

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

Crl. Revision 637 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 Komal Krishan, owner of Akash Enterprises 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 Komal Krishan of the charge against him. However, the petitioner was held guilty of 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. Vide judgment dated 25.3.2008, learned Additional Sessions Judge, Faridabad while finding no illegality in the conviction and sentence of the petitioner, as passed by the trial Court, dismissed the appeal.

Still not satisfied, the petitioner preferred the present revision which came to be admitted on 18.7.2008 and the sentence awarded to him was suspended.

According to the prosecution, on 27.1.1999 at about 4.00 p.m. complainant Subhash Chand, Government Food Inspector, inspected the premises of Komal Krishan, who was having in his possession 12 bottles of one litre each of mustard oil for public sale. The complainant purchased three bottles of one litre each as sample on payment of Rs.240/- and sealed their necks with the seal of local health authority. The signatures of Komal Krishan were also obtained on the same. One sealed bottle was sent to the Public Analyst for analysis, who vide report Ex. PF found it to be adulterated with argemone oil and, thus, not fit for human consumption. Accordingly, the complaint was filed against Komal Krishan from whom the samples were drawn. Finding prima facie case against him, the trial Court summoned Komal Krishan to face trial. Upon appearance, Komal Krishan filed application under Section 20A of the Act for impleading

petitioner Vipin Kapoor as accused, being manufacturer of the sealed bottles of mustard oil under the name and style of M/s Deepak Oil Mill. The said application was allowed and the petitioner was summoned to face trial.

In support of its case, the prosecution examined PW1 Subash Chander, Government Food Inspector, PW2 Dr. S.K.Mittal and PW3 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.

Though it is the prosecution case that the Government Food Inspector had inspected the premises of Komal Krishan of Akash Enterprises on 27.1.1999 at about 4.00 p.m. yet while framing charges against the petitioner, the trial Court informed the petitioner that the Government Food Inspector had inspected his premises and he was found in possession of 12 x 1 litres of mustard oil for public sale. Only towards the end of the charge-sheet, it was mentioned that the petitioner was the manufacturer

of the mustard oil in question and Komal Krishan had purchased the same from the petitioner vide bill No. 646 dated 8.1.1999. Fact remains that the charge-sheet initially described that the Government Food Inspector had inspected the premises of the petitioner and found him in possession of 12 litres of mustard oil for public sale. In this regard, it would be appropriate to reproduce the charge-sheet as under:-

“That on 27.1.99 at about 4.00 p.m. in the area of Old Faridabad, GFI inspected your premises after disclosing his identity and you were found having in your possession of 12x1 litres of Sarso Ka Tel for public sale contained in a rack and GFI demanded a sample of Sarso Ka Tel 3x1 litre against payment of Rs.240/- for the purpose of analysis. This purchased Sarso Ka Tel was divided into three bottles and the sample was sent to Public Analyst, Haryana Chandigarh for analysis and on receipt of the report from Public Analyst, Haryana Chandigarh, the sample does not conform to the standards laid down for mustard oil under item No.A.17.06 of the PFA Rules 1955 and the sample is adulterated with Agremone oil where as it should be free from the same. As such the sample is unfit for human consumption. You being the manufacturer of Sarso Ka Tel purchased by accused Komal Krishan vide bill No. 646 dated 8.1.99 committed an offence punishable under Section 16(1)(a)(i) read with Section 7 of Prevention of Food

Adulteration Act, 1954 and within my cognizance.”

It is the case of the prosecution that the sample of mustard oil was examined by the Public Analyst, who found it to be adulterated with argemone oil and, thus, unfit for human consumption. The said report was tendered in evidence as Ex.PF. However, when the petitioner was examined under Section 313 Cr.P.C., the said report of the Public Analyst was not put to him. What was put to him that his co-accused Komal Krishan had purchased the oil from him against bill No. 646 dated 8.1.1999. If the report Ex. PF of the Public Analyst was not put to him, it cannot be held that the mustard oil sold by him to Komal Krishan stood adulterated with argemone oil.

Besides, there is no material on the record from which it could be indicated that the petitioner was responsible for manufacturing and ensuring its quality. Even otherwise, Section 20A of the Act comes into play only after the trial Court examines some evidence against the seller of the commodity and in the event of the seller informing the Court that he had purchased the commodity in a sealed condition from the manufacturer and had not tampered with the same that he could ask for shifting of the liability on to the manufacturer. In the case in hand, after Komal Krishan stood summoned and he put in appearance that he filed the application, purported to be one under Section 20A of the Act

and on its basis the petitioner stood summoned being the nominee of the manufacturer concern. By that time, only the summoning order stood passed and the trial Court had not recorded any evidence, 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.

In view of the above, this Court finds that the prosecution has not 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