

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

CRR-255 of 2007

Date of Decision: August 12, 2015.

Ram Karan

.....PETITIONER

VERSUS

State of Haryana

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE M.M.S.BEDI

Present: Mr.B.S.Bedi, Advocate
for the petitioner

Mr.Charanjit Singh Bakshi, Addl.A.G., Haryana

M.M.S.BEDI, J.(Oral)

Petitioner, after having been convicted for having committed offence under Section 16(1)(a)(i) and Section 7 of the Prevention of Food Adulteration Act, 1954 and having been ordered to undergo rigorous imprisonment for six months and to pay fine of Rs.1,000/- in case of default in payment of fine, to further undergo simple imprisonment for one month, by the Chief Judicial Magistrate, Panchkula on 05.08.2006/08.08.2006 and dismissal of statutory appeal by Additional Sessions Judge, Panchkula on 06.02.2007, has come up in revision before this Court.

Briefly stated, the facts are that the prosecution was launched against him at the instance of Ram Singh, Government Food Inspector, with the allegations that he along with Dr. K.K.Kapoor, District Health Officer, Panchkula, on inspection of premises of the petitioner, found in his possession 35 Kg. of cow milk kept in two drums for public sale. After giving him notice Exhibit P-A, the

Government Food Inspector demanded sample of cow milk and purchased 750 mls of cow milk against payment of Rs.5/- vide receipt Exhibit P-B. After taking sample, he divided the sample in three equal parts. These were bottled in three dry, clean and empty bottles. Two drops of formalin were added as preservative in each bottle. After sealing the same in accordance with law, signatures of the petitioner was obtained in such a manner that both the paper slip and the wrapper on each sealed bottle carry a part of his signatures. Spot memo Exhibit P-C was prepared. The report of the Public Analyst was received to the effect that the sample was found adulterated, as such a complaint was filed in the Court by the Government Food Inspector.

On notice having been received, the petitioner appeared before the Chief Judicial Magistrate Panchkula and was granted bail. The trial Court has passed specific order on 09.05.2001 to try the case as a warrant case. In pre-charge evidence, statement of complainant Ram Singh, Government Food Inspector was recorded. Thereafter the petitioner was charge-sheeted under Section 16(1)(a)(i) read with Section 7 of Prevention of Food Adulteration Act on 16.07.2001. He pleaded not guilty and claimed trial.

After framing of charges PW1 Ram Singh appeared and was cross-examined. Dr. K.K.Kapoor, District Health Officer Panchkula as well as Pannu Ram and Sat Pal, Clerks of Local Health Authority Panchkula were examined as PW2, PW3 and PW4, respectively. Statement of the petitioner under Section 313 Cr.P.C. was recorded. He pleaded that he was falsely implicated.

Defence raised by the petitioner was that the sampling had not been done properly as a result of which the report of Public Analyst had depicted milk fat more than the standard prescribed whereas milk solid not fat (SNF) was found less

than the minimum specified limit and that no independent witness has been examined creating a doubt regarding the authenticity of the recovery of alleged adulterated cow milk from the petitioner.

Both the Courts below have convicted the petitioner and sentenced him to undergo imprisonment of sentence and fine, as mentioned herein above.

Learned counsel for the petitioner has vehemently contended that as per report of the Public Analyst, Exhibit P-D, milk fat was found to be 4.6% whereas milk solid not fat was found 5.9% against the minimum prescribed limit of 4.0% and 8.5% respectively. It is admitted fact that the sample in the present case had been taken in the month of January, 1997 which is considered to be a period of extreme winter in north India and a judicial notice can be taken of the fact that it lowers the temperature and the milk solid not fat and milk fat besides other ingredients were required to be made homogenous before sampling.

Learned State Counsel has emphasized that PW1 Ram Singh has established by stating in his examination-in-chief that the milk was properly stirred and was made homogenous. The complaint in the present case is Exhibit P-E which is a printed performa wherein it stands printed that the contents were properly made uniform for analysis before taking sample. The blank space filled in the printed complaint indicate that 35 Kgs of cow milk was contained in two drums. It is not specified in the complaint whether the contents of both the drums were mixed in one container having the capacity of keeping more than 35 Kgs of milk. While appearing as witness PW1 Ram Singh on first occasion on 09.05.2007 has not stated as to how the milk was made homogenous. There is no reference to the stirring. PW2 Dr.K.K.Kapoor, Deputy Director made an attempt in his examination-in-chief to fill in the lacunae by stating that the sample of 750 mls was

bought after stirring the milk properly. From the contents of the complaint and the statements of the witnesses it is apparently doubtful as to how the milk was stirred and made homogenous.

The fact of taking sample without making the contents of the bulk homogenous, had come up for consideration before this Court in a number of cases wherein milk fat was found to be more than the minimum specified limit and milk solid not fat were found less than the minimum specified limit as per the table below item No.A-11-01-11 of PFA Rules 1955. In this context reference can be made to the following judgments:-

- i) Prem vs. State of Haryana 1995(2) FAC 31;
- ii) State of Punjab vs. Balwant Singh 1992(1) FAC 239;
- iii) State of Haryana vs. Inder Singh 1992(1) FAC 55;
- iv) Darshan Lal vs. State of Haryana 95(1) FAC 79;
- v) Hira Singh vs. State of Rajasthan 1992(1) FAC 321;
- vi) State of Punjab vs. Pramjit Singh 1996(2) FAC 310; and
- vii) Ram Kumar vs. State of Haryana 2003(2) FAC 25.

The ratio of all the above said judgements is that where the cow milk was found deficient in “milk solid not fat” content as per the minimum prescribed standard and the deficiency in fat content is more than the standard prescribed and there is no evidence of sample having been stirred clockwise and anti-clockwise manner, it would not be an indication of addition of water to the milk by its vendor rather it would be attributable either to imperfect analysis by the Public Analyst or to the poor feed given to the cow from the udders of which milk was drawn. Division Bench of this Court in Paramjit's case supra has observed:-

“...that the inspector in his statement in Court stated that

he stirred the milk in one drum containing 20 Kgs. of cow milk and made it homogeneous. He has not cared to depose as to how and in what manner he had stirred the milk so that he could corroborate the fact that it was made homogeneous before sample was taken. If 20 Kgs. milk is in a drum, at least on this point, the witness was required to state that he used a clean stick or the milk measurement and stirred the milk clockwise and anti-clockwise in such a way that the milk at the bottom was thoroughly mixed with that of the contents of the milk on its upper layer in the drum. If it was stated so, then alone at this point it could be said that the milk was homogeneous and the sample was taken of the representative material.”

Taking into consideration the facts and circumstances of this case where the prosecution was initiated on the basis of printed complaint by vaguely mentioning that stirring had been done to make the whole contents uniform for analysis, sufficient evidence was required regarding making the cow milk worth analysis beyond the shadow of doubt. In the absence of any such evidence the petitioner can be granted the benefit of doubt.

This petition is allowed. The judgment of conviction and order of sentence passed by the Courts below are hereby set aside. The petitioner is acquitted of the charges under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act. He is discharged of the bail bonds.

August 12, 2015.
TSG

(M.M.S.BEDI)
JUDGE