

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

CRR No.1616 of 2008

Date of Decision: June 09, 2016

Jai Bhagwan

...Petitioner

Versus

State through Government Food Inspector, Panipat

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.K. Hooda, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

The petitioner Jai Bhagwan, proprietor of firm M/s Jai Shree Trading Company having been unsuccessful throughout the two Courts below when he was initially convicted through judgment dated 5.9.2007 passed by the Court of learned Chief Judicial Magistrate, Panipat under Section 7 read with Section 16 of Prevention of Food Adulteration Act, 1954 (in short, 'the Act') and sentenced to undergo rigorous imprisonment for 06 months and to pay fine of Rs.1000/- and in default of payment of fine to further undergo simple imprisonment for one month and, thereafter, the appeal having stood dismissed through impugned judgment dated 21.8.2008 of learned Additional Sessions Judge, Panipat has now sought to try his luck through the instant revision.

Heard, learned counsel for the parties and perused the records of the case. Undisputedly, the petitioner is running a shop under the name and style of M/s Jai Shree Trading Company. It was on 30.12.1999 Food Inspector, Panipat inspected the shop of the petitioner who was found offering for public sale and had in his possession 05 bottles, each of one litre bearing sticker "Kamal Marka" double filtered mustard oil. After necessary formalities, the complainant purchased 450 Mls. of this mustard oil and divided into 03 equal parts and after following due procedure on the basis of report of Public Analyst opining the sample so sent to be adulterated leading to the filing of the complaint and summoning of the petitioner as an accused.

The prosecution examined PW1 K.K. Sharma, GFI, PW2 Ashok Kumar, complainant and PW3 Muni Ram, Steno and proved documents, complaint Ex.PF; notice of Form No.VI Ex.PA; receipt of purchase Ex.PB; spot memo Ex.PC; Label Ex.PC/1; report of Public Analyst Ex.PE; postal receipt Ex.PD; notice to accused Ex.PX and postal receipt Ex.PY. The accused denied the allegations and in his defence examined DW1 Ashok Kumar and DW2 Ram Karan to prove that the petitioner was in fact running a shop by the name of M/s Shyam Machinery Store, which was owned by the petitioner and who admittedly happens to be son of Sadhu Ram, whereas, DW3 R.S. Bhodwal testified and proved documents Ex.D1 and Ex.D2, Income Tax returns. It was subsequent thereto the judgment of conviction was passed.

Learned counsel for the petitioner in his submissions has sought to create suspicion over the very factum of ownership of the

premises from where the samples were drawn by raking up the plea that it is owned by somebody else and rather the petitioner was running business in another premises under the name and style of M/s Shayam Machinery Store and further that there has been no due recourse to the process of law necessitating intervention by this Court to set aside the judgment of conviction. The same is sought to be opposed with much vehemence and force by the learned State counsel, who has submitted that the own stand of the petitioner throughout the trial nullifies his argument to that effect.

Appreciating the submissions, it is not the case of the defence that Form VI EX.PA issued and served under Rule 12 of the Prevention of Food Adulteration Rules was not served upon the petitioner and he has apparently signed the same and has even issued admittedly receipt Ex.PB regarding the payment of the sample amount so tendered by the complainant Food Inspector and so is the document Ex.PC which is a stark reminder to the process undertaken by the complainant which is counter signed by the petitioner rather are matters of much significance holding out that the petitioner was in possession of the premises in question and so offering for public sale an adulterated food item. It could not be displaced by the learned counsel for the petitioner that as per the report of the Public Analyst Ex.PE the sample did not confirm to the specified standards laid down for refined mustard oil as the asset value exceeding maximum specified limit and is also not free from suspended particles. The studied silence of the petitioner when local Health Authority served upon him a legal notice Ex.PX through post proved by means of Ex.PY, with postal receipt are matters which strike at the roots of the

defence to hammer home the point that all these pleas are belated afterthought propositions. Merely because the petitioner happens to be also an owner of M/s Shyam Machinery Store does not and cannot by any means cast its spell on the present case and the allegations so spelled out by the prosecution. Nothing is suggested to any of the prosecution witnesses of this stand so sought to be taken up before this Court either during the cross-examination of the witnesses by any means. Though, in a stand under Section 313 Cr.P.C. the accused has sought to rake up this defence but the same cannot come to the rescue of the petitioner being at a belated stage and has never responded to the legal notice so served upon him or during the course of trial at the first available opportunity had said it so. It has been so held by the Courts below and as claimed by the petitioner that the petitioner had no role in running the affairs of the premises in question from where the samples were drawn he could have certainly moved the authority but nothing suggestive is coming forth in the defence to support this contention of the petitioner. Merely filing of income tax return of another firm or examining oral witnesses does not suffice the purpose. The presence of the petitioner at the relevant time when the samples were drawn by the complainant, his signatures on the documents so prepared during the inspection and drawing of samples and his silence throughout this period are in itself suggestive of the fact that the petitioner had invariably accepted his role in selling the commodity in question. Though, much reliance has sought to be placed by the learned counsel for the petitioner on *State of Punjab vs. Satpal 1991(2) RCR (Criminal) 377, Subhash Chand and another vs. State of Punjab 2004(1) RCR (Criminal) 332; Balwinder Singh vs. State of UT Administration 2003(2) RCR (Criminal) 582;*

Chaman Lal vs. UT Chandigarh 2003(1) RCR (Criminal) 120; Ved Parkash vs. State of Haryana 1996(1) RCR (Criminal) 171; Niranjan Dass vs. State of Punjab 1992(2) RCR (Criminal) 104; Jog Dhian vs. State of Haryana 2001(2) RCR (Criminal) 331; Bhim Sain vs. State of Punjab 1998 (4) RCR (Criminal) 618 who has sought to project the case of the petitioner seeking concession of probation but none of the authorities do come to the aid of the petitioner and learned counsel for the petitioner could not oppose the fact that the complainant happens to be a Food Inspector so notified under the Rules. By virtue of exercise of powers under Section 10 of the Act had drawn the samples and nothing is suggestive that there has been any serious violation of the procedure so adopted in drawing such a sample of food article and which apparently has been seized from the possession of the petitioner while he was at the business premises offering these food articles for public sale and certainly as has been submitted by the learned State counsel it was at the behest of the petitioner in terms of Section 11 of the Act the name, address and other particulars has been disclosed to the Food Inspector which forms the very documents scribed at the time of drawing of the samples during the inspection of the premises. Even after the receipt of the report of the Public Analyst the petitioner has kept mum is a strong indicator of his complicity in the commission of offence. Though, it was open to the petitioner to have resorted to the provisions of Section 13 sub-Section 2A of the Act to move the appropriate Court for sending the samples for reanalyses and having failed to controvert the report of the Public Analyst the same come about to be irrefutable piece of evidence. Moreover, though not submitted but as is apparent there has been non-compliance of provisions of Section 14-A of

the Act as neither the Food Inspector nor the petitioner has disclosed the name and particulars of the persons from whom the purchase of this adulterated food item was made rather are matters which certainly show that some sort of contrivance is sought to be introduced for obvious reasons which certainly needs to be castigated. The contention and prayer sought to be made by the petitioner's counsel at the end of his submission seeking probation certainly is highly untenable in the light of the newly added provisions by way of Section 20AA of the Act which was introduced by amendment w.e.f. 01.4.1976. More so, even otherwise looking from another point of view having regard to the fact that there are serious allegations and concurrent findings of the two Courts below holding the petitioner guilty and in view of the seriousness of offence of having been instrumental in selling adulterated food item which certainly have life threatening effects on the life of the public disentitles the petitioner to any such relief so sought to be made by way of grant of probation.

Thus, in the light of above said discussions the findings of the two Courts below are correct appreciation of evidence on record and are in consonance with law and needs to be upheld. The present revision being devoid of any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

June 09, 2016
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Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No