

In the High Court of Punjab and Haryana at Chandigarh.

CRR No.1462 of 2010 (O&M)

Date of Decision:- November 17, 2017

Sarjit Singh

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Ms. Vibha Tewari, Advocate for
Mr. Sandeep K. Sharma, Advocate, for the petitioner.

Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. Sarjit Singh has filed this petition challenging judgment dated 17.5.2010 passed by learned Additional Sessions Judge, Gurgaon whereby his appeal against trial Court's judgment dated 6.11.2009, challenging his conviction for offence punishable under Section 16(1)(a)(i) of Food Adulteration Act 1954 (hereinafter referred to as "PFA Act"), has been dismissed.
2. The prosecution case, in nutshell, is that on 6.6.1999, Sh. Mahabir Singh, Government Food Inspector (hereinafter referred to as "GFI") accompanied by Dr. Vishesh Kumar, Medical Officer, General Hospital, Gurgaon intercepted the petitioner at Haily Mandi, who was found carrying 5 litres of cow milk in a drum for sale. After issuing notice in terms of Form VI, the GFI purchased

750 MLs of milk after mixing the milk. The milk, so purchased, was divided into three equal parts and poured into separate dry and clean bottles. After adding formalin as preservative in each of the bottle, the bottles were stoppered and sealed. One of the said three bottles was sent to Public Analyst for analysis and as per report(Ex.PE), the sample was found to be not conforming to the prescribed standards and was thus opined to be adulterated.

3. A complaint was filed by GFI against the petitioner in the Court of learned Chief Judicial Magistrate, Gurgaon for prosecuting the accused for having committed offence punishable under Section 16 of the PFA Act. To establish its case, the complainant Mahabir Singh, GFI, himself stepped into the witness box as PW-2 and also examined PW-1 Dr. Vishesh Kumar and PW-3 Dr. S.P.Singh. The learned trial Court upon appreciating the evidence on record held that the accused had committed an offence punishable under Section 16(1)(a)(i) of PFA Act and accordingly sentenced him to undergo rigorous imprisonment for 6 months and also imposed a fine of ₹1,000/- vide judgment dated 7.11.2009. The appeal filed by the accused challenging his conviction was also dismissed by the learned Additional Sessions Judge, Gurgaon vide impugned judgment dated 17.5.2010. Aggrieved with the same, the petitioner has filed the present revision petition.
4. The learned counsel for the petitioner has assailed the impugned judgment while submitting that no independent witness was associated at the time of drawing sample and that in fact the sample drawn was not in accordance with Rule 22 of Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "PFA Rules"), as per which sample of milk should be at least 500 ML in

quantity as against 250 ML in the present case. The learned counsel has further submitted that there is contravention of Rule 13(2) of PFA Act and that in these circumstances the conviction of the petitioner cannot sustain and he is entitled to be acquitted.

5. On the other hand, learned counsel representing the State has submitted that the impugned judgment is well reasoned and has been passed after appreciating all the material aspects of the case and has thus prayed for dismissal of the petition.
6. I have considered the rival submissions addressed before this Court and, with the able assistance of the learned counsel, have also perused record of the case.
7. As regards the contention of the learned counsel regarding non-joining of an independent witness at the time of drawing a sample is concerned, there is no mandate of law that an independent witness must be associated at the time of drawing sample. The sample was drawn by the Food Inspector while he was accompanied by a responsible officer i.e. Dr. Vishesh Kumar. Both the said witnesses had drawn sample in discharge of their official duties and had no axe to grind against the accused so as to implicate the accused falsely. This Court, in 2010(1) RCR (Criminal) 282 P&H Sucha Singh Vs. State of Haryana, has held that plea of non-joining of an independent witness is not tenable and the statements of Food Inspector who took sample and medical officer as witnesses are sufficient to prove guilt of the accused.

8. In light of the ratio of the above referred judgment, the non-joining of an independent witness cannot be said to be *ipso-facto* fatal to the case of the prosecution.
9. As regards contention regarding contravention of Section 13(2) of PFA Act, a perusal of the record shows that after receipt of the report of Public Analyst (Ex.PE), a copy of the same was sent to the petitioner. The covering letter has been proved on record as Ex.PW/A. The postal receipt indicating dispatch of the said report has also been placed on record as Ex.PW-3/B. A perusal of the covering letter Ex.PW/A shows that the petitioner was specifically informed of his right to get the second sample analysed from Central Food Laboratory, Pune, in case he so desired. However, there is nothing on record to show that the petitioner had ever expressed his desire to get the second sample analysed. In these circumstances, I find that there is proper compliance of provision of Section 13(2) of the PFA Act.
10. During the course of arguments the learned counsel for the petitioner submitted that infact the milk in question was not meant for public sale and that he was carrying it to supply the same to his relative who had to prepare tea for labourers working for him. The learned counsel in this context has referred to the testimonies of DW-1 Suresh Kumar and DW-2 Surender Yadav.
11. I have considered the aforesaid submission. It is not doubt correct that when the petitioner was intercepted he was found in possession of only 5 litres of milk. However, a perusal of report prepared at the spot i.e. Ex.PC indicates that apart from the drum which contained 5 liters of cow's milk, the petitioner

was carrying two empty drums as well which clearly indicates that the petitioner was a milk vendor. In these circumstances, the testimonies of DW-1 and DW-2 to the effect that the petitioner was carrying milk for making tea for the labourers cannot be accepted and is an after-thought only.

12. The learned counsel has next submitted that the Food Inspector was required to draw at least 500 ml. of milk per sample and that since the milk purchased from the petitioner was 750 ml. only which was divided into 3 parts and thus each of the sample was 250 ml. only, therefore, the same is contravention of Rule 22 of PFA Rules.
13. I have considered the aforesaid submission. Rule 22 of PFA Rules (as amended on 29.1.2003) for the sake of ready reference is reproduced below:

22. Quantity of sample to be sent to the public analyst:– The quantity of sample of food to be sent to the public analyst/Director for analysis shall be as specified in the Table below:

Article of Food	Approximate Quantity to be supplied
(1)	(2)
Milk	500 ml.

14. The aforesaid contention cannot be accepted for the simple reason that the sample in the present case was drawn in the year 1999 i.e. prior to amendment of the Rules in the year 2003. Prior to amendment, the quantity of milk per sample was prescribed as 250 ML as per notification dated 4.7.1985 issued by

Ministry of health and Family Welfare. The relevant extract from the aforesaid notification is reproduced below:

- “2. In the Prevention of Food Adulteration Rules, 1955, (hereinafter referred to as the said rules), in the Table below rule 22,—
- (a) against item 1, for the figures and letters “220 ml”, the figures and letter “250 ml”, shall be substituted ;”

15. In any case, the Public Analyst in his report has nowhere mentioned that the sample of milk, furnished for analysis, was insufficient for carrying out the tests. In these circumstances, the contention raised above does not carry any weight and is rejected.
16. I find that both PW-1 Dr. Vishesh Kumar and PW-2 Mahabir Singh have stated consistently regarding intercepting the petitioner on 6.6.1999 while he was carrying milk for sale. Both have categorically stated that the sample was purchased from the petitioner after homogenizing the milk with the help of plunger. Upon analysis the sample was found not conforming to the prescribed standards. The standards prescribed for cow's milk and the report of the Public Analyst are reproduced below in-tabulated form:

	Milk fat	Milk solids not fat
Prescribed standard : (Minimum per cent)	4.0 %	8.5 %
Report of Public Analyst :	2.1 %	4.6 %

17. Despite the petitioner having been informed about his right to get the second sample analysed, he did not chose to exercise his option. No infirmity has been found in the procedure adopted by the Food Inspector in drawing the sample. There is no misreading of evidence by the appellate court. As such, I do not find any infirmity in the impugned judgment and the conviction of the petitioner is affirmed.
18. During the course of arguments, the learned counsel also made an alternate submission for reducing the sentence imposed upon the petitioner to the period of imprisonment already undergone by the petitioner. In this context a reference needs to be made to a 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 convicted for offence punishable under Section 16 of Food Adulteration Act 1954, 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.”

19. In view of ratio of 2014(13) SCC 423 (supra), there is no case for reduction of sentence to the one already undergone which is barely 21 days, as a minimum sentence of 6 months is provided unless some special reasons justifying reduction to three months are there. In the present case, sample was drawn in the year 1999 and as such by now a period of 18 years has elapsed. The accused is not stated to be a previous convict. As such, keeping in view the fact that the petitioner has faced incarceration of trial since the last about 18 years and is not even stated to be a previous convict, in my opinion, a case is made out for reduction of sentence.
20. Accordingly, the sentence of substantive imprisonment as imposed by the trial Court and affirmed by the appellate Court is reduced from six months to three months. The fine shall however remain the same.
21. The appeal stands dismissed with the aforesaid modification in the quantum of sentence of imprisonment and fine.

November 17, 2017
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(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No