

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 3117-2011(O&M)
Date of decision: 01.11.2017

Wahid

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Gautam Dutt, Advocate for the petitioner
Mr.R.K.Makkad, DAG Haryana

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner has challenged the judgment of conviction dated 3.9.2009 and order of sentence dated 7.9.2009 passed by the learned Chief Judicial Magistrate, Nuh, vide which, the petitioner who is a wholesale dealer of packaged drinking water was convicted under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 and sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.1000/-, in default thereof, to further undergo Simple Imprisonment for one month. He was also convicted for violation of Rule 32 of Prevention of Food Adulteration Rules, 1954 punishable under Section 16(1)(ii) proviso of Prevention of Food Adulteration Act, 1954 and sentenced to undergo Simple Imprisonment for one month and fine of Rs.300/-, in default thereof, to further undergo Simple Imprisonment for 15 days.

Both the sentences were directed to run concurrently.

Heard.

Allegations against the petitioner are that the petitioner was found in possession of 30 poly bags containing 150 packet each of packed drinking water (PDW) Aqua Pure of 300 ml each for public sale. One sample was taken

in accordance with law and sent to the Public Analyst Haryana. Report was received that the sample is found to be adulterated on the following grounds:-

“(1) Nitrite contents exceeds the maximum limit of 0.02 mg/lit. (2) Nickel exceeds the maximum limit of 0.02 mg/lit (3) The sample is not labeled in accordance with clause (e)(f) of Rule 32 and sub Rule 28 of Rule 49 of the PFA Rules, 1955”

The learned Chief Judicial Magistrate, Nuh, after recording the evidence, held that the charges against the petitioner are proved. Appeal filed by the petitioner was dismissed by the learned Additional Sessions Judge, Fast Track Court, Nuh, District Mewat vide judgment dated 28.11.2011.

Learned counsel for the petitioner has assailed the judgments on two grounds. First is that the petitioner is admittedly, a wholesale dealer. The packed drinking water was found in his possession, which was found to be adulterated and mis-branded, for which, the manufacturer is to be blamed.

I am of the view that this plea is not available to the petitioner as the petitioner never pleaded and proved before the Courts below that he had purchased the said packed Aqua Pure drinking water (PDW) from its manufacturer M/s Food Beverage, Gwalior Road, Agra through a bill nor any bill was produced before Food Inspector or before the trial Court, to plead such purchase. It being so, it cannot be said that the petitioner has purchased the said articles from the manufacturer as sought to be pleaded before this Court.

Learned counsel has further pressed the second ground that the petitioner is not liable as his valuable right of sending second sample for analysis has been defeated. It is pleaded that the sample was taken on 17.5.2003, it was dispatched on 19.5.2003 and report of the Public Analyst was received on 26.6.2003 and it was sent/ delivered to the petitioner vide letter dated 29.9.2003 (Ex.PW2/A). However, on the packets, it was written that these are best for sale before 30 days. Therefore, expiry was within 30 days.

I am of the view that the perusal of the original file shows that the

report Ex.P1 of the Public Analyst shows that on the said sample, batch number/ code number, month and year of manufacturing packing and Bureau of Indian Standard Certificate Mark are not mentioned/ written on the label of the sample. Therefore, it cannot be said that from which date, 30 days will start. Therefore, the petitioner was rightly held guilty by the Courts below.

Learned counsel for the petitioner has contended that the petitioner has already remained in jail for three months. Therefore, a lenient view should be taken.

I am of the view that maximum sentence in this case is for six months, which is not found harsh, keeping in view the fact that adulterated drinking water was found, which was also found mis-branded, not containing any batch number or date or month of manufacturing, which is hazard to the public health and safety. No ground is made out to interfere in the quantum of sentence also.

Resultantly, the present revision petition stands dismissed.

Petitioner is on bail. He be re-arrested and committed to jail to undergo the remaining part of the sentence.

01.11.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No