

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

CRR-2177 of 2010 (O&M)

Date of decision: 20.09.2016

Vinod Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Saneta, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Jitendra Chauhan, J.

By filing the present criminal revision, the petitioner has assailed the judgment dated 27.07.2010 vide which the learned Addl. Sessions Judge, Panipat, upheld the judgment dated 21.05.2009 and order of sentence dated 22.05.2009 passed by learned Chief Judicial Magistrate, Panipat, whereby, the petitioner was convicted under Section 7 of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') and sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

The facts as culled out from the judgment of the trial Court are that the petitioner was found in possession of 40 kgs of cow milk in two iron drums for public sale at Ujha Road, Panipat on 20.02.2002. A sample of 750 ml milk was purchased from the petitioner by the Food Inspector. After mixing and stirring the whole contents properly and making it uniform for analysis, it was divided into three equal parts and put into three empty clean and dry bottles. The same was sent for an analysis by a public analyst and it was found to be adulterated.

The accused/petitioner was charge sheeted under Section 7 of the Act to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 S.L. Mahiwal, Govt., Food Inspector/complainant; PW-2 Muni Ram Steno, Office of Civil Surgeon and PW-3 Dr. S.N. Dawar.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. However, he did not lead any evidence in his defence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/petitioner, as stated hereinbefore. The appeal filed by the accused was dismissed by the Addl. Sessions Judge, Panipat on 27.07.2010.

Feeling aggrieved against the judgments of both the Courts below, the instant revision was filed by the accused/petitioner which was admitted on 09.09.2010. The sentence of accused/petitioner was suspended on the same day.

The learned counsel for the petitioner has contended that the trial Court as well as the appellate Court have erroneously passed the impugned judgments/orders without appreciating the evidence on record. The prosecution story solely rests upon the testimony of the official and interested witnesses. One Surinder Kumar son of Shish Pal, who was joined as independent witness at the spot has not been examined and was given up by the prosecution. There is no mention in the complaint or in the deposition of the witnesses that the alleged bottles used for samples were in fact clean. He has also submitted that it is nowhere mentioned that before taking the sample of milk, the same had been stirred clockwise or anti-clockwise. He refers to the testimony of PW-1, wherein he has stated that he had stirred the milk in the drum only and the second utensil was not used. He has further stated in his deposition that SNF was 8.2% whereas milk fat was 20% and was above the standard. Therefore, the learned counsel contends that the stirring of milk with the help of milk container is not sufficient to make the milk homogenous as prescribed under the Act. He has also stated that the petitioner is not involved in any other case. In support of his

contentions, the learned counsel cites Jai Singh Vs. State of Haryana, 2000(3) RCR (Criminal) 731, Jarnail Singh Vs. State of Haryana, 2007(4) RCR (Criminal) 775, Sakeel Vs. State of Haryana, 2007(4) RCR (Criminal) 740, Isham Singh Vs. State of Haryana, 2009(1) RCR (Criminal) 692, Harwant Kumar Vs. State of Punjab, 2009(3) RCR (Criminal) 321, Ram Niwas Vs. State of Haryana, 2010(2) RCR (Criminal) 407.

On the other hand, the learned State counsel argued that the prosecution has duly proved its case beyond the shadow of reasonable doubt. There is no infirmity in the conviction and the sentence awarded to the petitioner as the fat solid was 0.3% which is less than the minimum prescribed limit. The petitioner/accused has rightly been convicted by the trial Court. He supported the judgment of the Court below and prayed for dismissal of the instant revision petition.

This Court has heard the arguments of learned counsel for the parties and has carefully gone through the record of the case.

In the present case, as per the report of the Public Analyst Haryana, Chandigarh, the sample contained 8.2% of milk solids, not fat which is against the minimum specified limit of 8.5% laid down for cow milk in the PFA Rules, 1955. It is an admitted fact that there was no deficiency in the milk fat and deficiency found is only in the milk solids fat which is slightly lower than the specified

limit. It is to be noticed that sometimes there is a problem of non availability of nourishing and sufficient food quantity for the cattle. It is to be noticed that the quantity and quality of milk certainly depends upon the feed and nourishment of the cattle and it is not possible to take out non fatty solids from milk without reducing or affecting the fat contents. Therefore, it cannot be said that the accused/petitioner was selling adulterated milk.

In view of the foregoing discussion, the instant revision petition is allowed. The judgments of conviction and order of sentence of the Appellate Court as well as the trial Court are set aside. Accordingly, the petitioner is acquitted of the charge levelled against him. The petitioner is already on bail.

20.09.2016
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable:	Yes	No