

In the High Court of Punjab and Haryana at Chandigarh.

CRR No.1113 of 2010

Date of Decision:- September 29, 2017

Ram Gopal

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Sharad Aggarwal, Advocate.
for the petitioner.

Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. Ram Gopal has filed the present revision petition challenging judgment dated 10.4.2010 passed by the Court of learned Additional Sessions Judge, Faridabad, whereby his appeal challenging his conviction for offence under Section 7 punishable under Section 16(1)(a)(i) read with of Prevention of Food Adulteration Act, 1954 (for short, 'PFA Act'), has been dismissed.
2. Shorn of unnecessary details, the case of prosecution is that on 21.5.2000 at about 2 PM the Government Food Inspector (for short, 'GFI') inspected the premises of the accused who was found in possession of 30 KG of '*desi ghee*' for public sale contained in a '*patila*'. The GFI, after giving notice in writing, purchased 600 ML of '*desi ghee*' after mixing the '*ghee*' contained in '*patila*'. The purchased *ghee* was divided into three equal parts and put into three

separate bottles which were duly stoppered labelled and sealed. The Food Inspector was accompanied by Dr. Sudhir Khurana, Medical Officer (PW-3). One of the sealed bottle containing 'ghee' was sent for analysis to the office of Public Analyst. The Public Analyst vide his report(Ex.PE) found that the sample does not conform to the specified standards of Ghee as laid down under item No.A.11.02.21 of the PFA Rules, 1955 inasmuch as the Reichert value was found to be 5.83 i.e below the minimum specified limit of 28. Hence the sample of ghee was opined to be adulterated.

3. Upon receipt of the report of the Public Analyst, the GFI instituted a complaint in the Court of learned Chief Judicial Magistrate, Faridabad. After recording pre-charge evidence, charges were framed against the accused on 7.2.2005 by the learned Chief Judicial Magistrate for the offence under Section 7 punishable under section 16(1)(a)(i) of the Act, to which the accused pleaded not guilty and claimed trial.
4. The prosecution in order to establish its case examined PW-1 Jitender Yadav, Government Food Inspector, PW-2 Ram Chander, Clerk, Local Health Authority, Faridabad and PW-3 Dr. Sudhir Khurana, Medical Officer. Upon conclusion of prosecution evidence, statement of accused was recorded in terms of Section 313 Cr.P.C. wherein he denied the prosecution case in toto and pleaded innocence. The accused in his defence tendered documents Ex.D-1, Ex.D-2, Ex.D-3 and D-4 i.e. copies of notifications of Government of Haryana and Delhi Government.
5. The learned Chief Judicial Magistrate upon appraisal of the evidence on record held the accused guilty of having committed offence under Section 7

punishable u/s 16(1)(a)(i) of the Act and sentenced him to undergo simple imprisonment for six months and to pay fine of ₹ 2,000/- vide judgment dated 12.9.2009. The appeal filed by the accused was dismissed by the Court of learned Additional Sessions Judge, Faridabad vide judgment dated 10.4.2010. Aggrieved with the same, the present revision petition has been filed.

6. The learned counsel for the petitioner while assailing the impugned judgment has submitted that no independent witness was joined at the time of drawing sample from the accused which renders the case of the prosecution highly doubtful and no sanctity can be attached to the entire procedure of drawing sample. The learned counsel further submitted that the accused has virtually been deprived of his right to get the second sample analysed on account of non-compliance of provisions of Section 13(2) of PFA Act. It has also been submitted that neither the 'ghee' was heated and nor the same was homogenized before drawing the sample and in these circumstances the sample cannot be said to be a homogenized and representative sample. The learned counsel has further submitted that there is no evidence on record to show that the GFI was properly authorized and competent to draw sample and in the absence of proper authorization the entire case of the prosecution falls to ground being a contravention of provision of Section 20 of the Act. The learned counsel has thus submitted that in view of the aforesaid infirmities, the impugned judgment cannot sustain and is liable to be set aside and thus prayed for acquittal of the petitioner.
7. On the other hand, learned counsel representing the State submitted that the impugned judgment is well reasoned and that all the points raised by learned

counsel for the petitioner have been discussed in detail by the Court below and that there is no infirmity in the impugned judgment and the present revision petition deserves to be dismissed.

8. I have considered rival submissions addressed before this Court and have also perused record of the case.
9. The foremost contention raised by petitioner is regarding non-joining of independent witness at the time of drawing the sample. A perusal of testimony of PW-1 shows that he has specifically stated that he had made efforts to join some independent witness but none was willing to associate as a witness. A perusal of spot-memo(Ex.PC) prepared at the spot on 21.5.2000 also shows that GFI has recorded a specific note therein that no independent witness co-operated. Though Section 10(7) of the PFA Act does prescribe that the GFI should join one or more person at the time of drawing sample, but it has been held that non-joining of an independent witness is not always fatal to the case of prosecution especially when the evidence otherwise inspires confidence. In a case reported as (1992) 2 SCC 100, State of U.P vs. Hanif, Hon'ble the Supreme Court held as follows:

“It is not the law that the evidence of Food Inspector must necessarily need corroboration from independent witnesses. The evidence of the Food Inspector is not inherently suspected, nor be rejected on that ground. He discharges the public function in purchasing an article of food for analysis and if the article of food so purchased in the manner prescribed under the Act is found adulterated, he is required to take action as per law. He discharges public duty. His evidence is to be tested on its own merits and if found acceptable the court would be entitled to accept and rely on to prove prosecution case.”

10. In another case reported as (2004)13 SCC 72 Food Inspector vs. G. Satyanarayana, wherein the accused had been acquitted on grounds of non-joining of independent witness at the time of drawing sample, Hon'ble the Supreme Court while setting aside the acquittal held that corroboration of the statement of main witness is not the requirement of law but is only a rule of prudence. In the present case the GFI has furnished explanation for non-joining of the independent witness to the effect that none was willing to join. Further the Food Inspector (PW-1) was accompanied by PW-3 Dr. Sudhir Khurana. There is nothing on record to suggest that the said witnesses had any axe to grind against the accused so as to have deposed falsely against the accused. Thus, non-joining of independent witness is not fatal to the case prosecution.
11. The learned counsel for the accused has submitted that there is non-compliance of Section 13(2) of the Act inasmuch as the accused was never informed about the result of Public Analyst's Report and he was consequently deprived of getting the second sample analysed from CFL and thus his valuable right had been defeated.
12. I have considered the aforesaid submission. In the present case the sample was drawn on 21.5.2000 as is evident from perusal of Form VI (Ex.PA). On the very next day i.e. 22.5.2000 one sealed sample along with specimen seal was sent to the office of Public Analyst and the remaining two were deposited in the office of LHA Faridabad. The covering letter Ex.PD records the aforesaid facts. Upon receipt of report dated 27.6.2000 of Public Analyst wherein it was opined that the sample did not conform to the specified

standards of 'ghee', a complaint dated 20.9.2000 was filed in the Court of learned Chief Judicial Magistrate, Faridabad. It has specifically been stated by PW-1 that after instituting the complaint, he had informed the office of LHA Faridabad regarding institution of the complaint. PW-2 Ram Chander, Clerk, LHA Office of Civil Surgeon produced the summoned record from the office of LHA Faridabad to prove dispatch of report of Public Analyst to the accused with forwarding letter Ex.PW-2/A. He has also proved the receipt regarding the aforesaid dispatch as Ex.PW-2/B. A perusal of the covering letter Ex.PW-2/A shows that the accused had been specifically informed that in case he desires he can get the second sample analysed from Central Food Laboratory. No doubt in the present case the complaint was not filed immediately after receipt of the Public Analyst Report but the accused had been informed immediately upon filing of the complaint which is sufficient compliance of the provision of Section 13(2) of the Act. In any case the accused, at any point of time even after appearing in the Court, never expressed his desire to get the second sample analysed. No such application or request was ever made to the Court. As such, it cannot be said that the right of getting the second sample analysed had been defeated in any manner. The aforesaid contention raised on behalf of the accused is devoid of merits and is repelled.

13. It has next been submitted that Section 20 of the Act mandates that no prosecution for an offence under PFA Act is to be instituted except with the written consent of the Central/State Government or by a person duly authorized in this behalf by the Central/State Government. I have considered the aforesaid submission. A perusal of the complaint itself shows that the GFI

has specifically mentioned in the very first paragraph as regards the notification vide which he was appointed as a Food Inspector for the area of District Faridabad. The relevant extract from the complaint is reproduced below:

“..... The complainant as Food Inspector appointed under the Act for all the local areas of Distt./Tehsil Faridabad vide Haryana Govt. Notification No.36/31/2HB-II/92 dated 1.4.1994 inspected the Premises of Shri Ram Gopal on 21.5.2010 at 2.00 PM Sector 15-A Faridabad and found Sh. Ram Gopal having in his possession of about 30 Kgs of Deshi Ghee for public sale.....”

14. The notification dated 1.4.1994 has been placed on record as Ex.D-2 by the accused himself wherein it has been notified that Sh. Jatinder Singh has been appointed as Government Food Inspector for the whole of State of Haryana except Railway Station and Railway premises. The local area has further been defined. The notification reads as follows:

“HARYANA GOVERNMENT

HEALTH DEPARTMENT

Notification

The April 1, 1994

In exercise of the powers conferred by sub-section (1) of section 9 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) read with rule 8 of the Prevention of Food Adulteration Rules, 1955, the Governor of Haryana hereby appoints the following Government Food Inspectors:-

1. Shri Daya Kishan Sharma
2. Shri Mahabir Singh
3. Shri Narain Datt

4. Shri Sham Lal Mahiwal
5. Shri Prithvi Singh
6. Shri Rajinder Singh
7. Shri Jitender Singh

to be Food Inspectors for the whole of the State of Haryana excepting railway stations and railway premises.

Further, in exercise of the powers conferred by sub-section (2) of Section 9 of the Preventions of Food Adulteration Act, 1954, the Governor of Haryana hereby specifies the Local (Health) Authority Incharge of Health Administration of the Local Area wherein the aforesaid Food Inspectors are posted to which they shall be subordinate.

RAGHBIR SINGH

Commissioner & Secretary to Government, Haryana
Health Department”

15. A perusal of the aforesaid notification shows that it is very clearly and in unambiguous terms specified that the Food Inspector appointed therein have been appointed for the entire State of Haryana and the local area has been defined as the area in which they are posted under the Local Health Authority. Since at the given point of time the Food Inspector was posted at Faridabad, therefore, the local area in terms of Section 20 would be Faridabad. Had it been a case that the Food Inspector while being posted in Faridabad had drawn sample from other District, the contention raised by learned counsel might have carried weight but in the above stated circumstances it cannot be said that the Government Food Inspector was not authorized to inspect the premises and draw the samples within the area of Faridabad. The aforesaid contention is thus devoid of merit and thus repelled.

16. It was also argued that '*desi ghee*' was not heated before drawing the sample and that such the sample cannot be said to be a true representative sample. The learned counsel has submitted that ideally the '*ghee*' should have been heated to make it homogenous before drawing the sample. I have considered the aforesaid submission. In the present case, it is to be borne in mind that the sample of '*ghee*' was drawn in the month of May i.e. on 21.5.2000 which is peak summer season and '*desi ghee*' when kept at room temperature would be in molten state. It is not the case that the '*ghee*' was in refrigerated condition or was in a solidified state. The ghee was contained in a '*patila*' kept in the premises of the accused. In these circumstances there was no requirement of heating the '*ghee*' before drawing sample. The aforesaid contention raised on behalf of the accused does not carry any weight and is repelled.
17. The learned counsel for the petitioner has next submitted that the sample drawn cannot be said to be a true representative sample inasmuch as the desi ghee which was contained in a patila was never mixed to make it homogeneous before drawing sample and that the Government Food Inspector(PW-1) as well as PW-3 Dr. Sudhir Khurana, Medical Officer are both conspicuously silent in this regard in their statements recorded in the Court. The learned counsel has further submitted that though in the complaint Ex.PF it is mentioned that the sample was drawn after mixing the whole contents properly which were made uniform but the said complaint has been filed on a printed proforma on which the names and other particulars are merely written in hand and the factum of mixing is pre-printed on the proforma itself. The learned counsel has thus submitted that in the absence of

substantive evidence in the shape of testimonies in the Court regarding factum of mixing of ghee, it cannot be said that the contents of patila were made homogeneous before the samples were drawn and as such the accused is entitled to acquittal on this short score itself.

18. I have considered the aforesaid submission. There is no denying the fact that before drawing a sample the contents from which the sample is drawn should be homogenized especially if the same happens to be in liquid/semi-liquid form. In the present case the sample is of desi ghee and was drawn in the month of May which is peak summer season and thus would be in a molten state. As such, it was the bounden duty of the Government Food Inspector to have homogenized the contents before drawing sample. However, perusal of the testimony of PW-1 and PW-3 shows that none of them has stated a word regarding mixing the contents of '*patila*' containing '*ghee*' before the samples were drawn. As such, I find that the evidence in this regard is absolutely missing and the mere fact that the factum of 'mixing' is mentioned in the complaint is not sufficient to establish that the sample was drawn after duly mixing the entire contents of the patila in which desi ghee was kept.

19. In view of the above stated omission, the sample in question cannot be said to be a true representative sample and consequently the report of Public Analyst cannot be made a basis for launching prosecution against the accused. In view of the aforesaid infirmity the conviction of the accused cannot sustain and the impugned judgment is liable to be set aside. The revision petition merits acceptance and is hereby accepted. The impugned judgment upholding conviction of accused for having committed offence under Section 7

punishable Section 16(1)(a)(i) of the Act is hereby set aside. The accused is consequently acquitted of the charges framed against him.

20. The revision petition stands accepted accordingly.

(Gurvinder Singh Gill)
Judge

September 29, 2017
mohan

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No