

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH.**

CrI. Revision No.2620 of 2015 (O&M)
Date of decision: 10.09.2015

Anil Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. R.K. Agnihotri, Advocate, for the petitioner.
Dr. Sushil Gautam, DAG, Haryana.

Rajan Gupta, J.

Petitioner Anil Kumar had been convicted by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, under section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as “the Act”) and was sentenced to undergo RI for six months and to pay a fine of ₹ 1000/-.

The petitioner preferred appeal against the judgment of his conviction/sentence, which was dismissed by Sessions Judge, Yamuna Nagar at Jagadhri, vide judgment dated 16.07.2015.

Feeling aggrieved against the judgments of both the courts below, the petitioner has approached this court through the instant Criminal Revision.

Learned counsel for the petitioner at the outset states that he

is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. He states that he is conscious that scope in the revision is very limited as evidence of the witnesses cannot be re-appreciated or re-evaluated.

Learned State counsel, on the other hand submits that in case conviction of petitioner is maintained, the court may reduce the sentence as deemed appropriate in the circumstances of the case.

I have heard learned counsel for both the sides.

Briefly, the prosecution case runs thus:

On 12.02.2006 at around 8.10 p.m., K.K. Sharma, the then Government Food Inspector, Yamuna Nagar had intercepted the accused-appellant at Jagadhri. He was found in possession of about 40 Kg. of Khoya for public sale, which was contained in hump bag. A notice in writing on Form-VI was served upon the accused. The Government Food Inspector purchased 1½ Kg. of Khoya from him as sample for analysis purposes. Thereafter, the sample was divided into three equal parts in clean and dry bottles. Two drops of 40% formalin per 25 grams was added as preservative in each bottle. Legal formalities as prescribed under the Prevention of Food Adulteration Act, 1954 were completed. Necessary slip was pasted on each part of the sample. Signatures of the accused were also obtained on the samples. Thereafter, one sealed part of the sample alongwith memorandum on Form VII and sample seal was sent to Public Analyst, Haryana at Chandigarh. Remaining two sealed samples were deposited with Local

Health Authority, Yamuna Nagar. A certificate of Public Analyst, Haryana revealed that the sample did not conform to the prescribed standards laid down for Khoya under item No.A 11.02.17 of the Prevention of Food Adulteration Rules, 1955. After analysing the same, sample was found to be adulterated. Accordingly, the present complaint was instituted by the Government Food Inspector before the competent court against the accused for commission of offence under Section 7 read with Section 16(1)(a)(i) of the Act.

Thereafter, the trial court ordered that accused be summoned to face trial for commission of aforesaid offence. He put in appearance before the trial court. The complainant adduced pre-charge evidence. Finding prima facie case under Section 7 read with Section 16(1)(a)(i) of the Act, accused was served with a notice of accusation vide order dated 11.11.2010, to which he pleaded not guilty and claimed trial.

To substantiate its case against the accused, the prosecution examined as many as two witnesses and tendered documents Ex. PA to Ex. PE.

The statement of the accused under Section 313 Cr.P.C. were recorded, wherein all the incriminating evidence available on record was put to him. He refuted the incriminating circumstances and pleaded false implication. In his defence, he examined Rakesh Sharma, Halwai as DW-1, Vilaiti Bansal, owner of a Tent House as DW-2, Jai Kishan as DW-3 and placed on record marriage invitation card Ex.D1.

On the basis of the evidence on record, the learned trial court held the petitioner guilty of the charge under section under Section 7 read with Section 16(1)(a)(i) of the Act, and sentenced him as already indicated above. The appeal filed against the said judgment was also dismissed by the Sessions Judge, Yamuna Nagar at Jagadhri, vide order dated 16.07.2015.

On a perusal of the judgments of both the courts below, I am of the considered view that the trial court has rightly appreciated the evidence on record while holding the petitioner guilty of the charge framed against him. The appellate court has also rightly dismissed the appeal. There is no infirmity or illegality in the findings given by both the courts below. The conviction of the petitioner is, thus, affirmed.

Even counsel for the petitioner, during the course of arguments, has not assailed the judgment of conviction. He has, however, pleaded for reduction in the quantum of sentence on the ground that the petitioner is a poor persons and main bread winner of his family including old parents and two minor children and he is not previous convict. He has stated that he is conscious that the scope in revision is very limited as evidence of the witnesses cannot be re-appreciated and re-evaluated.

Incident occurred 09 years ago in which the accused was found to be in possession of 40 Kg of Khoya, samples of which found to be adulterated. Stand of the State is that in case this court intends to maintain the conviction of the petitioner and reduce the quantum of

sentence to that already undergone, State would have no reason to stand in the way of such orders. Thus, keeping in view the facts and circumstances of the case and ratio of judgment in *Harbans Lal versus State of Haryana*, reported as 2001(2) R.C.R. (Criminal) 333, it is directed that the sentence awarded to the petitioner shall be reduced to the period already undergone by him. However, fine imposed shall remain intact.

Except with modification in the quantum of sentence, as indicated hereinabove, the revision petition is dismissed.

(RAJAN GUPTA)
JUDGE

10.09.2015
sukhpreet