

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRR-1237-2012

Date of Decision:01.12.2018

Manbir Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Surender Lamba, Advocate,
for the petitioner.

Mr. Anmol Malik, A.A.G., Haryana.

HARI PAL VERMA, J.(Oral)

The petitioner has filed the present revision petition against judgment dated 16.04.2012 passed by learned Additional Sessions Judge, Bhiwani, whereby his appeal against judgment of conviction and order of sentence dated 13.07.2010 passed by learned Sub Divisonal Judicial Magistrate, Charkhi Dadri, was dismissed.

Briefly stated, the case of the prosecution is that on 07.06.2005 at 09.45 AM, complainant-Govt. Food Inspector had intercepted the petitioner-accused Manbir Singh, a milk vendor within the area of Charkhi Dadri, who was found in possession of about 70 litres of mixed milk, contained in two drums for public sale. A notice on Form-VI was served upon the petitioner by GFI, so as to take sample of milk for the purposes of analysis. Total 1550 ML milk was purchased and after mixing its contents

properly, it was made uniform for analysis. Thereafter, milk was divided

into three equal parts and put in three empty clean and dry bottles. Two drops of 40% formalin per 25 mls/gms were added in each bottle as a preservative.

On completion of necessary formalities as per rules, a sealed bottle along with a memorandum in Form VII was sent to the Public Analyst Haryana, at Karnal, for its analysis. Two other sealed bottles/packets of sample along with two copies of memo in Form VII were deposited with the Local Health Authority, Bhiwani. The report of public analyst received in the case had shown that the sample contained 5.86% milk solids against the minimum prescribed of 8.5% as laid down for mixed milk as per Appendix B of P.F.A. Rules, 1955. Hence, the sample was found adulterated. Therefore, a complaint was filed for taking action against the petitioner-accused for the commission of offence under Section 7 punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (for short, the Act).

After recording pre-charge evidence, charge under Section 7 read with Section 16 of the Act was framed against the petitioner-accused by the trial Court. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined four witnesses i.e. complainant-Mahabir Singh GFI as PW1, PW2-Raj Kishore Class-IV, PW3-Yogender Singh (L.H.A. Clerk) and Balwinder Singh, M.O. as PW4. Thereafter, statement of petitioner-accused under Section 313 Cr.PC was recorded in which he pleaded his innocence and stated that he was implicated in a false case. However, no evidence was led by him in his defence.

Vide judgment dated 13.07.2010, learned Magistrate held the

petitioner-accused guilty and convicted him for the commission of offence punishable under Section 16(1)(a)(i) of the Act read with Section 7 of the Act. Vide separate order of even date, learned Magistrate had sentenced the petitioner-accused to undergo simple imprisonment for six months and to pay a fine of ₹1,000/- and in default thereof, to further undergo simple imprisonment for one month.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Sessions, but the same was also dismissed by learned Additional Sessions Judge, Bhiwani vide judgment dated 16.04.2012.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

At the outset, learned counsel for the petitioner has not challenged conviction of the petitioner in view of the concurrent findings of both the Courts below. However, he has confined his arguments with regard to quantum of sentence only.

Learned counsel for the petitioner has argued that as against the awarded sentence of six months, the petitioner had already remained in custody for about 25 days. He has further submitted that the petitioner is a first time offender and is a poor person. Thus, he has prayed that the sentence awarded by the trial Court and affirmed by the appellate Court be reduced to the period already undergone by the petitioner.

Learned State counsel, on the other hand, though has not disputed the custody of the petitioner, but has argued that the petitioner-accused was carrying adulterated milk for public sale and as such, no leniency is required in the quantum of sentence imposed upon him. The

custody certificate filed by learned State counsel in the Court today, is taken on record.

I have heard learned counsel for the parties.

This Court has scrutinized the impugned judgments passed by the Courts below as well as other relevant documents and the evidence and finds that there is no scope of interference with the impugned judgments passed by the Courts below. Moreover, learned counsel for the petitioner has confined his prayer to the extent of quantum of sentence only. Therefore, the conviction of the petitioner is upheld.

However, as regards pleas of the petitioner that the petitioner is a poor person, a first time offender; and as against the awarded sentence of six months, he remained in custody for 25 days and there being no other case against him, this Court finds that the prayer made by learned counsel for the petitioner carries weight.

This Court in *Ram Chander Versus State of Haryana 2015(3) RCR (Criminal) 245*, while relying upon the case of *Sadhu Ram Versus State of Haryana 1990(1) RCR (Criminal) 259*, had reduced the sentence of accused to the period already undergone wherein a sample of sweet soda water was not found as per the prescribed standards, but at the same time, it was not found injurious to health.

In *Criminal Revision No.2262 of 2010* titled as *Elayash Versus State of Haryana* decided on 22.4.2016, this Court has also reduced the sentence of the accused to the period already undergone by him. In that case, the accused was awarded rigorous imprisonment for six months for commission of offence under Section 16(1)(a)(i) of the Act and had remained in custody for 25 days.

Accordingly, taking into consideration the pleas of petitioner and also the judgments referred hereinabove, the sentence imposed upon him under Section 16(1)(a)(i) read with Section 7 of the Act is reduced to the period already undergone by him.

With the aforesaid modification in the sentence, the present revision petition stands dismissed.

December 01, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No