

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

**CRR No. 2285 of 2008
DECIDED ON : MAY 13, 2016**

STATE OF HARYANA

....PETITIONER

VERSUS

BALJEET SINGH

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Ms. Neelam Kashyap, DAG, Haryana.

Mr. R.S. Mamli, Advocate
for the respondent.

JASPAL SINGH, J.

By virtue of this revision petition, State of Haryana has challenged the order dated July 26, 2008 passed by learned Additional Sessions Judge, Kurukshetra whereby, he set aside the order of conviction and sentence dated 30/31.01.2008 passed by learned Chief Judicial Magistrate, Kurukshetra vide which respondent was convicted under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (for brevity "Act") and acquitted the accused.

2. Brief facts giving rise to the instant revision petition are that on January 09, 1999 the Government Food Inspector intercepted the accused-respondent and on search he was found having in his possession 30 Kgs of Cow milk for public sale. He further disclosed his identity as Food Inspector,

purchased 750 ml of milk and thereafter prepared three samples and sealed those samples. One part of the sample was sent for analyst whereas, the remaining two samples were deposited with the Local Health Authority. The Public Analyst vide its report Ex. PD opined that the milk fat was found to be 6.4% against the minimum prescribed limit of 4.0% and milk solids not fat was found as 7.7% as against the minimum prescribed standard for 8.5% as laid down for Cow milk in the table provided in the PFA Rules 1955 (for short "Rules").

3. Since, there was violation of Rules. Accordingly, Government Food Inspector lodged a complaint in the Court of learned Chief Judicial Magistrate, Kurukshetra. In response to notice, accused appeared and exercised his option under Section 13(2) of the Act. The second sample retained in the office of Local Health Authority was sent to the Central Food Laboratory, Pune. As per report Ex.PF, milk fat was found as 2.9% and milk solids not fat was found to be 12.0%. Thus, the milk was found deficient in terms of milk fat.

4. On the strength of pre charge evidence adduced by the complainant, accused was charge sheeted to face trial under Section 16A of the Act vide order dated April 20, 2001 to which the accused did not plead guilty and claimed trial. In its after charge evidence, complainant could not be examined as he was stated to have been taken away by nature. However, Radhey Shyam Clerk LHS examined as PW-2 and Dr. Tejpal Nagar examined as PW-3. Thereafter, pre charge evidence was closed. When the incriminating circumstances appearing in evidence were put to the accused for elicit his explanation required under Section 313 Cr.P.C., he denied the same and pleaded his false implication. However, no defence was led.

5. After hearing learned counsel for the parties and appraisal of evidence available on record, accused was convicted under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (for brevity "Act") and sentenced to undergo RI for a period of six months alongwith fine to the tune of ₹1000/- and in default of payment of fine to further undergo simple imprisonment for 10 days vide judgment of conviction dated January 30, 2008 and order of sentence dated January 31, 2008.

6. Feeling disheartened against the judgment of conviction dated January 30, 2008 and order of sentence dated January 31, 2008, accused preferred an appeal which has been accepted by learned Additional Sessions Judge, Kurukshetra vide judgment dated July 26, 2008 whereby, he has been acquitted.

7. Feeling dissatisfied against the judgment of acquittal, State of Haryana preferred the instant revision petition.

8. While assailing the impugned judgment of acquittal passed by learned Additional Sessions Judge, Kurukshetra, it has been contended by learned State counsel that accused has been acquitted mainly on the ground that Government Food Inspector did not appear in the post charge evidence and as such a valuable right of the accused to cross-examine him after framing the charge has been taken away. The said findings recorded by learned Additional Sessions Judge, Kurukshetra are not based upon proper appreciation of the legal issue. Mr. A.R. Nehra could not appear before learned trial Court due to his death and in such a situation his statement recorded prior to that in pre charge evidence should have been considered by trial Court, as per the various

provisions contained in the Evidence Act.

9. Another reason which weighed in the impugned judgment of acquittal while acquitting the accused was that it appears that milk was not properly stirred as clock-wise and anti clock wise, which resulted into variations in the sample milk and due to non homogeneous samples, milk was not found according to the prescribed standard and further that accused has been denied his right to cross examination by Government Food Inspector who took the sample. The afore-said findings are against the record as Dr. Tej Pal, who accompanied the Government Food Inspector when the same in question was taken was examined as PW-3, who has clearly deposed that milk was duly stirred before taking the sample, therefore, the finding recorded by learned Additional Sessions Judge, Kurukshetra while acquitting the accused are absolutely against the evidence available on file.

10. Learned State counsel further argued that otherwise also once the accused has exercised his option under Section 13(2) of the Act for re-analysis to milk sample from the Central Food Laboratory, Pune and report received from that Laboratory is also not according to prescribed standard, accused cannot derive any benefit from it. The second report is conclusive proof which clearly depicts that the sample was not found as per the standard prescribed in Rules. Thus, the impugned judgment of acquittal is liable to be set aside whereas, the judgment of conviction dated January 30, 2008 and order of sentence dated January 31, 2008 passed by learned Chief Judicial Magistrate deserve to be restored.

11. On the other hand learned counsel for the respondent has stated that

there is no illegality or impropriety in the impugned judgment of acquittal and it being absolutely in consonance with the evidence available on record and settled cannons of law and it does not call for any interference by this Court.

12. This Court has given a deep thought to the rival submissions made by learned counsel for the parties and has scrutinized the impugned judgment(s) but this Court does not find any legal or factual substance in the submission made by learned State counsel.

13. Undoubtedly, in the case of acquittal, there is a double presumption of innocence in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law and secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened. Further, if two reasonable conclusions are possible on the basis of the evidence brought on record, Appellate Court should not disturb the finding of acquittal recorded by the Court unless there are substantial and compelling reasons.

14. A close scrutiny of the impugned judgement of acquittal transpires that State has miserably failed to establish the ingredients which constitute an offence under Section 16(1)(a)(i) of the Act. Undisputably, after the pre charge evidence, Dr. A.R. Nehra who has taken the sample could not appear in the witness box for the purpose of his cross-examination as he was taken away by nature. Due to non cross-examination of Dr. A.R. Nehra, respondent-accused has been deprived of a valuable right of his cross-examination in post charge

evidence and as such learned Appellate Court has rightly formed a view that a great prejudice is being caused to the respondent-accused as he has been deprived of a valuable right of cross-examination of a witness. Moreover, there is a violation of procedure to be adopted by the Government Food Inspector while taking the samples. No doubt Dr. Tej Pal Nagar was present at the time of taking the sample of milk but a close scrutiny of his testimony transpires that he is absolutely silent with regard to the fact that milk was stirred clock wise and anti clock wise, in such a way that the milk at the bottom was thoroughly mixed with the contents of upper layer of the milk in the drum to make it homogeneous. Though, during the course of arguments learned State counsel has submitted that there is a testimony of Dr. Tej Pal Nagar in this regard but the said submission is against the contents of the testimony of Dr. Tej Pal Nagar. It is also settled proposition of law that when the method of stirring was not adopted by the doctor who took the sample or the person who witnessed the proceedings, no liability can be fastened upon the accused and the conviction and sentence if imposed are liable to be set aside. It is obligatory upon the complainant to establish that the Food Inspector used clean stick for stirring the milk clockwise and anti clockwise in such a way that milk at the bottom was thoroughly mixed. But in the present case, firstly, doctor who took the sample did not appear in the post charge evidence and secondly, Dr. Tej Pal Nagar when examined as PW-3 did not utter even a single word with regard to the method adopted for making the milk homogeneous by stirring before taking the sample.

15. Thus, this Court does not find any infirmity or illegality in the impugned judgment of acquittal. Rather, this court is of the considered view that

the same is absolutely in consonance with the evidence available on file as well as legal proposition applicable in the facts and circumstances of the case.

16. In the light of what has been discussed, instant petition being devoid of merit is dismissed and impugned judgment of acquittal passed by learned Appellate Court is upheld.

MAY 13, 2016
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(JASPAL SINGH)
JUDGE

- 1. Whether Reportable or not?**
- 2. Whether speaking/reasoned?**