

In the High Court for the States of Punjab and Haryana
at Chandigarh

(Sr.No.310)

CRR No.284 of 2006

Date of Decision:-July 10, 2017

Rajan

.....Petitioner

Versus

State of Haryana

.....Respondent

Coram: **Hon'ble Mr. Justice Gurvinder Singh Gill**Present : Mr. G.S.Sandhu, Advocate,
for the petitioner.

Mr. Manoj Dhankhar, AAG, Haryana.

Gurvinder Singh Gill J.

1. The petitioner was initially tried by the Court of Chief Judicial Magistrate, Kaithal for having committed an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 for possessing adulterated sugar for the purpose of preparing sweets meant for public sale. The Trial Court held the accused guilty of having committed the aforesaid offences vide judgment dated 12.2.2002 and sentenced him to undergo rigorous imprisonment for a period of one year and also imposed a fine amounting to Rs.1,000/-.
2. Aggrieved by the aforesaid judgment, the petitioner challenged the same by way of filing an appeal but the said appeal was dismissed by the Additional Sessions Judge, Kaithal vide judgment dated 30.1.2006 upholding his conviction. By way of filing the present revision petition, the petitioner has

again assailed his conviction by challenging the judgment dated 30.1.2006.

3. The case of prosecution, in nut-shell, is that on 27.9.1997, Shri N.D.Sharma, Govt. Food Inspector along with Dr. R.C.Mittal inspected the shop of the accused who was found in possession of two kilograms of sugar kept for preparing sweets meant for public sale. A sample was drawn from the said sugar and was divided into three equal parts and put in three empty bottles, which were duly stoppered, labelled and sealed. Upon getting the sample of sugar analyzed from the Public Analyst, Karnal, Haryana, the same was found to be not conforming to the prescribed standards as the '*extraneous matter*' was found to the extent of 0.3% as against the maximum prescribed limit of 0.1% for sugar under Item No.A.07.01 of the Prevention of Food Adulteration Rules, 1955 and thus, was found to be adulterated.
4. Learned counsel for the petitioner while assailing the impugned judgment has submitted that though an independent witness namely Vinod Kumar had been associated at the time of drawing sample but for reasons best known to the prosecution he has not been examined which renders the case of the prosecution highly doubtful as the case of the prosecution is rendered bereft of independent corroboration. Learned counsel for the petitioner has further submitted that the alleged adulteration i.e. presence of "*extraneous matter*" to the extent of 0.3% instead of 0.1% is marginal and that the same can be due to varied reasons including some error in analysis and as such the petitioner deserves to be acquitted. He has further contended that the sugar in question was only for the purpose of preparing sweets and was not for sale and as such the petitioner can not be said to have committed any offence.

5. On the other hand, the learned counsel for the State has submitted that there is no infirmity in the impugned findings of conviction as recorded by both the Courts below. He has submitted that in case the petitioner was aggrieved by the report of the public analyst, he could have got the second sample analyzed so as to rule out the possibility of error in the analysis. The learned State counsel has submitted that the variation in purity, howsoever small, would render the petitioner liable for having committed the offence punishable under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act').
6. I have considered the rival submissions addressed before this Court as regards the challenge to the conviction of the petitioner and have also perused the record. PW-1 N.D. Sharma, G.F.I. has specifically stated that on 27.9.1997 he along with Dr. R.C. Mittal and one Vinod Kumar inspected the premises of the accused and the accused was found in possession of 2 Kgs. of sugar meant for preparation of sweets for public sale. He has stated that a sample of 600 grams of sugar was drawn after thoroughly mixing the same and which was further divided in the three equal parts which were put into three clean, dry and empty bottles which were duly stoppered, labelled and sealed. He has further deposed that one of the sealed sample was sent for analysis to Public Analyst, Karnal, Haryana through Shri Sat Pal, Peon and that sample seals were also sent separately. He has further deposed that as per the report of the Public Analyst (Ex.PE) the sample was found to contain "*extraneous matter*" to the extent of 0.3 % as against the maximum prescribed limit of 0.1% and hence adulterated. PW-2 Dr. R.C. Mittal has fully corroborated the statement of PW-1 N.D. Sharma. Despite lengthy cross examination of both the aforesaid witnesses

nothing substantial could be elicited during the course of their cross examination. I find that the testimonies of PW-1 N.D. Sharma, Government Food Inspector and of PW-2 Dr. R.C. Mittal are absolutely consistent on all material aspects of the case. No doubt the prosecution has given up the independent witness namely Vinod Kumar but his non-examination can not be said to be fatal to the case of the prosecution as both the PWs had participated in drawing the sample from accused in discharge of their official duties and they had no axe to grind against the accused. There is nothing on record to discredit the aforesaid witnesses and their testimonies fully establish the case of prosecution.

- 7 As regards the contention of the petitioner that the sugar in question was only for the purpose of preparing sweets and was not for sale, this Court is unable to agree the aforesaid submission inasmuch as the possession of adulterated sugar, even if not directly for sale, would fall within the mischief of Section 7 of the Act as the petitioner, in any case, was to sell the sweets made with the help of adulterated sugar. In view of the aforesaid discussion, this Court does find any reason to alter the finding of conviction as recorded by the courts below.
8. The learned counsel for the petitioner has next submitted that the petitioner has been facing the incarceration of trial since the last about 20 years and is not a previous convict and has thus prayed for reduction in sentence. The learned counsel has relied upon judgments of this Court reported as Ram Kanwar Vs. State of Haryana, 2016(3) RCR (Criminal) 844 and Jagdish Chander Vs. State of Haryana, 2016(4) RCR (Criminal) 606.

9. On the other hand, the learned counsel representing the State has submitted that for an offence under Section 7 read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954, a minimum sentence of imprisonment for six months is prescribed and that the sentence cannot be reduced to less than six months. The learned State Counsel has today produced the "Custody Certificate" of petitioner, as per which the petitioner has undergone only 18 days of imprisonment.
10. I have considered the rival submissions addressed before this Court and have also perused the judgments relied upon by the learned Counsel for the petitioner. Article 21 of Constitution of India guarantees a right to speedy trial in favour of the accused. It is now well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Further, in a case reported as Des Raj v. State of Haryana, 1996(1) RCR(CrL.) 689, this Court has held that right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.
11. The learned counsel has also pressed into service a judgement of Apex Court in a case reported as Braham Dass v. State of Himachal Pradesh, 1988(2) RCR(Criminal) 184 wherein while discussing the matter regarding imposition of sentence in case of a protracted trial, it has been observed as under :

"Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back.

Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the Court should take strict view of such matter."

12. In this context a reference needs to be made to a subsequent judgment of the Hon'ble Apex Court reported as 2014(13) SCC 423 Mithilesh Versus State of Nct, Delhi, wherein the Hon'ble Apex Court while upholding the conviction of an accused who was found in possession of adulterated Chilly Powder wherein the presence of Sodium Chloride was found to be exceeding the prescribed limits, the Hon'ble Apex Court did not accept the contention of the petitioner/accused for reduction in sentence to the period already undergone which was 12 days only and held that the High Court had already shown leniency by reducing the sentence from rigorous imprisonment of one year to three months. The Hon'ble Apex Court in the concluding paragraph observed as under:-

"11. We are of the view that no further benevolence can be shown to the appellant, more so, when it is a case of food adulteration. There is no special circumstances which may warrant reducing the sentence below the minimum."

13. As regards the judgments cited by the petitioner i.e. Ram Kanwar Vs. State of Haryana, 2016(3) RCR (Criminal) 844 and Jagdish Chander Vs. State of Haryana, 2016(4) RCR (Criminal) 606, a perusal of the same shows that in both the cases, the petitioner had already undergone more than three months of

imprisonment and the Hon'ble Court while holding that special circumstances are made out for reduction of sentence in terms of proviso to Section 16(1) of the Act, had reduced the sentence to the period of imprisonment already undergone. Thus, both the said cases were on a different footing inasmuch as the accused had already undergone three months of imprisonment as is provided under the Act in case the proviso to Section 16(1) of the Act is invoked.

14. In the present case, sample was drawn in the year 1997 and as such by now a period of 20 years has elapsed. The period of incarceration of trial and appeal for 20 years would surely constitute special circumstances so as to justify some reduction in sentence especially in view of the cited judgments,.
15. Consequently, while upholding the conviction of the petitioner, the sentence of rigorous imprisonment imposed upon him is reduced from one year to three months. The sentence of fine shall, however, remain same.
16. The appeal stands dismissed with the aforesaid modification in the quantum of sentence of imprisonment and fine.

July 10, 2017

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No