

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-5794 of 2015

.....

Date of decision:13.5.2016

Narain Dass and another

.....Petitioners

v.

State of Punjab

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vishal Handa, Advocate for the petitioners.

Ms. Shivali, Assistant Advocate General, Punjab for the
respondent-State.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for setting aside the order dated 4.10.2014 (Annexure-P.9) passed by learned Additional Sessions Judge, Amritsar, and order dated 20.8.2013 (Annexure-P.7) passed by learned Judicial Magistrate Ist Class, Amritsar in criminal complaint No.51 dated 10.3.2010 titled as State vs. Sh. Narain Dass & Anr. (Annexure-P.2) under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and under Rule 50 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules').

Notice of motion was issued in this case.

Ms. Shivali, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and contested this

petition.

I have heard learned counsel for the petitioners as well as learned Assistant Advocate General, Punjab and have gone through the record.

From the record, I find that a complaint under Sections 7/16 of the Act and under Rule 50 of the Rules was filed against Narain Dass and Gulzari Lal by the State through Government, Food Inspector, Amritsar-complainant. An application for discharge of the accused was filed under Section 245(2) Cr.P.C. It was pleaded that sample was taken by the Food Inspector and was sent to DCFL Mysore for further analysis and final opinion. Report was received from DCFL Mysore that sample was not fit to carry out test. As the report of DCFL, Mysore supersedes the report of Public Analyst, thus no conviction can be based on the report of Public Analyst and prayed for discharge and no charge-sheet can be framed in this case.

The learned Judicial Magistrate Ist Class, Amritsar, vide order dated 20.8.2013 held that the complaint has been filed on the ground that Food Inspector had taken the sample of Khoya from the premises of accused. One sample was sent to the Public Analyst, Punjab and the Public Analyst opined that the contents of the sample are adulterated. Second sample at the instance of accused had been sent to DCFL, Mysore and as per the report given by DCFL, Mysore that sample was in a condition not fit for analysis. The Court below held that, at this stage, only prima facie case is to be seen for framing the charge. While the legal implication of the report

received from the DCFL, Mysore will only be considered at the time of final arguments. It was observed that, at this stage, there is report of Public Analyst that the sample of the Khoya taken from the possession of the accused meant for sale was adulterated and dismissed the application. Aggrieved against this order, the present petitioner filed the revision before the Sessions Court. The learned Additional Sessions Judge, Amritsar, after discussing the matter in dispute also gave the same finding and upheld the order passed by the Magistrate. The Additional Sessions Judge held that report of the DCFL, Mysore is not a report based on any analysis. It is merely reported that sample could not be analysed as it has become putrefied with fungal growth and not required for analysis. The learned Additional Sessions Judge in the revision petition also discussed the law laid down in Municipal Corporation of Delhi v. Ghisa Ram, 1975 (1) FAC 185, in which it was held that if for any reason no certificate is issued by the Director of the Central Food Laboratory, the report given by the Public Analyst does not cease to be evidence of the facts contained in it and does not become ineffective merely because it could have been superseded by the certificate issued by the Director of the Central Food Laboratory. The Court further held that there is no delay on the part of the prosecution to produce the second sample in the Court for re-analysis purpose.

I have gone through the impugned orders passed by the Courts below. No illegality has been committed by the Courts below while passing the impugned orders. The orders passed by the Courts below are correct as per evidence and law and do not require any interference from this Court.

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In the present case, nothing has been argued before the Courts below that there is delay in sending the second sample late. Rather, learned Additional Sessions Judge has held that there is no deliberate delay on the part of the prosecution in producing the second sample.

Keeping in view the above facts, I find that no illegality has been committed by the Courts below and the orders passed by the Courts below are not liable to be quashed.

Finding no merit in the present petition, the same is dismissed.

May 13, 2016.

(Inderjit Singh)
Judge

hsp