

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.**

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**CRR-1883 of 2010 (O&M)
DATE OF DECISION: 21.12.2016.**

Kishan Kumar

....Petitioner.

VERSUS

State of Haryana

....Respondent.

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Yogesh Goel, Advocate for the petitioner.

Mr. Deepak Grewal, Deputy Advocate General, Haryana.

A.B. CHAUDHARI, J. (Oral)

Taken up for final disposal.

I have heard the rival contentions of both the parties at length.

Vide judgment of conviction dated 31.01.2007 and order of sentence dated 01.02.2007 the petitioner was convicted for the offence punishable under Section 16(1)(a)(i) of the Prevention Food Adulteration Act, 1954, which was confirmed by the appellate Court. The petitioner was sentenced to undergo rigorous imprisonment for six months and pay a fine of Rs.3,000/-.

It is not in dispute that the sample taken was of ice-cream for public sale under item No.A.11.02.08 of the P.F.A. Rules, 1955. The sample was obtained on 27.08.1996. The sample was analyzed and was found below standard point to be precise. Judgment of the trial Court would show the details thereof, as under:-

“It has been mentioned that the sample does not conform to the standards laid down for Ice-cream under item No.A.11.02.08 of the PFA rules, 1955 thereof in that:-

- 1. Milk fat falls below minimum specified limit of 10.0%*
- 2. Total solids fall below minimum specified limit of 36.0%*
- 3. Protein content falls below minimum specified limit 3.5%”*

Perusal of the above report of the public analyst shows that the milk fat was up to 8.0% as against 10.0%, total solids at 35.5% as against 36.0% specified, while protein at 3.5 % as against specified 4.6%.

The petitioner has already undergone 21 days of imprisonment during the trial. He was awarded sentence of six months and fine of Rs.3,000/- which was paid. Rule 65 having been not changed in so far as the standard of a quality of milk is concerned right from the year 1955. It cannot be forgotten that standard prescribed way back in the year 1955 cannot be assumed to be same as on the date of taking of the sample looked at changes in the environment and so on so forth. At any rate, the violation seems to be marginal. The incident i.e. taking up of the sample had taken place 20 years before and the petitioner has already undergone imprisonment of 21 days and had also paid fine. In my opinion, it is too late in the day now to push the petitioner in jail for serving the remaining sentence. Hence, considering all above mitigating factors and the sentence already undergone by the petitioner, I make the following order:-

ORDER

- (i) CRR No.1883 of 2010 is partly allowed.
- (ii) The impugned judgment of conviction dated 31.01.2007

passed by the trial Court and judgment dated 09.07.2010 passed by the lower Appellate Court dismissing the appeal filed by the petitioner, are maintained. However, the order of sentence dated 01.02.2007 passed by learned trial Court awarding sentence of six months to the petitioner is modified to the one namely 21 days i.e. the sentence already undergone by the petitioner.

(iii) The petitioner be set at liberty forthwith, if not required in any other case.

(A.B. CHAUDHARI)
JUDGE

21.12.2016.

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Whether speaking/reasoned: Yes/ No

Whether reportable: Yes/No