

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP No.10979 of 2016
Date of Decision : 12.7.2016

Satnam Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Vishal Sharma, Advocate for the petitioner.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Present writ petition is directed against the order dated 9.2.2016 passed by the State Food Safety Appellate Tribunal, Punjab, Chandigarh (Annexure P-3) upholding the order dated 26.9.2014 (Annexure P-2) passed by the Additional Deputy Commissioner (G)-cum-Adjudicating Officer, Gurdaspur, imposing a penalty of RS.1.00 lac on the petitioner, as the petitioner was found supplying sub-standard milk in violation of Regulation 2.1.1 of Food Safety and Standard (Food Production and Food Adulteration) Regulation 2011 as well as Section 51 of Food Safety and Standard Act, 2011.

Facts of the case are hardly in dispute. Petitioner had been doing the business of selling the milk. The sample of cow milk drawn from the milk possessed by the petitioner failed. It is also a matter of record that the milk was found sub-standard. Petitioner was granted due opportunity of

being heard. He was found guilty of selling adulterated milk, because of which the Adjudicating Officer i.e. the competent authority, Gurdaspur vide order dated 26.9.2014 (Annexure P-2) imposed a fine of Rs.1.00 lac on the petitioner.

Feeling aggrieved against the above said impugned order, petitioner filed his appeal before the State Food Safety Appellate Tribunal, Punjab, Chandigarh, (for short 'the appellate tribunal'), but the learned tribunal dismissed his appeal after having found the same without any merit. Hence this writ petition.

The only argument raised by learned counsel for the petitioner is that the petitioner being the first offender, the fine imposed upon him is on higher side. He prays for setting aside the impugned order.

Having heard learned counsel for the petitioner and after careful perusal of the record of the case, this court is of the considered opinion that both the authorities have recorded concurrent findings of fact and both the impugned orders are based on cogent findings, which call for no interference at the hands of this court. It is so said because it is not even the pleaded or argued case on behalf of the petitioner that he was not granted due opportunity to defend himself or any kind of prejudice was caused to him during the whole process of drawing sample of milk and in carrying out analysis thereof.

The operative part of the order dated 26.9.2014 passed by the prescribed authority, reads as under :-

“8. Therefore, as per Section 68(4) while determining the quantum of penalty guidelines specified in Section 49 which are as under have to be considered :-

- a. the amount of gain or unfair advantage wherever quantifiable, made as a result of the contravention.
- b. the amount of loss caused or likely to cause to any person as a result of the contravention.
- c. the repetitive nature of the contravention.
- d. whether the contravention is without his knowledge and any other relevant factor.

9. The Food Safety Officer and the lab report of Food Analyst have clearly indicated that as per regulation numbers 2.1.1 of Food Safety and Standard (Food Production and Food adulteration) regulation 2011, the minimum prescribed standard for cow milk is 8.5% for milk solids not fat and hence penalty under section 51 of Food Safety and Standard Act, 2006 is attracted.

10. The complainant has not quantified the exact gain that would have been derived by the accused. It is however evident that by supplying sub-standard milk substantial loss would have been caused to the customer/user of the food product. The accused's claim that the contravention is without his knowledge is not justifiable since he is aware that certain standards have to be met in the cow milk that he is providing to various users. Considering all the factors mentioned above, penalty of Rs.1.00 lac (Rupees one lac) is imposed on Sh. Satnam Singh s/o Sh.Suba Singh.”

Learned appellate tribunal reconsidered the entire matter and

found the appeal filed by the petitioner wholly misconceived. The operative part of the impugned order passed by the learned appellate tribunal, reads as under :-

“ I have considered the said arguments. It is not disputed that the appellant was engaged in selling cow milk. In the written reply submitted before the Adjudicating Officer, taking of the samples and report of the Food Analyst is also admitted by the appellant. The appellant has taken a plea that he was taking the milk for supply in a Milk Plant, so, he has impliedly admitted that he was selling the milk, which was meant for human consumption. As per the report of the Food Analyst, the contents of the sample contain 7.5% of milk solids not fat against the minimum prescribed standard of 8.5%. Therefore, the sample was sub-standard.

14. Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 (hereinafter referred as as “the Regulation) provides standards for food products. Regulation 2.1.1 of the said Regulation provides that minimum percent of milk solids not fat in cow milk (raw, pasteurized, boiled, flavoured, sterilized) should be 8.5%. Since the sample was found containing the said percentage as 7.5%, therefore, the milk carried by the appellant was sub-standard and he has violated the said provisions.

15. Section 51 of the Act provides that if any person,

who, whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption, which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees. In the present case, the appellant was found selling an article of food, which was for human consumption, but it was sub-standard. The plea taken by the appellant that he was only collecting the milk or that he was not getting proper price for milk having less solids, is inconsequential. Since as per Section 51 of the Act, not only the manufacturer, but a Seller is also liable, if the product is sub-standard.

16. In view of the above reasons, the Adjudicating Officer has rightly held that the appellant as guilty under Section 51 of the Act. I have also considered the quantum of penalty imposed against the appellant. He has himself admitted that he is engaged in the business of selling the milk and supply to the milk plants. He is dealing with bulk quantities. As such, the quantum of penalty is in resonance with the provisions of Section 49 of the Act.

17. The order of the Adjudicating Officer is well reasoned. An opportunity of hearing was given to the appellant and his plea has been rightly considered. The facts have been rightly appreciated. Hence, the appeal is

devoid of any merit. Consequently, the present appeal stands dismissed. Record of the Adjudicating Officer be sent back. Registrar to communicate the order to both the parties. File be consigned to the record room.”

During the course of hearing when confronted with the cogent and concurrent findings recorded by the authorities in the impugned orders (Annexures P-2 and P-3), learned counsel for the petitioner could not point out any patent illegality in either of the impugned orders. So far as the sympathy in favour of the petitioner is concerned, he has not been found entitled for any sympathy in this regard. Some times, unwarranted sympathy shown causes more harm than any good. The view taken by this court also finds support from the judgement of the Hon'ble Supreme Court in **M/s Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and others**, 2004 (2) SCC 130.

Adulteration in the food items is a very serious issue, which causes numerous diseases and ultimately a poor consumer has to suffer. Considering the totality of facts and circumstances of the case, noticed herein above, this court is of the considered opinion that the present writ petition is bereft of merit and without any substance, thus, it must fail.

No case for interference has been made out.

Resultantly, with the above said observations made, present writ petition stands dismissed, however, with no order as to costs.

12.7.2016
GS

(RAMESHWAR SINGH MALIK)
JUDGE