

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

Criminal Revision No.2364 of 2009.

Decided on:-December 15, 2016.

Sher Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against judgment dated 03.09.2009 passed by learned Sessions Judge, Narnaul whereby his appeal against judgment of conviction dated 01.08.2007 and order of sentence dated 03.08.2007 passed by learned Chief Judicial Magistrate, Narnaul was dismissed.

Briefly stated, the case of the prosecution is that on the evening of 22.09.1997, complainant-Govt. Food Inspector (GFI) along with Dr. D.K. Saxena, Medical Officer had intercepted petitioner-accused Sher Singh, a milk vendor, within the area of Gandhi Colony, Narnaul. The petitioner-accused was found in possession of about 20 Kgs of mixed milk contained in 3 iron drums for public sale. A notice on Form-VI was served upon the petitioner by GFI for taking sample of milk for the purpose of analysis. Total 750 ML milk was purchased from the petitioner and the same was taken out of one drum of the capacity of 20 Kgs after stirring it with the help of ½ Kg

measure at the price of Rs.7.5 per litre. However, there was about 6 Kgs of milk in the said drum. Receipt was also obtained from the petitioner-accused. The purchased milk was put into 3 dry and clean glass bottles in which formalin was added as preservative.

On completion of necessary formalities as per rules, a sealed bottle along with copy of Form-VII was sent to Public Analyst, Haryana, Chandigarh on 23.09.1997 in a sealed box by way of railway parcel. The report of Public Analyst was received by GFI through Local Health Authority on 06.11.1997. As per the said report, the sample was found to be 29% deficient in milk fat and 42% in milk solids not fat of the minimum prescribed standards. Therefore, a complaint was made for taking action against the petitioner-accused for commission of offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (for short, the Act).

After recording pre-charge evidence, charge under Section 7(1) read with Section 16 of the Act was framed against the petitioner-accused by the trial Court on 31.03.2005. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined four witnesses i.e. complainant-GFI as PW1, Dr. D.K. Saxena as PW2, Dr. V.D. Bhardwaj as PW3 and Mool Chand, Assistant Civil Surgeon as PW4. Thereafter, statement of petitioner-accused under Section 313 Cr.PC was recorded in which he pleaded his innocence and stated that he was

implicated in a false case. However, no evidence was led by him in his defence.

Vide judgment dated 01.08.2007, learned Magistrate held the petitioner-accused guilty and convicted him for commission of offence punishable under Section 16(1)(a)(i) of the Act. Vide separate order dated 03.08.2007, learned Magistrate had sentenced the petitioner-accused to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for two months. However, the fine was deposited by the petitioner-accused before the trial Court.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Sessions Judge, Narnaul vide judgment dated 03.09.2009.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

At the outset, learned counsel for the petitioner has not challenged conviction of the petitioner in view of the concurrent findings of both the Courts below. Rather, he has confined his arguments with regard to quantum of sentence only.

Learned counsel for the petitioner has argued that as against the awarded sentence of six months, the petitioner has remained in custody for 2 months and 4 days. He has been facing the agony of criminal proceedings

for the last more than 19 years. He has further submitted that the petitioner is a first time offender and is a poor person. Thus, he has prayed that the sentence awarded by the trial Court and affirmed by the appellate Court be reduced to the period already undergone by the petitioner.

Learned State counsel, on the other hand, though has not disputed the custody of the petitioner, but has argued that the petitioner-accused was carrying adulterated milk for public sale and as such, no leniency is required in the quantum of sentence imposed upon him. The custody certificate filed by learned State counsel in the Court today, is taken on record.

I have heard learned counsel for the parties.

This Court has scrutinized the impugned judgments passed by the Courts below as well as other relevant documents and evidence and finds that there is no scope of interference with the impugned judgments passed by the Courts below. Moreover, learned counsel for the petitioner has also not challenged conviction of the petitioner and confined his prayer to the extent of quantum of sentence only.

However, as regards pleas of the petitioner that he is facing criminal proceedings for the last more than 19 years; a poor person and first time offender; and as against the awarded sentence of six months, he has remained in custody for 2 months and 4 days, this Court finds that the prayer made by learned counsel for the petitioner carries weight. Moreover, the fact remains that as per the report of Public Analyst, the milk in question did not

contain any urea and, therefore, the left out content is water.

This Court in ***Ram Chander Versus State of Haryana 2015(3) RCR (Criminal) 245***, while relying upon the case of ***Sadhu Ram Versus State of Haryana 1990(1) RCR (Criminal) 259***, has reduced the sentence of accused to the period already undergone wherein the sample of the sweet soda water was not found as per the prescribed standard, but at the same time, was not found injurious to health.

In ***Criminal Revision No.2262 of 2010*** titled as ***Elayash Versus State of Haryana*** decided on 22.4.2016, this Court has also reduced the sentence of accused for the period already undergone by him. In that case, the accused was awarded rigorous imprisonment for six months for commission of offence under Section 16(1)(a)(i) of the Act and had remained in custody for 2 months and 9 days.

Accordingly, taking into consideration the pleas of petitioner and also the judgments referred hereinabove, though conviction of the petitioner is upheld but the sentence imposed upon him under Section 16(1)(a)(i) of the Act is reduced to the period already undergone by him, however, with no change in the fine clause.

With the aforesaid modification in the sentence, the present revision petition stands dismissed.

(HARI PAL VERMA)
JUDGE

December 15, 2016

Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No