

In the High Court of Punjab and Haryana at Chandigarh

CRR No.338 of 2008 (O&M)

Date of Decision:-December 22, 2017

Irfan Ali

.....Petitioner

Versus

State

.....Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. B.D.Sharma, Advocate, for the petitioner.

Mr. G.S.Chahal, Advocate, for the respondent-State.

Gurvinder Singh Gill, J.

1. Irfan Ali has filed this revision petition challenging judgment dated 2.2.2008 passed by learned Additional Sessions Judge, Chandigarh whereby his appeal against judgment dated 9.8.2005 of learned Chief Judicial Magistrate, Chandigarh convicting him for offence under Section 7(i) punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'PFA Act'), has been dismissed.
2. Briefly stated, the case of the prosecution is that on 20.3.1986, Food Inspector Balbir Singh inspected premises of Irfan Ali who was found in possession of 200 cups of 'Delicious Ice Cream' for sale. After issuing a notice in writing in the shape of prescribed Form VI, 900 grams of Ice Cream was purchased after

mixing the same. The purchased ice-cream was divided into three equal parts and was put into separate bottles. 24 drops of formalin were added as preservative in each of the bottles. One of the said bottles was sent for chemical analysis to Public Analyst, Chandigarh. As per report of the Public Analyst, the sample did not conform to the standards prescribed for Ice Cream and was thus opined to be adulterated. The Food Inspector, consequently, filed a complaint in the Court of learned Chief Judicial Magistrate, Chandigarh, alleging therein that the accused had committed offence under Section 7(i) punishable under Section 16 (1)(a)(i) of the PFA Act.

3. Charges were framed against the accused for offence under Section 7(i) of the PFA Act punishable under Section 16 (1) (a) (i) of the PFA Act to which the accused pleaded not guilty and claimed trial.
4. The prosecution, in order to establish its case examined PW-1 Sh. Balbir Singh, Food Inspector and PW-2 Sh. Prakaram Chand, Sr. Assistant, Office of Local Health Authority, U.T. Chandigarh who produced the official record pertaining to despatch of report of Public Analyst to the accused. Upon conclusion of prosecution evidence, statement of accused was recorded in terms of Section 313 Cr.P.C. wherein he denied the prosecution case and took a stand that infact the sample drawn was of 'fruit cream'. The accused in his defence examined DW-1 Naresh Kumar.
5. The learned trial Court, upon appraisal of evidence on record, held that the charges framed against the accused stood fully established and while convicting the accused for offence under Section 7(i) punishable under Section 16(1)(a)(i) of the PFA Act, sentenced him to undergo rigorous

imprisonment for six months and to pay fine of ₹1000/-. Appeal filed against the said judgment was also dismissed by the learned Additional Sessions Judge, Chandigarh vide judgment dated 2.2.2008. Aggrieved with the same, the accused has preferred the present revision petition.

6. The learned counsel for the petitioner while assailing the impugned judgment submitted that in fact it was a case of 'Fruit-Cream' and no standards having been prescribed for the same, the petitioner could not be held guilty for committing any offence. It has also been argued that the sample was not even properly drawn and cannot be said to have been homogenized properly so as to be held a truly representative sample. The learned counsel further submitted that in the present case there is no corroboration to the testimony of the complainant and although one independent witness namely Naresh Kumar was cited as a witness in the complaint but he was not examined by the prosecution and who infact appeared as a defence witness. The learned counsel thus submitted that in view of the aforesaid infirmities the impugned judgment cannot sustain and the petitioner is entitled to be acquitted. The learned counsel also made an alternate submission that in case the conviction is upheld, the petitioner may be released on probation in view of the fact that he is aged about 67 years.
7. On the other hand, learned counsel representing the State submitted that all the mandatory safeguards had been adhered to at the time of drawing sample and no infirmity can be found in sampling or in the report of Public Analyst/Central Food Laboratory. He has further submitted that joining an independent witness is a rule of prudence and not a rule of law and the case of prosecution can not be doubted on this score. The learned State counsel has

thus submitted that there is no infirmity in the impugned judgment and that the petition deserves to be dismissed.

8. I have considered rival submissions addressed before this Court and with able assistance of learned counsel have also perused record of the case.
9. The learned counsel for the petitioner in order to impress upon his contention that no standard is prescribed for 'Fruit Ice-Cream', cited a judgment of this Court reported as 1990(1) RCR (Criminal) 23 State of Punjab Vs. Dharamveer which also pertained to a case of fruit ice cream wherein discharge of the accused by trial Court was upheld.
10. I have considered aforesaid submission. Before proceeding further, it is apposite to refer to the report of the Public Analyst (Ex.PD) and also the report of the Central Food Laboratory (Ex.PG). In both the said reports it is specifically recorded that the contents of the sample contained fruit pieces. Since the report of the Central Food Laboratory supersedes the report of the Public Analyst, the report of the Public Analyst need not to be referred to in detail. As per the report of CFL (Ex.PG), the following results of the tests were recorded:

“1. Physical appearance : Slightly viscous liquid not free from the presence of 2-3 fruits pieces and one ice-cream cup (made of wax paper) labelled as “Delicious ice-cream”.

2. Total solids : 28.66% by weight

3. Milk fat : 2.37% by weight

4. Protein (N x 6.38) : 2.25% by weight

5. Test for the presence

of artificial sweetener

- (a) Saccharin : Negative
- (b) Dulcin : Negative

- 6. Test for the presence of artificial colouring matter : Negative
- 7. Test for the presence of added starch : Negative
- 8. Test for the presence of cane sugar : Positive

and I am of the opinion that the sample does not conform to the standards laid down for ice-cream under the provisions of PFA Act 1954 and Rules thereof, in that:-

- (a) Total solids content falls below the minimum specific limit of 36.0% by weight.
- (b) Milk fat content falls below the minimum specified limit of 8.0% by weight.
- (c) Protein content falls below the minimum specified limit of 3.5% by weight.”

11. The standards prescribed for 'Ice-Cream' under Item A.11.02.08 of Appendix B to Prevention of Food Adulteration Rules, 1955, as existing in the year 1986 were as follows :

“A.11.02.08. – Ice Cream, Kulfi and Chocolate Ice Cream mean the frozen produce obtained from cow or buffalo milk or a combination thereof or from cream, and/or other milk products, with or without the addition of cane sugar, dextrose, liquid glucose and dried liquid glucose, eggs, fruits, fruit juices, preserved fruits, nuts, chocolate, edible flavours and permitted food colours. It may contain permitted stabilizers and emulsifiers not exceeding 0.5 per cent by weight. The mixture shall be suitably heated before freezing. The product shall contain not less

than 10.0 per cent milk fat, 3.5 per cent protein and 36.0 per cent total solids except that when any of the aforesaid preparations contains fruits or nuts or both, the content of milk fat shall not be less than 8.0 per cent by weight.

Starch may be added to a maximum extent of 5.0 per cent under a declaration on a label as specified in sub-rule (2) of Rule 43.

The standards for ice cream shall also apply to softy ice-cream.

In case of ice-cream, where the chocolate or like covering portion forms a separate layer, only the ice-cream portion shall conform to the standards of ice-cream.”

12. The judgment cited by the learned counsel is not of much assistance to the petitioner as in the said case this High Court has in fact disapproved the discharge of the accused by relying upon 1980 PLR 403 Lekh Raj Vs. State. However, this High Court did not interfere in the order of discharge as there were some other points in favour of the accused.
13. In Lekh Raj's case (Supra), the sample was of 'fruit cream' and not of fruit ice-cream and it was held that since the Food Adulteration Act does not prescribe any standard for 'fruit cream', therefore, the accused could not be held liable for having committed any offence. However, under Item A.11.02.08 of Appendix 'B' to Prevention of Food Adulteration Rules, 1955, the standards for ice-cream are prescribed and it is specifically provided that where ice-cream contains fruits or nuts, the milk fat shall not be less than 8%. Thus, the submission raised by the learned counsel that there is no standard prescribed for fruit Ice Cream cannot be accepted.
14. To consider the contention regarding improper sampling, the statement of

Food inspector needs to be referred to. The relevant extract from the statement of PW-1-Balbir Singh pertaining to the sampling reads as follows:-

“..... I put the contents of said delicious Ice Cream from some cups of said Ice-cream to a dry and clean jug with the help of dry and clean spoon and got the contents of said ice-cream melted. Thereafter, I purchased 900 gms. of delicious ice-cream against cash payment of Rs.36.50 paise after mixing the same with help of dry and clean spoon in the jug for the purpose of analysis and examination and thereafter, the contents which were approximately 900 gms. were put into three dry and clean glass bottle equally.....”

15. A perusal of the cross-examination of PW-1 shows that the Food Inspector has stated that he has not mentioned in any of the document or in complaint as to how many cups of ice-cream had been taken for sample. In fact, the said fact is not even stated by the Food Inspector while appearing in the witness box. Further, the Food Inspector very categorically stated that there was no fruit in the ice-cream from which sample was drawn by him, which is contrary to the report of CFL. Relevant extract from his cross-examination is reproduced below:

“ XXXX by Sh. S.C.Sharma, Adv., counsel for accused

I am not the complainant in this case nor Mr. Jagpal, ADA is the complainant. It is correct that Sh. Kuldeep Singh is the complainant in this case who has since expired. I melted the ice-cream in the Jug. I took the

sample of the ice-cream which was in liquid form. I do not remember how many cups I took as sample of ice cream. It is correct that this fact is neither mentioned on any of the documents or in the complaint as to how many cups of ice cream I took as sample.....

..... Fruit pieces were not there in the ice-cream of which I took the sample.”

16. The aforesaid inconsistency regarding there being no fruit pieces in ice-cream as against report of FSL, when examined in light of the fact that there is no other witness, neither official not independent, to lend corroboration to the testimony of the Food Inspector despite the fact that the Food Inspector himself admitted that at the time of taking sample Sh. M.K.Sharma, Food Inspector and Sh. V.S.Thakur were also present at the spot puts the Court to caution. Further the independent witness associated at the time of sampling namely Naresh Kumar was given up by prosecution being won over and has been examined by the accused who has stated to the effect that in fact the sample was of fruit cream and that the accused had told the said fact to the Food Inspector.
17. Though, it is settled law that associating an independent witness is a rule of prudence and absence thereof *ipso facto* would not affect the case of prosecution, but in the present case, the independent witness has in fact supported the case of the accused. The testimony of the solitary eye witness i.e. the Food Inspector is also rather discrepant inasmuch as the Food Inspector stated that there were no fruit pieces in the sample drawn by him whereas, both the reports i.e. of the Public Analyst as well as of the CFL reveal that there were fruit pieces in the Ice Cream.

18. In the back-drop of above stated factual position, wherein the testimony of the solitary official witness i.e. of the complainant himself is rather discrepant, it would not be safe to rely upon the same especially, when neither the official witness present at the spot have been examined nor the independent witness has come out to support the case of the prosecution.
19. In view of aforesaid discussion, the impugned judgment cannot sustain and is liable to be set aside. The revision petition merits acceptance and is hereby accepted. The impugned judgment of the trial Court and of the Appellate Court are set aside and the petitioner is acquitted of all the charges framed against him.

(Gurvinder Singh Gill)
Judge

December 22, 2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No