

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

CRR-1454-2011

Date of Decision:07.09.2017

Jagdish @ Jaggi

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Yogesh Goel, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This criminal revision is directed against judgment dated 27.07.2010 and order of sentence dated 28.07.2010 passed by the Court of Judicial Magistrate Ist Class, Sonapat vide which accused Jagdish @ Jaggi was convicted for an offence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short referred to as “PFA Act”) and

sentenced to undergo rigorous imprisonment for 02 years and to pay a fine of ₹10,000/-, in default of payment of fine, to further undergo simple imprisonment for 06 months, he was further sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- for violation of Rule 32 of the PFA Rules 1985, which is separately punishable under Section 16(1)(a)(ii) of the PFA Act, 1954, in default of payment of fine, to further undergo simple imprisonment for 03 months, as well as judgment dated 10.06.2011 vide which appeal filed against the judgment of conviction and order of sentence passed by Chief Judicial Magistrate, Sonipat was dismissed by Additional Sessions Judge, Sonipat.

All the sentences were ordered to run concurrently

Briefly stated facts of the case as per prosecution version are that a team headed by Government Food Inspector (for short - "GFI") having a Medical Officer had checked the factory premises of petitioner-Jagdish @ Jaggi in the evening time of 17.09.2003, the premises were located at industrial area, Murthal where "Bansuriwala pure ghee" was kept in 17 cartons in the factory for public sale. Government Food Inspector served a notice on the petitioner and purchased three pet jars of 1 litre each of Bansuriwala pure Ghee for ₹330/-. The quantity of ghee so purchased was divided into three equal parts and transferred into three empty, clean and dry containers. The containers were closed tightly and sealed with the seal of Medical Officer. The containers were labeled and wrapped in strong thick paper and top to bottom with a slip code with the seal of Local Health Authority. The signatures of accused were obtained on the slips in such a manner that both the paper slip and wrapper on each sealed bottle carry a part of his signatures. One sealed packet along with memorandum in Form VII were sent to the office of Public Analyst, Karnal, Haryana whereas two sealed samples were deposited with Local Health Authorities; that the

certificate of Analyst Haryana was received with report that “the month and year upto which the product is best for consumption were not mentioned on the label of the sample, batch number and the month and year in which the commodity is manufactured or pre-packed was also not clearly visible on the label of the sample as required under Rule 32 of PFA Rules, 1955. The sample was found to be misbranded. Butyro Refractometer reading of the sample was 53 against the maximum prescribed standard of 43.0 and reichert value was 1.32 against the minimum prescribed standard of 28. Bauduin test was also positive whereas it should be negative as required for ghee under item No.A.11.02.21 of appendix of PFA Rules, 1955, in that way sample was found to be adulterated, the petitioner was prosecuted for offence under Section 7/16 of Prevention of Food Adulteration Act, 1954.

Based on the contents of the complaint, the accused was summoned to face the trial, which appeared and was admitted to bail.

For trial of the accused, procedure provided for trial of warrant case on a complaint, was adopted.

In pre-charge evidence, prosecution had examined GFI Surender Punia as CW-1, therefore, based on pre-charge evidence, the accused was served and charge-sheeted for commission of offence punishable under Section 7/16 of Prevention of Food Adulteration Act, 1954, to which he pleaded not guilty and claimed trial.

When the case went up for trial, learned Magistrate afforded both the parties to bring evidence.

Complainant examined Surender Poonia, GFI as PW-1 who in company of Medical Officer Dr. A.P.Gulia on 17.09.2003 had taken the sample of Bansuriwala Pure Ghee. The witness had stated that ghee was contained in 226 pet jars of 1 litre each and he had purchased 3 sealed jars of one litre each of Bansuriwala Pure Ghee from the accused. He deposed

regarding what had been done by him in his presence, when search of premises of accused was conducted.

PW-2 Dr. A.P.Gulia supported the case of complainant on material aspects.

PW-3 Narender Mor, an official of LHA Office, Sonipat deposed that after filing of complaint under Section 13(2) of the Act, Public Analyst report was sent to the accused through registered post in a sealed envelope and witness proved carbon copy of forwarding letter of said report as Ex.PW3/A, postal receipt Ex.PW3/B showing that necessary complaint of mandatory provision under Section 13(2) of the Act had been made.

According to the report received from the office of Public Analyst the sample of ghee sent to that office for analysis was misbranded as well as adulterated since the month and years upto which the product was best for consumption were not mentioned on the label of the sample. The Batch number and month and year in which the commodity was manufactured or pre-packed were also not clearly visible, hence the sample was found to be mis-branded. Butyro Refractometer reading of the sample was 53 against the maximum prescribed standard of 43.0 and reichert value was 1.32 against the minimum prescribed standard of 28. Bauduin test was also positive whereas it should be negative as required for ghee under item No.A.11.02.21 of appendix of PFA Rules and Rule 32 of the Rules, 1955.

Statements of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him was put to such accused but he denied the allegations contending that he is innocent and had been falsely involved in this case.

After hearing arguments learned trial Court convicted and sentenced the accused mentioned above against that he had preferred an appeal before learned Sessions Judge, Sonipat but was unsuccessful there, as

such he has filed the present criminal revision petition.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record.

The first and foremost argument advanced by learned counsel for the revision petitioner was that the accused was not manufacture of the desi ghee and he had been selling such ghee placed in sealed jars, if something was wrong with quality of the ghee then the responsibility for the same laid on the manufacture and not on the petitioner, but strangely enough such manufacture or its firm has not been impleaded as a party, therefore, the complaint against the petitioner is not maintainable.

Second argument put forward was that the procedure for trial of warrant case was adopted without passing specific order in that regard. Therefore, the judgment cannot be sustained; that report of Public Analyst was not put to the petitioner when he was examined under Section 313 Cr.P.C. causing material prejudice to the accused.

In support of his those contentions learned counsel has referred to various citations which are as follows:-

Asraf Ali vs. State of Assam, 2008(3) RCR (Criminal) 835, wherein it was observed that recording of a statement of accused under Section 313 is not a purposeless exercise and circumstances about which the accused was not asked to explain cannot be used against him.

In **Neel Kamal Narender Mohan vs. State of Haryana through Government Food Inspector, Rohtak, 2006(4) RCR (Criminal) 532** by a Co-ordinate Bench of this Court wherein it was held that Act provides imposition of minimum sentence of 6 months, however, sentence reduced to already undergone on the ground that accused is in custody for two months and had been facing the agony of trial and appeal for the last more than four years.

In **Shamsher Singh vs. State of Haryana, 2006(2) RCR (Criminal) 210** by a Co-ordinate Bench of this Court, which was a case of selling 'Laddus' which contained unpermitted orange acid coaltar dye and he was convicted under Food Adulteration Act, however considering the incident being 20 years old, accused was released on probation.

In **Sarwan Singh vs. State of Punjab 2006(1) RCR (Criminal) 331** by a Co-ordinate Bench of this Court where while dealing with a case when the accused had been convicted under Section 4 of Prevention of Food Adulteration Act, 1954, he was released on probation having regard to the fact that accused was an old man of more than 70 years of age and out of total sentence of six months imprisonment, he has already undergone the same for few days; that he was first offender; that he had not misused the concession during a long period of over 13 years.

In **Sita Ram Paswan and another vs. State of Bihar, 2005(4) RCR (Criminal) 138** by Hon'ble Apex Court it was observed that power to extent benefit of probation can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India.

In **Harbans Lal vs. State of Haryana, 2001(2) RCR (Criminal) 333** by a Co-ordinate Bench of this Court wherein dealing with a case where the accused had been convicted and sentenced to six months imprisonment considering that he had faced trial for about 7 years, the sentence was reduced to already undergone.

Learned State counsel has successfully countered the arguments put forward by learned counsel for the petitioner. As regards the first argument regarding the petitioner being not manufacturing of desi ghee and manufacture having not been joined as an accused in this case, learned State counsel has drawn my attention to Para No.15 of the judgment passed by

trial Court wherein this aspect has been discussed observing that from the perusal of proceeding conducted and cross-examination of witnesses, it transpires that it is not case of accused that he had purchased those ghee jars from a particular company, which was its manufacture; that accused had neither produced any bill to show the purchase of such ghee from a particular company nor was he able to give name of such firm. He has nowhere claimed that he had produced the bill of the purchase of those ghee jars at the time of raid. He has not been able to prove that ghee with the make "Bansuriwala pure ghee" was registered in the name of a particular company. The trial Court has distinguished the authorities referred to by learned counsel for accused observing that in quoted cases there was disclosure of manufacture's name as well as vendor had a written warranty in the form of proper bill of purchase. Whereas it was not so in the present case, therefore, the authorities are not of any help to the defence. I find that it is sufficient explanation to the first argument put forward by learned defence counsel.

Coming to his second argument that procedure for trial of warrant case was adopted without passing any specific order in that regard. Again this argument does not carry any merit keeping in view the fact that though the trial Court had not passed any specific order for trying the case as a warrant trial but as the record shows proceedings in the case was conducted as that of warrant trial right from the beginning after filing of the complaint when the accused was summoned and put in appearance, pre-charge evidence was recorded. Thereafter charge was framed against the accused and case was fixed for after charge evidence which was so recorded. The petitioner accused was given full opportunity to cross-examine the witnesses which he availed of, therefore, in the light of ratio of authority

Gopal Dass Sindhi and others vs. State of Assam and Another AIR 1961

(SC) 986, *it was merely procedural irregularity which did not vitiate the proceedings and was curable since no prejudice was shown to have been caused to the accused.* This aspect has been dealt with at length by the first Appellate Court in Para No.11 of the judgment and the Apex Court judgment has also been discussed and relied upon.

As regards the statements of accused under Section 313 Cr.P.C. having been recorded in perfunctory manner, I do not find myself in agreement with learned counsel for the petitioner on that point since almost all the incriminating circumstances appearing against the accused had been put to him to which he replied. Again he is not shown to have been prejudiced in any manner on that action.

The judgment passed by trial Court and those by the first appellate Court are well reasoned one, based on proper appraisal of evidence and correct interpretation of law. It does not suffer from any illegality or infirmity and accused was rightly convicted by the trial Court which was upheld by first appellate Court. Therefore, the impugned judgments are upheld as regards the conviction part.

Whereas the remaining sentence part, keeping in view the fact that accused is stated to be aged about 48 years and not a previous convict, the incident is of 2003 i.e. about 14 years back and since then he faced trial and when convicted by learned trial Magistrate, filed appeal and after appeal was dismissed, he approached this Court by way of filing this revision petition. In that way he is facing litigation for last about 14 years. He is not shown to have any previous criminal record, as per the custody certificate placed on file by the State Counsel, he has undergone 6 months and 8 days of the total sentence. The minimum sentence prescribed for the offence is 06 months.

I am of the considered view that keeping in view the facts and

circumstances and the previous antecedents of the petitioner it would be proper and appropriate if he sentenced to imprisonment already undergone by him in this case, which is little more than the minimum prescribed for the offence.

It is ordered accordingly.

With such modification the revision petition stands disposed of.

Intimation be sent to the quarter concerned.

07.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**