

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

CRR-2649 of 2016 (O&M)

Date of decision: 10.11.2016

Krishan

...Petitioner

Versus

State through Govt. Food Inspector, Rohtak

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Mannat Anand, Advocate for the petitioner.

Mr. Naveen Kaushik, Addl. A.G., Haryana

Jitendra Chauhan, J.

By filing the present criminal revision, the petitioner has assailed the judgment dated 19.07.2016, vide which, learned Addl. Sessions Judge, Rohtak, upheld the judgment dated 05.02.2016 and order of sentence dated 08.02.2016, passed by learned Chief Judicial Magistrate, Rohtak, whereby, the petitioner was convicted under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1955 (for short 'the Act') and sentenced to undergo imprisonment for a period of six months and to pay a fine of ₹1000/- and in default of payment of fine, to further undergo simple imprisonment for 15 days.

The facts as culled out from the judgment of the trial Court are that on 02.11.2010 at about 4.30 p.m. Om Kumar being Govt. Food Inspector of District Rohtak inspected the premises of the petitioner and he was found possessing six kilograms of *burfi khoya* contained in an aluminium tray. He demanded the sample of aforesaid sweet by giving notice in writing to him. 1500 grams of aforesaid sweet was purchased against ₹240/-. The sweet was divided into three parts and put in three empty, dry and clean bottles. Forty drops of 40% formalin were added as preservative in each bottle. Samples were wrapped in khakhi paper on the neck and were sealed after pasting both the ends with gums etc. A paper slip was pasted which was got duly signed by Local Health Authority on each sample. The samples were sent for analysis. However, the same was found to be adulterated as starch and excess fat was found in the aforesaid sweet.

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

In support of the case of prosecution, it examined PW-1 Om Kumar, Govt. Food Inspector, PW-2 Dr. Ajit Singh Lathar and PW-3 Sunil Kumar, Clerk.

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 defence.

After hearing the Assistant 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.

Feeling aggrieved against the judgments of both the Courts below, the instant revision was filed by the accused/petitioner. The sentence of accused/petitioner was suspended on 28.09.2016.

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 official witnesses. The recovery effected from the petitioner's shop was that of *burfi khoya* and not *khoya* itself and analysis is pertaining to *burfi khoya* as a whole and not just *khoya*. The Public Analyst Report did not mention the exact quantity of added starch present in the sample or the breach of any specific rule. The inspection team did not join any independent witness(es). It is specifically mentioned that the sample was free from insect infestation, fungus and mould growth. In support of her contentions, the learned counsel cites **Roshan Lal Vs. UT Chandigarh**, 1993(3) RCR (Criminal) 679, **Rajeev Kumar Vs. State of Bihar**, 2012(7) RCR (Criminal) 342, **Ram Kumar Vs. The State of Punjab**, 1982

(1) FAC 68, **P.P. Karuran Vs. The Food Inspector and another**, 1985(2) FAC 129, and **Rajaram Vithoba Kanekar and another Vs. State of Maharashtra**, 2011(1) Bom.C.R. (Criminal) 157.

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 sentence awarded to the petitioner as the sample gives 47.0 Butyro-refractometer reading at 40.0 C of extracted Fat against the maximum specified limit of 43.0 Milk fat. The sample contains added starch whereas it should be free from the same and hence the sample is adulterated. The petitioner/accused has rightly been convicted by the trial Court. He supported the judgments of the Courts below and prayed for dismissal of the instant revision petition.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

In the instant case, *barfi khoya* was recovered from the petitioner's shop and the same was analysed as a whole instead of just *khoya*. No standard with regard to *barfi khoya* has been prescribed under the Act. At the time of inspection, no independent witness(es) was joined which is a violation of Section 10(7) of the Act. Neither the exact quantity of added starch nor breach of any specific rule is mentioned in the Public Analyst Report. It is

specifically mentioned that the sample is free from insect infestation, fungus and mould growth. In these circumstances, it cannot be said that the accused/petitioner was selling adulterated *khoya*.

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. The petitioner is already on bail. Accordingly, the petitioner is acquitted of the charge levelled against him.

10.11.2016
ashok

(JITENDRA CHAUHAN)
JUDGE

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