipt Ex.PB, which was divided in three equal parts and put in three different dry and clean bottles. Same were then sealed, labelled and wrapped as per rules. Each bottle was then secured by means of strong twine and sealed with the seals of Medical Officer and the Food Inspector at the spot. Signatures of the petitioner-accused were obtained in such a manner that both the paper slip and the wrapper on each sealed bottle carried part of signature. One sealed bottle along with a

copy of Form-VII with specific impressions of seal used, to seal the bottle and box, were sent to the Public Analyst, Haryana, at Karnal for analysis through railway parcel. Another copy of memo along with impressions of seal used was sent separately by registered post to Public Analyst, Haryana with intimation to the Local Health Authority, Sonapat. Other two sealed sample bottles along with copied of memo in Form VII were deposited with LHA, Sonapat.

After analysis, the Public Analyst, Haryana issued certificate (Ex. PE.), as per which, sample did not conform to the standards of *Moong Dal* (split), as laid down under item No.A.18.06.10 of the PFA Rules, 1955, as sample was coloured with added permitted yellow colour Tartrazine, whereas it should be free from the same and further moisture contents in the sample exceeded maximum specified limit of 14.0%. After receiving the report of Public Analyst through LHA, Sonapat, GFI filed complaint in the Court of Ld. Sub Divisional Judicial Magistrate, Gohana and sent intimation in this regard to the LHA, who then sent a copy of the report to the Public Analyst along with his forwarding letter to the accused-petitioner.

With the aforesaid allegations, the complaint was filed to prosecute the accused-petitioner under Section 7 with Section 16 of the Act.

Accused-petitioner made appearance before court on 10.01.1997. Learned trial Court decided to proceed with the case as a warrant case, as it was of the view that in case of conviction, sentence was likely to exceed one year.

In pre-charge evidence, GFI Shri A.N. Sharma examined himself as PW-1. After considering pre-charge evidence, accused-petitioner was then charge-sheeted by Ld. Sub Divisional Judicial Magistrate, Gohana on 09.01.2001, under Section 16(1)(a)(i) of the Act, to which he pleaded not guilty and claimed trial.

In post-charge evidence, complainant examined Shri Ashok Sharma, Clerk to LHA, Sonapat as PW-1 and Dr. S.S. Gupta, Medical Officer, CHC, Gohana as PW-2. GFI A.N. Sharma also appeared for the purpose of cross-examination. Though he was marked as PW-1 but it has been clarified by ld. Trial Court in the impugned judgment that he will be referred as PW3. The incriminating circumstances appearing in the evidence produced by the complainant were confronted to the accused under Section 313 Cr.P.C. He controverted the same. Though, accused opted to adduce evidence in defence, but later on, no evidence was produced by him.

After analyzing the evidence on record and hearing both the sides, the learned trial Court, vide judgment dated 14.10.2005, held the petitioner guilty of offence punishable under Section 16 of the Act and sentenced as aforesaid.

Against the judgment of conviction and order sentence dated 14.10.2005 passed by learned trial Court, petitioner preferred an appeal before learned Addl. Sessions Judge, Sonapat, however, learned lower appellate Court reduced the sentence of the petitioner from one year to six months under section 16(1)(a)(i) of the Act.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Learned counsel for the petitioner contends that the fine has already deposited by the petitioner which also finds mention in the judgment of conviction passed by the trial Court.

Learned counsel for the petitioner instead of arguing the case on merits confined his arguments only on the quantum of sentence. He submits that the petitioner is a petty shopkeeper and suffering the agony of trial for the last about 19 years i.e. the date when complaint was filed on 06.12.1996 and there is no other case of such or similar nature against him. In the case in hand, a sample was drawn from *Moong Ki Dal*, which was contained in a wooden rack for public sale in the shop of the accused-petitioner. The total quantity of *Moong ki Dal* is about 3 kg from which the sample was drawn. Since the sample was drawn during the month of September, 1996, which is ordinarily a rainy season and moisture contents are usually found more particularly when it is a '*split pulse*' (*Dal*). He also submits that as against the permissible limit of 14.00%, the moisture contents were found marginally higher (i.e. 14.9 %) and Mr. A.N. Sharma, the then GFI, Gohana (PW-1), in his cross-examination has stated that the moisture content found in the '*Moong Ki Dal*' is not injurious and in this manner, no harm is caused to the public or any person.

Learned counsel for the petitioner further submits that as regards the change in colour of the sample is concerned, the petitioner is a petty shopkeeper and whatever quantity he purchased from the wholesale

dealer, he sold the same in its purchased form and, therefore, petitioner has not added any colour.

Learned counsel for the State, however, submits that the cases of food adulteration are on high rise and by selling such adulterated material, the petitioner has tried to play with the life of innocent people. Use of such adulterated contents shall certainly cause injury to the public.

I have heard learned counsel for the parties and have gone through the case file.

There is no dispute regarding the fact that the complaint in question was filed on 06.12.1996 and the petitioner is suffering the agony of trial for the last about 19 years. Moreover, the sample was drawn during the month of September, 1996, which is ordinarily a rainy season and, therefore, the possibility of higher moisture content during the rainy season cannot be ruled out. Admittedly, the petitioner was running a small shop and being a petty shopkeeper is purchasing such like material from the wholesale dealer. Moreover, such stocks are usually stored at a place which otherwise visible/subject to exposure. Furthermore, the moisture content has been found marginally higher than the permissible limit. Therefore, the petitioner would not have intentionally introduced the moisture contents moreover when the moisture contents were found only marginally high.

Hon'ble Supreme Court in **Nand Lal Vs. State of Uttarakhand and another, 2010(2) R.C.R. (Criminal) 581**, has reduced the sentence of the petitioner-accused in that case while considering the fact that the incident had taken place almost 27 years ago.

In the case of Ram Chander Vs. State of Haryana, 2015(3) R.C.R. (Criminal) 245, while relying upon the case of Sadhu Ram Vs. State of Haryana, 1990(1) R.C.R. (Criminal) 259, this Court has reduced the sentence to the period already undergone wherein the sample of the sweet soda water was not found as per the prescribed standard, but at the same time, was not found injurious to health.

In the case of Umrao Singh Vs. State of Haryana AIR 1981 SC 1723, this Court has 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.

Having considered the judgment of this Court in Umrao Singh's case (supra), this Court finds that the petitioner deserves to be extended the benefit of reduction in the sentence more particularly when the sample was found not injurious to health and moisture contents marginally high.

Accordingly, taking into consideration the fact that petitioner is a petty shopkeeper, there being no other case of such or similar nature against him as well as the moisture content is marginally higher than the permissible limit, coupled with the fact that as against the awarded sentence of 06 months, he has already undergone about 1¼ months of imprisonment and also the fact that in cross-examination Mr. A.N. Sharma (PW-1) has admitted that moisture content found in the 'Moong Ki Dal' is not injurious and the above referred judgments, while upholding the conviction of the petitioner-Subhash Chander, the order of sentence is

modified and sentence awarded to the petitioner is reduced to the period already undergone.

With the above modification in the sentence, the instant revision stands dismissed.

(HARI PAL VERMA)
JUDGE

November 19, 2015
Anjal