

In the High Court of Punjab and Haryana at Chandigarh

CRR No. 2389 of 2010 (O&M)

Date of Decision:- January 12, 2018

Naresh Kumar**.....Petitioner**

Versus

State of Haryana**....Respondent**

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. O.P.Goyal, Senior Advocate
with Mr. Piyush Aggarwal Advocate, for the petitioner.

Mr. Vijesh Sharma, DAG, Haryana.

Gurvinder Singh Gill, J.

1. Naresh Kumar has filed this revision petition challenging judgment dated 25.8.2010 passed by learned Sessions Judge, Gurgaon whereby his appeal against judgment dated 19.3.2010 of learned Chief Judicial Magistrate, Gurgaon convicting him for offence 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. Briefly stated, the case of the prosecution is that on 29.3.1999, Government Food Inspector Mahabir Singh alongwith Dr. Prem Kumar inspected premises of Ms. Aggarwal Paneer Bhandar situated in Anaj Mandi, Gurgaon who was found in possession of 4 kg of 'khoya' for sale. After issuing a notice in

writing in the shape of prescribed Form VI, 600 grams of 'khoya' was purchased after mixing the same. The 'khoya' so purchased was divided into three equal parts and was put into separate dry clean bottles. Formalin was added as preservative in each of the bottles. One of the said bottles was sent for chemical analysis to Public Analyst, Haryana, Chandigarh. As per report of the Public Analyst, the sample did not conform to the standards prescribed for 'khoya' as milk fat was found to be below the minimum specified limit of 20% and was thus opined to be adulterated. The Food Inspector, consequently, filed a complaint in the Court of learned Chief Judicial Magistrate, Gurgaon, alleging therein that the accused had committed offence under Section 7 punishable under Section 16 of the PFA Act.

3. After recording pre-charge evidence, charges were framed against the accused for offence punishable under Section 16(1)(a)(i) of the PFA Act on 18.1.2007 to which the accused pleaded not guilty and claimed trial.
4. The prosecution in order to establish its case examined PW-1 Sh. Mahabir Singh, Food Inspector, PW-2 Dr. Prem Kumar and PW-3 Dinesh Kumar, Clerk, Office of Local Health Authority. 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 in his defence examined DW-1 Akhilesh.
5. The learned trial Court, upon appraisal of evidence on record, held that the charges framed against the accused stood fully established and while convicting the accused for offence punishable under Section 16(1)(a)(i) of the PFA Act, sentenced him to undergo rigorous imprisonment for six months and

to pay fine of ₹1000/-. Appeal filed against the said judgment was also dismissed by the learned Sessions Judge, Gurgaon vide judgment dated 25.8.2010. Aggrieved with the same, the accused has preferred the present revision petition.

6. The learned counsel for the petitioner while assailing the impugned judgment submitted that in the present case the alleged deficiency is marginal as the fat was found to be 18.30% as against the specified limit of 20% and that marginal violation could be due to various reasons including improper sampling. It has been argued that the sample was not properly drawn and cannot be said to have been homogenized properly so as to be held a truly representative sample. The learned counsel further submitted that there is no independent corroboration to the testimonies of the official witnesses and in these circumstances it is not safe to rely solely upon their testimonies only.
7. It has further been argued that even as per the report of the public analyst, it is only on account of deficiency of fats that it has been opined that 'khoya' was adulterated though neither any other extraneous material was found to have been added nor the same was opined to be injurious to health. The learned counsel submitted that in these circumstances it cannot be said that the recovered sample of 'khoya' was adulterated.
8. The learned counsel also made an alternate submission for either releasing the petitioner on probation or for reducing the substantial sentence of imprisonment to the one already undergone on the ground that he has already faced incarceration of trial for more than 17 years and is not a previous convict and also keeping in view the fact that the alleged adulteration is not even

stated to injurious to health. The learned counsel cited 2016 (3) RCR (Criminal) 166, Subhash Chander Vs. State of Haryana to support his aforesaid submission regarding reduction in sentence.

9. On the other hand, learned counsel representing the State submitted that all the mandatory safeguards had been adhered to at the time of drawing sample and no infirmity can be found in the sampling or in the report of Public Analyst. He has further submitted that joining an independent witness is a rule of prudence and not a rule of law and the case of prosecution can not be doubted on this score. The learned State counsel has thus submitted that there is no infirmity in the impugned judgment and that the petition deserves to be dismissed.
10. I have considered rival submissions addressed before this Court and with able assistance of learned counsel have also perused record of the case.
11. As regards the contention regarding manner of sampling, a perusal of the complaint (Ex.PF) and also the spot memo (Ex.PC) show that it is specifically recorded therein that the sample of 'khoya' had been drawn after mixing. A perusal of the testimony of PW-1 Mahabir Singh shows that during his cross-examination when he was put question regarding the manner of sampling he has specifically stated that before drawing sample he had cut the 'khoya' into small pieces with the help of a knife and had mixed the same. Even PW-2 Dr. Prem Kumar in his statement has stated identically to the effect that the 'khoya' had been cut into small pieces with the help of a clean knife and had been put in dry clean bottles. No fault can be found with the aforesaid procedure of sampling as adopted by the Government Food Inspector as 'khoya' has a semi

solid consistency and cutting the same into small pieces and mixing it before sampling would homogenise the same so as to make the same a representative sample. Thus, the aforesaid submission regarding improper sampling does not carry any weight and is rejected.

12. 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. PW-2 Dr. Prem Kumar. The Food Inspector had drawn sample in discharge of his official duties in the presence of PW-2 Dr. Prem Kumar and they 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 of medical officer as witnesses are sufficient to prove guilt of the accused.
13. In light of the ratio of the above referred judgment, non-joining of an independent witness cannot be said to be ipso-facto fatal to the case of the prosecution.
14. To consider the contention that it is a case of marginal deficiency which could be due to various factors including error in sampling or analysis, it would be apposite to refer to the report of the Public Analyst (Ex.PE). The relevant extract from the report reads as follows:

“1. Physical appearance :- Characteristic of khoya in a glass bottle.

2. Milk Fat	:-	18.31%
3. Test for the presence of Sugar	:-	Negative
4. Test for the presence of Starch	:-	Negative
5. Butyro-refractometer reading at 40 c of extracted fat.	:-	42.0
6. Baudouin test of extracted fat	:-	Negative

and am of the opinion that the sample does not conform to the standards laid down for khoya under item No.A.11.02.17 of the PFA Rules, 1955, thereof in that :- Milk Fat falls below the minimum specified limit of 20.0%.”

15. The standards specified for 'khoya' under Item A.11.02.17, as existing in the year 1999 were as follows :

“A.11.02.17. – KHOYA by whatever variety of names it is sold such as pindi, danedar, dhap, mawa or kava means the product obtained from cow or buffalo or goat or sheep milk or milk solid or a combination thereof by rapid drying. The milk fat content shall not be less than 30 per cent on dry weight basis of the finished product.

It may contain citric acid not more than 0.1 per cent by weight.

It shall be from added starch, added sugar and added colouring matter.”

16. It is certainly a case where deficiency in milk fats is not substantial being

18.31% as against specified limit. It may here be added that as per the report of the Chemical Examiner the minimum specified limit of milk fats in khoya is mentioned as 20% whereas the same stood amended in the year 1998 and was enhanced to 30%. In any case, there is absence of evidence to show either improper sampling or any defect in analysis so as to attribute the deficiency due to any such error. The mere fact that there is a marginal deficiency can not lead to an inference that deficiency could be due to some other reason.

17. 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. Thus, the submission raised in this regard can not be accepted.
20. The learned counsel for the petitioner has drawn the attention of this Court to Section 16(1)(a)(i) and also Section 2 (ia)(m) to contend that since the sample has not been opined to be injurious to health, therefore, the same cannot be said to be adulterated.
21. I have considered the aforesaid submission. Section 2(ia)(m) for the sake of ready reference is reproduced below:

“(ia) “adulterated” – an article of food shall be deemed to be adulterated –

(a) to (l)

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

PROVIDED that, where the quality or purity of the article, being primary food, has fallen below the

prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.”

22. A perusal of proviso to aforesaid Section 2(ia)(m) shows that it is only in those cases where the purity of food article has fallen below the prescribed standards due to natural causes and reasons beyond the control of human agencies and which still does not render it injurious to health, that the article will not be deemed to be adulterated. However, the present case is not such that the purity has fallen below the prescribed standards on account of any natural cause or a cause beyond the control of human agency so as to fall within the ambit of proviso. Thus, the petitioner can not derive any benefit from the said proviso.
23. I find that both PW-1 Mahabir Singh and PW-2 Dr. Prem Kumar have stated consistently regarding inspection of the premises of the petitioner on 29.3.1999 when he was found in possession of 4 kgs of 'khoya'. Though the petitioner examined a witness in his defence i.e. DW-1 Akhilesh who stated that on 29.3.1999 he had brought 'Khoya' weighing 4 kg for his personal use which he kept in the shop of accused Naresh but said statement is apparently an afterthought on part of the accused. The testimony of said witness can not be accepted as against consistent testimonies of PW-1 and PW-2 who had drawn the sample in discharge of their official duties. The name of the premises from where the sample was drawn i.e. “Ms. Aggarwal Paneer Bhandar” suggests that the petitioner was dealing in milk products which

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makes it difficult to accept that the 'khoya' found in the premises belonged to somebody else as is being suggested by DW-1 Akhilesh. Both PW-1 and PW-2 have stated consistently that the sample was purchased from the petitioner after making the same homogenous. 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 trial Court or the appellate court. As such, I do not find any infirmity in the findings of the trial Court as regards conviction of the petitioner.

24. 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.
25. 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

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warrant reducing the sentence below the minimum.”

26. 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 one month two 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 more than 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 more than 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.
27. Accordingly, the substantive sentence of 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 with the aforesaid modification in the quantum of sentence of imprisonment.

(Gurvinder Singh Gill)
Judge

January 12, 2018

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No