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

CRR No.749 of 2009
Date of Decision: August 24, 2016

Mai Lal ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Manoj Kumar, Advocate
for the petitioner.

Mr. Munish Sharma, AAG,Haryana.

FATEH DEEP SINGH, J.

The State of Haryana through the Government Food Inspector, Bhiwani instituted a prosecution by way of complaint preferred under Section 16(1) (a) (i) of the Prevention of Food Adulteration Act,1954 (in short, 'the Act') against accused Shankar Lal and Mai Lal-present petitioner. The precise allegations of the prosecution are that on 10.9.1998 around 1.15. p.m the premises of the accused was inspected by the Food Inspector and the accused were found to be in possession of 25 k.g. *Haldi* for a public sale contained in gunny bag. The Food Inspector purchased 600 grams of the commodity after mixing whole contents properly to make it homogeneous and then divided in 03 equal parts and sealed them in 03 different dry and clean bottles which were duly packed and sealed as per the procedure prescribed and signatures of the accused were obtained thereon. One of the sample was sent to the Public Analyst and two spare samples were deposited as per law including Local Health Authority. On receipt of Public Analyst report it was opined that the sample was adulterated and not as per the norms leading to filing of the complaint and prosecution of the accused, out of whom co-accused Shankar Lal was declared a proclaimed offender.

At the trial prosecution examined PW1 Kali Ram, Food Inspector, PW2 Surender Kumar, Clerk, Local Health Authority, PW3 Dr. S.C. Batra and, thereafter, closed the evidence. The accused Mai Lal in his stand taken under Section 313 Cr.P.C. took the plea of total innocence but did not lead any defence evidence leading to judgment of conviction, whereby, holding the accused guilty for commission of offence under Section 16(1) (a) (i) of the Act. He was sentenced to undergo RI for 06 months with fine of Rs.1000/-.

The convict preferred an appeal before the learned Sessions Judge and through judgment dated 17.03.2009 the learned Appellate Court upheld the findings of the Court below and dismissed the appeal and that is how the instant revision has been preferred challenging these findings of the two Courts below.

Heard learned counsel for the parties and perused the records of the case.

The contentions of the learned counsel for the petitioner that admittedly and so is the story of the prosecution that accused Shankar Lal happens to be the servant and the actual owner of the firm M/s Bitu Kiryana Store is Ram Partap and not the petitioner-Mai Lal. Learned counsel has drawn the attention of this Court to the remarks on the postal cover by way of report of the Public Analyst sent to the petitioner-Mai Lal wherein, it has been noted down that he was not the owner. Though, on behalf of the State, it is nowhere elicited in the complaint how the petitioner-Mai Lal is the owner when to the very query of the Court the learned State counsel squarely accepts that neither any form so issued under the Shops and Commercial Establishment Act has been procured by way of evidence to show the ownership of the firm in question much less any bill book records or cash memo of the purchase of the commodity, in question accounts books in the name of the petitioner. No doubt, the contention of the learned State counsel that petitioner happens to be the brother of the real owner the State counsel could not impress upon this Court how the petitioner could be fastened with any such liability of being the owner or in possession of such an adulterated article rather what meets the eye is that there has been half hearted attempt by the complainant to put forth his case without adducing evidence to nail the real culprit and to bring about from any of the documents including sale tax and other similar records of M/s Bitu Kiryana Store to bring about that Mai Lal was the owner and not the Ram Partap. It is there on the record that a civil suit No.05 dated 17.01.1997 much prior to the present occurrence was filed by the firm M/s Bitu Kiryana Store through Ram Partap against certain defendants over tenancy of the shop in question wherein, the plaintiff Ram Partap has claimed himself to be the sole owner of M/s Bitu Kiryana Store regarding which "suit for injunction" the Court of learned Civil Judge, Junior Division, Siwani has passed a decree for permanent injunction in favour of the then plaintiff complainant Ram Partap holding him to be the owner of the firm as well as in possession of the shop in question and which evidence could not be rebutted by the learned State counsel.

Looking from another angle, learned Courts below have failed to appreciate the fact how the petitioner is being connected with the commission of the offence when there is not even an iota of cogent and reliable evidence to connect the petitioner with the commission of the offence as it is very well put to the prosecution witnesses the complainant PW1 as well as PW3 who happens to be a doctor and who both have admitted in the cross-examination that they cannot give any proof as to the ownership of this firm M/s Bitu Kiryana Store. How the Courts below on their own have raised presumption that petitioner was the owner and, thus, in possession of the articles in question and meant for sale is anybody's guess. Above all, it is the own stand of the complainant that all the signatures on the proceedings prepared at the time of the inspection bears signatures of accused Shankar Lal consisting of memo by way of form VII and, therefore, is another distressing feature in the prosecution story. How learned trial Court has come to the conclusion that Mai Lal-petitioner is the owner of the firm M/s Bitu Kiryana Store and thus the guilty one is merely on surmises and conjectures, when had there been a bonafide and genuine efforts the real owner could have been easily brought to book before the Court. Rather what comes up is that there is total insincere efforts and the very cross-examination of the complainant in itself is reflective of this deceptive prosecution with an ulterior motive for sinister gains certainly needs to be deprecated. Even in his cross-examination the complainant accepts the fact that petitioner-Mai Lal by no means could be connected with the commission of offence on account of there being hardly any tangible link of the petitioner with the commission of offence. The clear perusal of the records shows that even learned trial Court had not sincerely gone about with its obligation in following procedure and which was never taken cognizance of. No doubt, provision of Section 10 of the Act confers wide power upon the Food Inspector of taking sample of any article of food and though there is no such mandatory requirement that his evidence needs to be corroborated from independent source but at the same time law requires that his evidence needs to be tested on his own merits and only if it is found acceptable the Court needs to accept the same. Section 11 of the Act lays down that whenever Food Inspector takes sample for food analysis he is required to give notice in writing of his intention to have it analysed to the person from whom the sample has been taken and whose name, address and other particulars have to be disclosed in terms of Section 14-A of the Act. Neither the Food Inspector has sought name and particulars from the vendor in question or the persons from whom the alleged article has been purchased i.e. The Manufacturer. Looking from another angle, Section 11 of the Act by way of Sub-section 1(b) ensures that after drawing the samples of the article the Food Inspector is supposed to take signature or thumb impression of the person from whom the sample has been taken and which is not so qua the petitioner nor it is the stand of the prosecution that the petitioner has refused to put his signatures or thumb impression on his asking. Rather it is the co-accused Shankar Lal whose signatures/thumb impression are found on the documents in question and as is reflected from the records of the case and the stand of the prosecution there has been total non-exercise of powers by the Food Inspector in terms of Section 10(6) of the Act. Food Inspector ought to have taken into custody all books of accounts and documents etc. found to be in the premises and in possession of the accused from whom the sample has been drawn which is not so in the present case and which could have assisted the Court to come to a judicious and comprehensive conclusion as to the actual ownership of the shop and the possessor of the articles in question which is claimed to be adulterated. To the very query of the Court, learned State counsel has duly accepted the fact that there has been total non-adherence of the provisions contained in Section 10(8) of the Act and the Food Inspector has failed to exercise powers of a Police officer in terms of Section 42 Cr.P.C. to enable him to ascertain the name and particulars of the person from whom such a sample was drawn and seized.

Thus, in view of what has been detailed and discussed above and in the light of the golden principle of Criminal Jurisprudence the onus always rests upon the prosecution to establish its case against the accused beyond the shadow of reasonable doubt which in the present matter the prosecution has utterly failed to do so. Moreover, by virtue of Section 17 of the Act entails the prosecution of the offences by companies and as an explanation to this provision a company means any body corporate and includes a firm or other association of an individual and, therefore, whenever any such offence is committed by such company/firm the person so nominated in terms of sub-Section 2 of Section 17 of the Act ought to be prosecuted which the learned Court below never bothered much less the Food Inspector at whose behest the prosecution has been lodged and since the person incharge of the firm ought to be prosecuted and, therefore, in the absence of any cogent and reliable evidence and in the absence of specific pleadings in the complaint regarding the person who is incharge of the firm in question as well as responsible for the conduct of the business the prosecution so lodged certainly is not maintainable and is misuse of the process of the Courtand is totally nonest.

Thus, in the light of what has been detailed and discussed above both the Courts below have certainly fell into an error and there is wrong interpretation of the evidence taking a totally perverse and illegal approach. Thus, the impugned judgment needs to be set aside by way of acceptance of the instant revision, thereby, setting aside the judgment of conviction.

(FATEH DEEP SINGH)
JUDGE

August 24, 2016
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No