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

**CRR-592-2007**

**Date of Decision : August 2nd, 2016**

Ishwar Chand

.... Petitioner

Versus

State of Haryana

.... Respondent

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

Present Mr. Sandeep Punchhi, Advocate,  
for the Petitioner.

Mr. Munish Dev Sharma, AAG, Haryana,  
for the respondent-State.

**SHEKHER DHAWAN, J.**

Present revision is directed against the judgment of conviction dated 15.02.2005 and order of sentence dated 18.2.2005 passed by learned Sub Divisional Judicial Magistrate, Guhla [District Kaithal], whereby the petitioner was convicted and sentenced as under:-

| Under Section                                                                         | Sentence                                                                                 | In default                         |
|---------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|------------------------------------|
| Section 16(1)(a)(i) read with Section 7 of Prevention of Food Adulteration Act, 1954. | to undergo Rigorous Imprisonment for a period of One year and to pay a fine of Rs.2000/- | To further undergo RI for 30 days. |

The appeal filed by the petitioner was dismissed by learned Sessions Judge, Kaithal vide judgment dated 12.03.2007.

2. Relevant facts for the purpose of decision of this petition; that on 14.07.1999 at about 1.00 PM, Government Food Inspector, [Complainant]

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inspected the premises of the petitioner, who was running a *dhaba*. At that time, the petitioner was found to be in possession of 1 Kg. of *Lal Mirch* [Red chilli] powder for preparation of vegetables for public sale contained in an Iron *Dibba* [tin]. The Food Inspector purchased 450 gms. of red chilli powder against cash payment and took the same into his custody. After converting the same into three portions and sealing the same, the sample was sent to Public Analyst and as per report [Ex PH] of Public Analyst, the sample was found to have total ash 10.0% and in the second report, it was found to be 9.2%. Presence of red and orange synthetic oil soluble colour was also detected and as such, the sample did not conform to the standard required under Prevention of Food Adulteration Rules, 1955.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned trial Magistrate after serving notice of accusation, completed various proceedings of trial including recording of statements of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence version on record, the Court below held the petitioner guilty and convicted him for commission of offence and sentenced as detailed in para No.1 above.

5. Aggrieved of passing of judgment of conviction and order of sentence, the petitioner filed an appeal which was dismissed by learned Sessions Judge, Kaithal vide judgment dated 12.03.2007. As such, the petitioner is before this Court by way of present revision petition.

6. Learned counsel for the petitioner mainly took the plea that

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admittedly, the sample of 450 gms. was taken out of 1 Kg. of red chilli powder which was kept in an iron tin for preparation of vegetables for public sale. However, the red chilli was not for public sale and as such, the offence alleged against the petitioner does not stand proved and the Court below has not considered this aspect while recording the judgment of conviction.

7. Learned State counsel took the plea that even sale of red chilli to the Food Inspector is sale under the Prevention of Food Adulteration Act, 1954 and the Court below has taken the correct view and the present revision petition is without any merit and the same be dismissed.

8. Having considered the submissions made by learned counsel for the parties and perusal of the record, there is no dispute regarding the fact that the sample of red chilli was taken from a *dhaba*. The total quantity of red chilli available with the petitioner was 1 Kg., and out of that, sample of 450 gms. of red chilli was taken. The said red chilli was kept in an iron tin box [dibba]. Such a quantity of red chilli available at a *dhaba* cannot be construed to be meant for public sale. The same was to be used for preparation of food which was meant for public sale. Even the petitioner has taken the plea that the said red chilli was being used by him for preparation of food at the Dhaba.

9. Identical matter had gone before this Court in case **Harbans Lal Vs. State of Haryana**, 1999[2] PLR 447, where the sample of chilli powder was taken from a dhaba and the convict was in appeal before this Court. This Court had taken the view that one cannot conceive that the

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chilli powder kept by the accused was directly for sale and the version of the petitioner [therein] appeared to be truthful. Similar matter was also before Hon`ble Bombay High Court [Nagpur Bench] in **State of Maharashtra Vs. Zamandas Vansimal Paryan, 1981 CrI. L.J 383**, where sample of red chilli powder was taken from a hotel and the accused had taken the plea that the chilli powder was kept in a tin box and Hon`ble Bombay High Court observed as under :-

“ We, therefore, find that as the chilli powder was not stored for sale by respondent the Food Inspector was not empowered to take sample of the said stock and as such the ratio of decision of Calicut Corporation's case would not apply here. As observed in the Municipal Corporation of Delhi S.10 of the Food Act, does not give a blanket power to the Food Inspector to take samples of an article of food from a person who is not covered by any of the sub-clauses (1)(a) or Sub-Sec. (2) of S.10. On the facts of that case, however, it was no doubt observed that, the adulterated articles of food were offered by the hotelier to the resident customers for a money consideration and it was immaterial whether such consideration was a distinct item or was an inseparable element of the consolidated charge made by the hotelier for providing residential accommodation services, amenities and food. In the instant case the chilli powder by itself which was kept in the kitchen was not stored for sale by the respondent and it is not the case of the prosecution that the finished product sold to the customers did contain this adulterated chilli powder for which a consolidated charge was levied (on) by the respondent.”

10. Identical view was taken by Hon`ble Andhra Pradesh High Court in **Pydi Prasada Rao and another Vs. State of A.P., rep by its Public**

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**Prosecutor, High Court of A.P., Hyderabad, 2012(2) R.C.R. [Crl.] 816,**

where the sample of green grams was found to be adulterated and the green grams were meant for use in preparing meals for human consumption, but the same were not held to be for public sale.

11. In the instant case also, the red chilli powder available with the petitioner in a tin box was not meant for public sale and the Courts below have not considered this aspect while passing the judgment of conviction and order of sentence. Resultantly, the judgment of conviction dated 15.02.2005 and order of sentence dated 18.2.2005 passed by learned Sub Divisional Judicial Magistrate, Guhla [District Kaithal] and the judgment passed by learned first Appellate Court dated 12.03.2007 are set-aside and the petitioner is acquitted of the charge framed against him. The revision petition stands allowed. The fine, if paid, be refunded.

**(SHEKHER DHAWAN)  
JUDGE**

**August 2<sup>nd</sup>, 2016**  
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|---------------------------|---|-----|
| Whether speaking/reasoned | : | Yes |
| Whether Reportable        | : | Yes |