

In the High Court of Punjab and Haryana at Chandigarh

CRR No.573 of 2011

Date of Decision:-September 29, 2017

Mukesh Garg

.....Petitioner

Versus

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Sanjay Vashisth, Advocate,
for the petitioner.

Mr. Manoj Dhankhar, AAG, Haryana.

Gurvinder Singh Gill J.

1. Mukesh Garg has filed this revision petition challenging judgment dated 22.2.2011 passed by learned Additional Sessions Judge, Faridabad whereby his appeal against judgment dated 12.11.2009 passed by the Court of Chief Judicial Magistrate, Faridabad holding him guilty of having committed an offence under Section 7 punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 has been dismissed.
2. Shorn of the unnecessary details, the facts are that on 26.12.1999, Govt. Food Inspector(PW-1) inspected the premises of the petitioner and found 10 plastic bottles, each containing half a litre oil, bearing label of Agmark Mustard oil(Surya), manufactured by M/s Roopesh Industries and Oil Mill Bharatpur

(Rajasthan), for public sale. Three sealed plastic bottles of said Agmark mustard oil were purchased as samples after issuing notice. The bottles were duly labelled and wrapped in thick paper and were duly sealed. Upon analysis, the sample of mustard oil was found to be not conforming to the prescribed standards. Hence, a complaint was filed in the Court of Chief Judicial Magistrate, Faridabad wherein after recording pre-charge evidence, charges were framed against the accused on 15.5.2008 for offences punishable under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954, to which the accused pleaded not guilty and claimed trial.

3. The prosecution in order to establish the charges framed against the accused examined PW-1 S.P.Malik, Government Food Inspector; PW-2 A.K.Gupta, Deputy Civil Surgeon, Faridabad and PW-3 Ved Parkash, Deputy Superintendent, Legal Health Authority, Faridabad. The accused, in his statement recorded in terms of section 313 of Cr.PC. denied the prosecution allegations and pleaded false implication. However, the accused did not lead any evidence in his defence.
4. The learned trial Court, upon appraisal of the evidence on record found the accused guilty of having committed offence under Section 7 punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of ₹ 2,000/- vide judgment dated 12.11.2009. The appeal filed by the petitioner against said judgement was dismissed by the Court of Additional Sessions Judge, Faridabad vide judgment dated 22.2.2011. Aggrieved with the same, the present revision petition has been filed.

5. The learned counsel for the petitioner, while assailing the impugned judgments *inter-alia* submitted that the trial Court fell in error in not summoning the manufacturer M/s Roopesh Industries and Oil Mill Bharatpur (Rajasthan) though admittedly the mustard oil allegedly recovered from the premises of the accused was in sealed condition. The learned counsel, while referring to Section 19(2) and Section 20-A of the Prevention of Food Adulteration Act, 1954 submitted that once there was evidence on record indicating that the article of food was in sealed condition and a branded one then it was obligatory for the trial Court to have summoned the manufacturer invoking Section 20-A of the Prevention of Food Adulteration Act, 1954 and omission to summon the manufacturer has seriously prejudiced the petitioner inasmuch as the entire liability would have otherwise shifted upon the manufacturer. The learned counsel in order to hammer forth his aforesaid submission has pressed into service the judgment of Hon'ble Apex Court reported as 1996(1) R.C.R. (Criminal) 63 P.Unnikrishnan vs. Food Inspector, Palghat Municipality, Kerala State.
6. On the other hand, the learned counsel representing the State has submitted that it was for the accused to have produced some warranty or bill to indicate that he had duly purchased the articles kept by him for public sale and that in the absence of production of such bills or warranty, the accused found in possession of adulterated articles cannot escape from his liability.
7. I have considered the rival submissions addressed before this Court and have also perused the record of the case.
8. Before discussing the contention of the petitioner regarding omission to

summon the manufacturer, it would be appropriate to briefly refer to the evidence led by the prosecution. PW-1 S.P.Malik, Government Food Inspector (Retd.) stated that on 26.12.1999, at about 12:35 p.m., he had inspected the premises of M/s Durga Provision Store and the accused Mukesh Garg, Proprietor was found in possession of 10 plastic bottles of Agmark Mustard Oil(Surya) for public sale. He has stated that Dr. A.K.Gupta was also present with him. He deposed that after introducing himself, he gave notice (Ex.PA) and three bottles each containing 500 ml. of mustard oil were purchased for an amount of ₹ 90/- against receipt (Ex.PB). He further stated that the bottles were duly labelled and sealed. He deposed that one sample was sent to the office of Public Analyst, Haryana, Chandigarh for analysis and that as per the report (Ex.PF) of Public Analyst, the sample of mustard oil was found to be adulterated and on the basis of said report he instituted the complaint in the present case. PW-2 Dr. A.K.Gupta, Deputy Civil Surgeon, Faridabad has corroborated the statement of PW-1 as regards inspection of premises of the petitioner on 26.12.1999 and purchase of three bottles of mustard oil as sample from the accused. PW-3 Ved Parkash, Deputy Superintendent, office of Legal Health Authority, Faridabad produced the forwarding letter (Ex.PX) vide which a copy of the Analyst's report had been forwarded to the accused.

9. Since the accused moved an application for getting the second sample analysed, therefore, acceding to the request of accused, second sample of mustard oil was sent to the CFL. Even as per report of CFL, the sample of mustard oil was found to be adulterated. For the sake of convenience, the prescribed norms of mustard oil as per Item No. A.17.06; the results as per report of the Public Analyst and the results as per report of CFL are

reproduced below in tabulated form:-

		Prescribed standards	Public Analyst Report	CFL's Report
(a)	Butyro-refractometer OR Refractive Index at 40°C	58.0 - 60.5 1.4646 – 1.4662	60.4	60.5
(b)	Saponification value	168 – 177	171.96	175.3
(c)	Iodine value	96 to 112 : Polybromide test shall be negative.	99.46	110.0
(d)	Unsaponifiable matter	Not more than 1.2 per cent by weight.	— — —	0.6
(e)	Acid value	Not more than 6.0	1.34	0.8
(f)	Bellier test (Turbidity temperature – Acetic acid method)	23.0°C to 27.5°C	27.5°C	30.0°C
(g)	Test for argemone oil	Negative	Positive	Negative
(h)	Test for Hydrocyanic acid	Negative	Negative	Negative

10. The opinion as per report(Ex.PE) of Public Analyst is as follows:

“The sample does not conform to the prescribed limits laid down for Mustard Oil under item no. A.17.06 of PFA Rules 1955, thereof in that :- the sample is adulterated with Argemone Oil whereas it should be free from same. Hence the sample is unfit for human consumption.”

11. The opinion as per report(Ex.PH) of CFL is as follows:

“I am of the opinion that the sample has Bellier Test(turbidity temp. acetic acid method) more than 27.5°C, hence does not conform to the standards of mustard oil as per the PFA Rules 1955.”

12. From a perusal of the aforesaid reports, it transpires that as per the CFL's

report, the sample failed in Bellier Test as the turbidity temperature was found to be 30°C as against the prescribed standards between 23.0°C to 27.5°C.

13. The learned counsel for the petitioner has assailed the aforesaid report on the ground that there are considerably variations in both the reports inasmuch as while the Public Analyst Report had reported the turbidity temperature as per Bellier Test to be 27.5°C i.e. within the prescribed standards but as per report of the CFL, the same was found to be 30°C. He has further pointed out that there is variation in test regarding presence of Argemone oil, which was reported to be 'positive' as per Public Analyst Report but is reported to be 'negative' as per CFL's report. The learned counsel has submitted that in view of the aforesaid variations, no reliance can be placed upon the aforesaid reports and the same cannot be said to be trustworthy and are indicative of the fact that either the samples had not been kept properly or the test had not been conducted properly.

14. I have considered the aforesaid submission. It is well settled that when a second sample is got analysed from CFL then it is the report of the CFL which supersedes the report of the Public Analyst and the report of the CFL prevails. The mere fact that there are some variations in both the reports cannot be interpreted to mean that the results have not been conducted properly and would not *ipso facto* entitle to acquittal of the accused. This Court, in a judgment reported as 2011(2) RCR (Cri) 775 Raghbir Sharma Vs. State of Haryana, held that the variation in the reports cannot be taken to belie the second report which has superseded the first report and that the report made by Central Food Laboratory supersedes the report made by Public Analyst and on

receipt of the report of the Central Food Laboratory, the report made by Public Analyst loses its existence. In view of the ratio of the above cited judgment, the aforesaid contention raised on behalf of the petitioner does not carry any weight and is hereby repelled.

15. Coming to the contention raised on behalf of the petitioner regarding omission to summon the manufacturer, it is apposite to refer to the provisions of Section 19(2) and Section 20-A of the Prevention of Food Adulteration Act, 1954 which are reproduced below :-

“19.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves—

(a) that he purchased the article of food—

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.”

“20A. Power of court to implead manufacturer, etc.—Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974) or in section 20 proceed against him as though a prosecution had been instituted against him under section 20.”

16. A perusal of Section 20-A of the Act shows that the trial Court upon being satisfied that a manufacturer, distributor or dealer of an article is also concerned with the offence in addition to the person being tried for such an offence may proceed against such manufacturer, distributor or dealer. However, the satisfaction of the Court is *sine qua non* for proceeding against any such manufacturer etc. If there is no such evidence then the trial Court would proceed only against the accused from whom the sample of food article has been purchased.
17. A valuable defence is afforded to the accused in terms of Section 19(2) of the Act, as per which a vendor can be absolved of his liability for an offence in case he proves that such article had been purchased by him from a manufacturer, distributor or dealer with a written warranty in the prescribed form and that the same had been kept properly stored while the same was in his possession. However, a bare perusal of Section 19(2)(ii) itself shows that a written warranty is *sine qua non* for shifting the liability to the manufacturer, distributor or dealer.
18. Hon'ble Apex Court in a case reported as 1975 AIR (SC) 189 Rajaldas G.Pamnani vs. State of Maharashtra held as under :-

“The reason why a warranty is required in both the cases contemplated in Section 19 (2) (a) (i) and (ii) is that if warranty were not to be insisted upon by the statute and if a vendor would be permitted to have a defence merely by stating that the vendor purchased the goods from a licensed manufacturer, distributor or dealer, adulterated or misbranded articles would be marketed by manufacturers, distributors, dealers as well as purchasers from them with impunity. That is why a written warranty is

enjoined in both the cases in Section 19 (2) (a) (i) and (ii). Section 19 (2) (a) of the Act will provide a defence where a vendor purchases articles of food from a licensed manufacturer, distributor or dealer with a written warranty in the prescribed form. Again, a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article from any manufacturer, distributor or dealer with a written warranty in the prescribed form. These salutary provisions are designed for the health of the nation. Therefore, a warranty is enjoined. No laxity should be permitted."

19. This Court in a case reported as 2003(2) RCR (Criminal) 52 Ramesh Chand vs. Chandigarh Administration, Chandigarh held that where an accused purchased food without any bill and warranty, the manufacturer cannot be summoned as an accused. It was further held therein that before a Magistrate invokes powers vested in him under Section 20-A of the Act there should be acceptable evidence on record that the person proceeded against is also concerned with the offence and that such satisfaction is not an empty formality. In another case reported as 2001(3) RCR (Criminal) 468 Surinder Nath Sood vs. Union Territory, Chandigarh where a sample of Suji Rusk was found to be misbranded, this Court held that the accused cannot be absolved of the offence when he failed to prove that he had purchased article under written warranty in the prescribed form.
20. Hon'ble the Supreme Court, in an identical case, reported as 1996(1) RCR (Criminal) 666 M/s Murlidhar Shyamlal vs. State of Assam, where a sample of mustard oil has been purchased from accused and the same was in a packed tin with printed label "New Rice and Oil Mill, Pure Mustard oil", the contention of the accused that he had warranty and that by operation of Section 19(2) read

with Rule 12-A, the appellant is absolved of his liability, was not accepted as the vendor had not proved that he had purchased the article with a written warranty in the prescribed form.

21. In the present case, neither the petitioner at any stage produced any bill nor any warranty indicating that he had purchased the mustard oil from M/s Roopesh Industries and Oil Mill Bharatpur (Rajasthan) with warranty. In the absence of any such evidence, there was certainly no ground to shift the liability of the accused upon any manufacturer. The mere fact that during cross-examination, the prosecution witness stated that the bottles purchased from the accused from his shop were in sealed condition and bore the mark of the manufacturer would not *ipso facto* entitle the accused to shift his liability upon manufacturer by pleading that he had not committed any offence. Infact, the accused has not even stated a word about any such defence in his statement recorded under Section 313 Cr.PC.
22. As such, in view of the specific provisions of Section 19(2)(ii) providing for written warranty in case of purchase of food article and in light of ratio of the above referred judgments, the contention raised on behalf of the accused that the trial Court fell in error in not summoning the manufacturer does not carry any weight and is repelled.
23. PW-1 and PW-2 have stated consistently regarding inspection of the premises of the accused on 26.12.1999 and regarding purchase of three bottles of mustard oil and having duly labeled and sealed the said bottles. Both the witnesses were cross-examined at length on behalf of the accused but nothing substantial could be elicited during their cross-examination so as to doubt the

veracity of their statements. In any case, the witnesses had inspected the premises of the accused in discharge of their official duties and they cannot be said to have any axe to grind against the accused so as to have deposed falsely. The report of the CFL clearly shows that the sample in question did not meet the standards as prescribed for mustard oil at Item No.A.17.06 in Appendix-B to Prevention of Food Adulteration Rules 1955.

24. The judgment relied upon by the petitioner i.e. 1996 (1) R.C.R. (Criminal) 63 P.Unnikrishnan vs. Food Inspector, Palghat Municipality, Kerala State does not have any application in the present case, being distinct on facts inasmuch as it was a case where the accused had produced bill containing warranty indicating that he had purchased the articles from a firm though the said firm was ultimately found to be non-existent. Hon'ble Supreme Court while considering the facts of the said case held that the accused was entitled to benefit of Section 19(2) of the Act, as knowledge of non-existence of the manufacturing firm could not be attributed to the accused. In the present case, however, the accused had not produced any bill to show that he had purchased the articles from any manufacturer, distributor or dealer. Thus, the aforesaid judgment, being distinguishable on facts, is of no avail to the petitioner.
25. No other point has been raised or urged before this Court.
26. As a sequel to the discussion made above, I do not find any infirmity in the impugned judgment and there is no misreading of evidence by either of the courts. Consequently, the findings of the courts below as regards the conviction of the accused do not call for any interference and the same are hereby affirmed.

27. Coming to the quantum of sentence, the petitioner has been sentenced to undergo rigorous imprisonment for six months in addition to payment of fine of ₹ 2000. The occurrence in the present case had taken place about 18 years back. As per the custody certificate filed today, the petitioner has already undergone 2 months and 18 days. 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 has already undergone two months and 18 days and is not even stated to be a previous convict, in my opinion, a case is made out for reduction of sentence. 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.
28. The revision petition stands dismissed except for modification in sentence as indicated above.

September 29, 2017
kamal

(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No