

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

Crl. Revision 612 of 2008

Date of Decision : October 21, 2016

Vipin Kapoor

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. H.S.Gill, Senior Advocate with
Mr. Nitin Rampal, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Additional A.G., Haryana.

T.P.S. MANN, J.

The petitioner being the nominee of M/s Deepak Oil Mill and Jatinder Kumar, the vendor, were tried for committing the offence punishable under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "**the Act**"). Vide judgment and order dated 12.12.2006, learned Chief Judicial Magistrate, Faridabad acquitted Jatinder Kumar of the charge against him. However, the petitioner was held guilty for the said charge and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal but remained unsuccessful as the same came to be dismissed by learned Additional Sessions Judge, Faridabad vide judgment dated 25.3.2008.

Still not satisfied, the petitioner filed the present revision which came to be admitted on 4.4.2008 and his sentence of imprisonment was also suspended.

As per the prosecution, Shri Daya Kishan, Government Food Inspector inspected the premises of Jatinder Kumar on 6.8.1999 at 3.45 p.m., who was found in possession of 5 sealed bottles of mustard oil for public sale. He demanded sample of mustard oil by giving notice in writing on form VI. Three sealed bottles of one litre each of mustard oil were purchased against payment of Rs. 171/- for the purpose of analysis. One packet of sealed bottle was sent for analysis, after it was duly sealed with the seal of Local Health Officer and containing the signatures of Jatinder Kumar as well. Vide report Ex.PG the Public Analyst declared the sample to be adulterated with argemone oil and, thus, unfit for human consumption. This led to filing of criminal complaint by the Government Food Inspector. Finding a prima facie case, Jatinder Kumar was summoned. Upon being served, Jatinder Kumar appeared and was released on bail. The case was, thereafter, adjourned for

pre-charge evidence. However, before any pre-charge evidence could be recorded, the counsel representing Jatinder Kumar moved application for impleading M/s Deepak Oil Mill as accused for the reason that he had purchased the mustard oil in a sealed packet and against bill. The said application was allowed and M/s Deepak Oil Mill summoned. Pursuant to the same, the petitioner appeared before the trial Court and moved application under Section 13(2) of the Act for sending the second portion of the sample for analysis. On the said application, the Government Food Inspector was directed to produce the second sample in the Court. The second sample was duly produced but on 28.9.2004, the petitioner, for reasons best known to him, made statement before the trial Court that he did not want to send the second sample for analysis. His request was allowed and the second sample produced by the Local Health Authority returned back.

In support of its case, the prosecution examined PW1 Daya Kishan, Government Food Inspector and PW2 Ram Chander, Local Health Authority.

When examined under Section 313 Cr.P.C., the petitioner and his co-accused pleaded that they were innocent. However, they did not lead any evidence in their defence.

As mentioned above, the trial Court convicted and sentenced the petitioner which was, thereafter, upheld by the

lower appellate Court.

This Court has heard learned counsel for the parties and perused the evidence with their able assistance.

There is no material on the record which might indicate that the petitioner was responsible for manufacturing the mustard oil and ensuring its quality. Even otherwise, the provisions of Section 20A of the Act can be pressed into service only during the trial of the case and not before. In the present case, once Jatinder Kumar accused put in appearance, he filed application under Section 20A of the Act for impleading M/s Deepak Oil Mill as accused. By that time, no pre-charge evidence had been examined by the prosecution. The application filed by Jatinder Kumar was allowed and M/s Deepak Oil Mill was summoned. Therefore, the summoning of M/s Deepak Oil Mill of which the petitioner was shown to be a nominee had wrongly been summoned as it was before the initiation of the trial and no evidence stood recorded, either pre-charge or post charge. Reliance in this regard can be placed upon the judgment in **O.P.Shiv Prakash Vs. K.I. Kuriapose**, (1999) 8 SCC 633.

It is the case of the prosecution that the sample of mustard oil was examined by the Public Analyst and vide report Ex.PG declared it adulterated with argemone oil and, thus, unfit for human consumption. When the petitioner was being

examined under Section 313 Cr.P.C., report Ex. PG of the Public Analyst was not put to him. What was put to him was that the mustard oil was sold against bill No. 951 dated 28.7.1999. He was asked as to why the case stood registered against him and why the witnesses had deposed against him. Finally, he was asked as to whether he wanted to say anything else. No where it was brought to his notice that the sample of mustard oil sold by M/s Deepak Oil Mill of which he was a nominee was found to be adulterated vide report Ex. PG of the Public Analyst.

In view of the above, it cannot be said that the prosecution has been able to prove its case against the petitioner beyond reasonable doubt.

Resultantly, the revision petition is accepted, conviction and sentence of the petitioner is set-aside and he is acquitted of the charge against him.

October 21, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No