

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

**CRR No.1858 of 2012 (O&M)
Date of Decision: May 25, 2016**

Karambir

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Nand Lal Sammi, Advocate
for the petitioner.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Karambir against State of Haryana, challenging the impugned judgment of conviction dated 07.05.2010 and order of sentence dated 10.05.2010 passed by learned Chief Judicial Magistrate, Kaithal, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹1000/- and in default of payment of fine, to undergo simple imprisonment for a period of fifteen days under section 7 of the Prevention of Food Adulteration Act, 1954 and also challenging the judgment dated 09.06.2012 passed by learned Sessions Judge, Kaithal, vide which appeal filed by petitioner was dismissed.

Learned State counsel appeared and contested the petition.

From the record, I find that the State through Government Food Inspector, Kaithal filed complaint under Section 7 read with Section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 against Karambir. The brief facts of the case as noted down in the judgment passed by learned CJM, Kaithal, are as under:-

“2. In brief, the allegations are that he on 16.05.2003 along with Dr.Vikash Bhatnagar intercepted Karambir accused at about 9.00 A.M. when he was carrying a drum containing 30 litres of cow milk for public sale. He introduced himself and served upon him notice in writing on Form VI in the presence of witnesses. He purchased cows milk by serving Notice Ex.PA upon him for the process of sampling against Rs.8/- against cash payment and obtained receipt Ex.PB in this regard from the accused.

3. However, prior to obtaining the sample, the contents were mixed with the help of plunger, clock and anti-clock wise and the milk obtained for sampling process was divided into three equal parts and was put in three dry clean empty bottles. Two drops of foralim were added per 25 ml in the sample of cow's milk.

4. The bottles were stoppered, tightly and sealed on the neck with the seal of Medical Officer. The bottles were labeled and wrapped in strong thick paper and paper slip issued by the Local Health Authority bearing code number KAT-DH/FH/F-2 Serial No.219 and the signature of the Local Health Authority was affixed on the bottles containers from top to bottom with gum which was secured by means of strong twine and sealed with his seal and that of the medical officer. The signature of Karambir were obtained in such a manner that both the paper slip and the wrapper of the sealed sample carry a part of his signature. The impressions of the seals used were also affixed on form VII. Spot memo Ex.PC was prepared. On Ex.PA, Ex.PB and Ex.PC the signatures of doctor, witnesses and accused were obtained. One part of the sample with form VII was sent through Shri Satpal, Class-IV employee to the Public Analyst, Haryana, Karnal and whereas remaining two parts were deposited with the L.H.A. Kaithal on 16.05.2003. Intimation was given to the L.H.A. for having sent the sample.

5. The public analyst, Haryana, Karnal in his report Ex.PH which he received through L.H.A. found the sample not conforming to the prescribed standards laid down for “Cow's Milk” as the sample contained 3.80% of Milk fat and 7.30% of milk solids not fit against the minimum prescribed standard of

4.0% and 8.5% respectively, as laid down for cow milk under item No.A.11.01.11 of Appended of the PFA Rules, 1955. Thus, the sample was found to be adulterated. Notice was issued to the accused and the complaint was filed.”

Learned CJM, Kaithal, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Sessions Judge, Kaithal vide judgment dated 09.06.2012.

Aggrieved from the above-said judgments, present revision petition has been filed.

Learned counsel for the petitioner argued that as per Public Analyst Report Ex.PH, minimum fats are found 3.80 instead of 4.00 and milk solid as 7.30 against minimum standard of 8.50. He argued that as there is little variance, therefore, the milk cannot be treated as adulterated.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that minimum prescribed standard mentioned for cow milk under Item No.A.11.01.11 of Appendix B of the Prevention of Food Adulteration Rules 1955, which were found less as per the Public Analyst Report as admitted by learned counsel for the revision petitioner. Therefore, the cow milk, which was for public sale, was found adulterated. Otherwise also, both the Courts below have given concurrent findings regarding conviction of the present petitioner. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below. In no way, the judgments passed by both Courts below can be held as perverse or against the evidence and law. The judgments passed by the Courts below are

correct, as per law and do not require any interference from this Court.

Learned counsel for the revision petitioner also prayed that the appellant be released on probation and cited judgment passed by this Court in *Narain Dass vs. State of Haryana, 1997(3) RCR (Criminal) 311*. The above-cited judgment will not apply in the present case as in that case, the accused was below 18 years of age, which are not the facts of the present case.

Section 20AA of the Prevention of Food Adulteration Act, 1954 states that nothing contained in the Probation of Offenders Act, 1958 (20 of 1958), or Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age. This provision shows that no probation can be granted as the Prevention of Offenders Act or Section 360 Cr.P.C. are not made applicable to provisions of Prevention of Food Adulteration Act. Therefore, in view of the specific provision under the Act, probation cannot be granted.

Learned counsel for the petitioner also cited some other judgments passed by this Court, where the probation has been granted. I find that it is admitted that in those judgments, nowhere this provision of Section 20AA has been discussed. Therefore, in view of specific provision, benefit of probation under the Probation of Offenders Act cannot be given to the present petitioner.

As per Prevention of Food Adulteration Act, in the present case, the minimum punishment of six months has been prescribed and the revision petitioner has been sentenced only to undergo rigorous imprisonment for a period of six months along with fine, which is the minimum sentence.

Therefore, the sentence imposed upon the petitioner also cannot be reduced.

Therefore, finding no merit in the present revision petition, the same is dismissed.

May 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE