

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

**CRL. REVISION No.1263 OF 2010 (O&M)
DATE OF DECISION : 2nd MAY, 2017**

Gourav Barry

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Vikram Jain, Advocate for the petitioner.

Mr. G. S. Salwara, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. This is revision petition against judgment dated 19.02.2009 and order of conviction dated 21.02.2009 passed by the Chief Judicial Magistrate, Panipat, who convicted the revision petitioner for commission of offence under Section Prevention of Food Adulteration Act, 1954 (in short, the "PFA Act") and sentenced him to undergo rigorous imprisonment for six months and to pay fine of ₹1,000/- and in default to undergo simple imprisonment for one month, confirmed in Criminal Appeal No.11 of 2009 decided on 28.04.2010 by learned Additional Sessions Judge, Panipat.

2. In support of the revision petition learned counsel for the petitioner submitted that both the courts below have ignored the admissions given by the witness K. K. Sharma, GFI in the cross-examination that the sample that was collected by the Food Inspector was taken from the kitchen of the restaurant run by the petitioner. In other words according to learned counsel for the petitioner 2 kilograms of

dhania powder was lying in a bag in the restaurant Dili Darbar at Lal Batti Chowk, Panipat, for being used in the food being prepared in the restaurant and obviously the same was not for sale which is the requirement for prosecution under PFA Act. He then submitted that the trial Court as well as the appellate Court did not accept the said ground on facts, as according to the Courts below the said defence was being taken at late stage. According to him in the trial Court itself in the cross-examination admissions were made by the concerned food inspector Mr. K. K. Sharma, who had taken the samples and therefore, there was no question of anything being projected after thought. He then contended that there was also evidence on record that there are employees working in the kitchen of the restaurant which clearly corroborated the fact that sample of *dhania* was taken from the restaurant and the restaurant was not doing the business of selling *dhania* powder. Finally he prayed for acquittal of the revision petitioner.

3. *Per contra*, the learned counsel for the State vehemently opposed the revision petition and submitted that the present revisional jurisdiction is limited to see whether there is any error of law committed by the courts below. According to the learned State counsel, the revision petitioner has not pointed out any error of law or of jurisdiction on the part of the courts below and on the contrary, the petitioner wants this Court to re-appreciate the evidence which is impermissible under law. At any rate, he submitted that the revision petitioner has never argued at initial stage itself about the said defence regarding the sample being taken allegedly from the restaurant. He, therefore, supported both the

judgments rendered against the revision petitioner and prayed for dismissal of the revision petition.

4. Heard learned counsel for the rival parties at length. I have perused the entire record namely the evidence of witnesses and reasons given by the courts below for recording conviction of the petitioner. I find the following salient features in the prosecution case.

5. Reading of the complaint filed by the Food Inspector, shows everywhere use of the word 'premises' from which the sample of *dhania* powder was taken by him. Reading of the examination-in-chief in entirety of the Food Inspector K. K. Sharma, also shows the same position. In other words, the Food Inspector Mr. K. K. Sharma has presented his case with full pretension that he has taken the sample from the premises. It appears that he has deliberately chosen to repeat the word premises rather than shop premises or restaurant premises or as the case may be but has throughout in his cross-examination and in examination-in-chief and complaint as well used the word sample taken from the "premises". To repeat Mr. K. K. Sharma has nowhere in his narration of his prosecution case described the taking of sample from any restaurant or hotel nor has given the name of the premises. The premises are admittedly known as Dili Darbar having certificate of registration in Form B Exhibit D-1, Exhibit D-2 certificate of registration form ST3 issued by Dy. Excise and Taxation Commissioner, Panipat both dated 12.10.2000, Exhibit D-3 Provident Fund coverage pro forma; Exhibit D-4 is a Form Under Rule 39 F of Haryana Sales Tax Act; Exhibit D-5 is a letter issued by the petitioner Saurabh Barry to ETO, Panipat dated 08.04.2002 in which he stated that the dealer is carrying business of

Halwai as per the Act and exercising his option to pay lump sum in lieu of Sales Tax by way of Composition under Rule 39(F) of H.G.S.T. The aforesaid documents were duly proved by the defence witnesses.

6. There is a document Exhibit PC under the signature of K. K. Sharma, District Food Inspector, Panipat, in which the vendors name is described as C. B. Pandey son of Ram Swarth Pandey Dili Darbar, Lal Batti Chowk, Panipat. The documents Exhibits D-1, D-2 & D-3 clearly show the business of the petitioner or Deli Darbar which is described as under:

“Trading & Preparations of all kind of Fast Food items, Halwai items, bakery products and confectionary items”

For re-sale

“All kind of Fast Food, Halwai Items, Bakery Products & Confectionary items.”

Despite the fact the documents signed by K. K. Sharma, namely Exhibit PC, itself described the premises as Dili Darbar, there is no explanation why he did not so mention in his complainant or his examination-in-chief that he collected the samples from Dili Darbar premises. He also did not produce on record the aforesaid documents of licenses describing the business of the petitioner and Dili Darbar. He has perhaps suppressed the same deliberately since he did not choose to file those documents on record but they were brought on record by the defence in their defence evidence. There is no reason why the documentary evidence, at least the government documents, should have been completely kept aside by both the courts below. In the

examination-in-chief Mr. K. K. Sharma has also not deposed that it was the business of the petitioner to sale the *dhania* powder to the customers.

7. It is at this stage now significant to note that the cross-examination of Mr. K. K. Sharma, which has been completely ignored by the courts below and for which no reasons are forthcoming. It will be appropriate to quote the translated portion by way of extract from his cross-examination:

“When I reached premises there were large number of members of public. Those who were sitting in the chairs and the tables were eating. I had taken the sample from the “kitchen” on the ground floor. It is correct to say that the place from which I took the sample was Dili Darbar shop. Whatever preparations were being made in the kitchen of Dili Darbar the said *dhania* powder was being used for the preparation. In my presence Dili Darbar persons did not serve *dhania* powder to anybody.”

8. In my opinion, the above admissions given by Mr. K. K. Sharma, clearly show that he had collected the sample from the restaurant of Dili Darbar which was engaged in preparing food and selling the food items.

9. It is important to note that the above entire evidence in the form of admissions, has been completely kept aside by the courts below, for no reasons. This Court is entitled to interfere in the revisional jurisdiction in a situation where the findings are based on no evidence or there is a perversity on the part of the courts below in making assessment

of entire evidence according to law. In the result I make the following order:

ORDER

- (i) CRL. REVISION No.1263 OF 2010 is allowed.
- (ii) The judgment dated 19.02.2009 and order of conviction dated 21.02.209 passed by the Chief Judicial Magistrate, Panipat, and judgment dated 28.04.2010 passed by learned Additional Sessions Judge, Panipat, are quashed and set aside.
- (iii) The petitioner is acquitted from the charge framed against him.
Fine if any paid by the petitioner shall be refunded to him.

2nd MAY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>