

In the High Court for the States of Punjab and Haryana
at Chandigarh

CRR No.3292 of 2010 (O&M)
Date of Decision:- December 1, 2017

Aakil Hussain

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Sachin Mittal, Advocate and
Ms. Aditi Girdhar, Advocate (amicus curiae) for the petitioner.

Mr. Vijesh Sharma, DAG, Haryana.

Gurvinder Singh Gill J.

1. Aakil Hussain has filed the present revision petition assailing judgment dated 1.12.2010 passed by learned Additional Sessions Judge, Nuh whereby appeal filed by him against judgment dated 6.10.2009 challenging his conviction 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. A few facts, necessary to notice for disposal of this petition, are that on 26.7.2000, Sh. Mahabir Singh, Government Food Inspector (hereinafter referred to as 'GFI') accompanied by Dr. M.S.Ranga, Medical Officer, CHC

Nuh, Gurgaon inspected the dairy of accused and found him to be in possession of 170 litres of 'mixed milk', contained in a drum for public sale. After giving notice in terms of the prescribed Form VI, 750 MLs of mixed milk was purchased after mixing the milk. The milk so purchased was divided into 3 equal parts and was poured into separate bottles which were duly sealed and labeled. One of the said bottles was sent for analysis to the Public Analyst, Haryana. As per analyst's report, the milk was found to be deficient in 'milk solids not fats'. Consequently, a complaint was filed in the Court of learned Chief Judicial Magistrate, Nuh on 25.7.2009.

3. The prosecution in order to establish charges against the accused examined PW-1 Mahabir Singh, GFI, PW-2 Dr. M.S.Ranga and PW-3 Dr. S.P.Singh. 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 pleaded false implication. The accused examined DW-1 Gurmail Singh and DW-2 Rukmuddin in his defence. The accused also moved an application under Section 315 Cr.P.C. seeking permission to step into witness box in his defence which was allowed and his statement was recorded.
4. The learned trial Court upon appreciating the evidence, held the accused guilty for having committed offence under Section 7(i) punishable under Section 16(1)(a)(i) of PFA Act, vide judgment dated 6.10.2009 and sentenced him to undergo simple imprisonment for 6 months and to pay fine of ₹ 1000/-. Appeal filed by the accused challenging aforesaid judgment was dismissed by learned Additional Sessions Judge on 1.12.2010. Aggrieved with the same, the present revision petition has been filed.

5. The learned counsel for petitioner while assailing the impugned judgment submitted that there is no independent corroboration to the case of prosecution and although one independent witness namely Mohd. Salim had been associated at the time of drawing sample, but the prosecution has chosen not to examine the said witness and which renders the case of the prosecution highly doubtful. The learned counsel further submitted that since report of Public Analyst (Ex.PF) reveals that milk fats were found to be much in excess of the prescribed standards, therefore, it was apparent that either the sample in question had not been properly homogenized or that the cows had not been properly fed as there is no method of extracting 'milk solids not fats' without affecting the fatty content of the milk and that in case water had been added in the milk, the milk fats would have also been considerably reduced. The learned counsel in order to hamerforth the aforesaid submission cites 1991(3) RCR, Criminal, State of Haryana Vs. Inder Singh.
6. The learned counsel further submitted that it was incumbent upon the Food Inspector to ensure that the bottles in which the sample of milk was poured were thoroughly clean and dry and that since neither PW-1 nor PW-2 have stated to this effect, therefore, no sanctity can be attached to the sample drawn from the petitioner. The learned counsel thus submitted that in view of the aforesaid infirmities, the conviction of the petitioner cannot sustain and he is entitled to be acquitted.
7. 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.

8. 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.
9. As far as the contention of the learned counsel regarding non-joining of an independent witness at the time of drawing sample is concerned, there is no mandate of law that 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. M.S. Ranga. 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, 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.
10. 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.
11. As regards the contention that the sample was not properly drawn, a perusal of record shows that the milk was properly homogenized before the sample in question was drawn. It is specifically mentioned in the complaint that the sample had been drawn after mixing the milk clockwise and anti-clockwise with the help of a plunger. PW-1 Mahabir Singh and PW-2 Dr. M.S. Ranga

have both specifically stated that the sample had been drawn after thoroughly mixing the milk. PW-1 GFI, Mahabir Singh has categorically stated that the milk had been mixed from top to bottom and from left to right. In view of the consistent statements of aforesaid witnesses it cannot be said that the milk had not been homogenized before the sample was drawn.

- 12 During the course of arguments learned counsel also submitted that since no freezing test have been conducted by the analyst, therefore, no reliance can be placed upon the report (Ex.PF).
13. I have considered the aforesaid submission. It is nowhere prescribed under the provisions of the PFA that a freezing test is required to be conducted for proper analysis of the milk. The learned counsel has not been able to show any such authoritative decision to support his aforesaid contention. As such, the contention is devoid of merit and is rejected. As regards the contention that there is lack of evidence to establish that the bottles in which the sample of milk had been kept were dry and clean, in my opinion the said contention would not carry weight in the present case inasmuch as the report of Public Analyst does not suggest that any impurities were found in the sample of milk. In case, the bottles were not clean or had some impurities, the same could have resulted in contamination of the sample or curdling of milk. The deficiency in milk solids not fats, by no stretch of imagination, can be attributed to any impurity in the bottle. In any case, the report of Public Analyst does not suggest presence of any foreign material in the sample of milk. The aforesaid contention, being sans merit, is also rejected.

14. As regards the contention of the petitioner that milk fats being in excess of the prescribed standards would indicate that either the milk was not homogenized or the cows were not properly fed, I have gone through the cited judgment i.e. Inder Singh's case(supra), wherein under similar circumstances where fat content was found to be excess and non-fatty solids were found to be deficient, it was held that the inference to be drawn is that either the cow was not properly fed or the report of the Public Analyst was erroneous. The learned counsel has referred to the testimony of the accused himself when he stepped into the witness box and also the statement of DW-2 Rukmuddin who have stated that during rainy season there is shortage of green fodder due to which the quality of milk gets deteriorated.
15. Though, it may be correct that shortage of fodder would affect the quality of milk. However, all such factors must have been taken into account while prescribing the minimum standards of the constituents of milk. The standards prescribed for mixed milk at item A.11.01.11 of Appendix B to Prevention of Food Adulteration Rules 1955 and the report of the Public Analyst are reproduced below in-tabulated form:

	Milk fat	Milk solids not fat
Prescribed standard : (Minimum per cent)	4.5 %	8.5 %
Report of Public Analyst :	6.5 %	7.7 %

16. Needless to mention that it is due to possibilities of variation in varying factors that the minimum standards only have been prescribed. In many cases the constituents are found to be more than the prescribed minimum standards.

The mere fact that some constituent is found in excess of the prescribed standards would not *ipso-facto* lead to an inference that there is error in sampling or analysis.

17. As regards variation in the constituents of milk *viz-a-viz* the prescribed standards, the law in this regard stands authoritatively settled by Hon'ble Full Bench of this Court reported as 1976 Criminal Law Journal 1648, The State of Punjab Vs. Teja Singh. In the cited case there was marginal deficiency in the constituents of milk. The three questions which were formulated for decision of the Full Bench read as follows:

1. Whether it is permissible to add the percentages of the various constituents of milk disclosed by the Public Analyst and, thereafter, to deduce a conclusion therefrom about the overall deficiency or otherwise of the milk from its prescribed standards ?
2. Whether the Court is entitled to assume a slight or reasonable margin of error in the conclusions recorded by the Public Analyst during the Course of analysis of the milk ?
3. Whether a negligible or marginal deviation from the prescribed standard laid down by the Act can be ignored and acquittal recorded on that basis ?

18. The Hon'ble Full Bench, after considering the matter at length returned the answer in the negative by stating as follows:

“.... From the afore mentioned quotations it is obvious that the answers to all the three questions posed in the opening part of the judgment must be returned in the negative....”

19. In view of the ratio of the Full Bench judgment, it goes without saying that neither any presumption of any error in the report of the Public Analyst can be drawn nor any marginal deviation can be ignored as is being suggested in the present case that the deficiency was due to the fact that the quality of the milk deteriorates during rainy season due to lack of green fodder. In view of the aforesaid discussion especially in light of decision of Teja Singh's case (Supra) the contention raised on behalf of learned counsel for the petitioner cannot be accepted and is hereby rejected.
20. I find that both PW-1 Mahabir Singh and PW-2 Dr. M.S.Ranga have stated consistently regarding intercepting the petitioner on 26.7.2000 while he was carrying milk for sale. Both have categorically stated that the sample was purchased from the petitioner after homogenizing the milk. Upon analysis the sample was found not conforming to the prescribed standards. 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 findings of the trial Court as regards conviction of the petitioner.
21. 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.

22. 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, did not accept the contention of the 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.”

23. 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 2000 and as such by now a period of 17 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 17 years and is not even stated to be a previous convict, in my opinion, sufficient reasons are made out in terms of proviso to Section 16 of PFA Act for reduction of sentence of imprisonment from six months to three months.

24. 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.

25. The revision petition stands dismissed with the aforesaid modification in the quantum of sentence of imprisonment and fine.

December 1, 2017
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(GURVINDER SINGH GILL)
JUDGE

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