

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1842-2014

Date of decision:-14.2.2018

Vijay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Sawhney, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

The State of Haryana through Government Food Inspector(GFI), Karnal had brought a criminal complaint under Section 7 punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as PFA Act) against accused Vijay Kumar son of Chander Bhan, Proprietor M/s V.K. Trading Company, Wholesaler of Utsav Brand Ghee, Jind Road, Assandh on the allegations that on 5.11.2003 at about 2:45 p.m., when the business premises of accused situated at Jind Road near Main Chowk, Assandh

were inspected by GFI, Karnal, the accused was found in possession of 10 plastic containers (dabbas) with capacity of half litre each having pure Ghee (Utsav brand) placed in a rack meant for public sale; that the GFI after disclosing his identity purchased three containers of pure Ghee for analysis from the accused on payment of Rs.165/-; that those were then put into a dry and empty polythene bag; that the samples were drawn, which were sealed at the spot in presence of Dr.Kulbhushan Mehta, Medical Officer, Assandh and accused; that one sealed sample was sent to Public Analyst, Haryana, Chandigarh for analysis on 6.11.2003 and in terms of report received therefrom, the sample did not conform to the prescribed standard laid down for Ghee under item No.A.11 of Appendix B of PFA Rules 1955; that thereafter complaint was filed against the accused in the Court of Sub Divisional Judicial Magistrate, Assandh.

Notice was issued to accused under Sections 7/16 of PFA Act. He was granted bail on 27.1.2004. He moved an application under Section 13(2) of PFA Act and vide order dated 3.5.2004, the case was ordered to be treated as a warrant case.

During the course of pre-charge evidence of the complainant. Sh.Narain Dutt, GFI appeared as PW1 and supported the case of complainant on material points. Thereafter, finding a prima-facie case for commission of offence under Section 16(1)(a)(i) of PFA Act, the accused was charge-sheeted accordingly, to which, he pleaded not guilty and claimed the trial.

During after charge evidence, statement of Dr.Kulbhushan Mehta was recorded as PW1, who supported the prosecution story on

material aspects proving notice Ex.PA, receipt Ex.PB, spot memo Ex.PC and Form VII as Ex.PD. PW2 Narain Dutt Sharma, GFI lent support to the case of the complainant on material points proving various documents including those already exhibited as Ex.PA to Ex.PD, besides postal receipt Ex.PE, report of Public Analyst Ex.PF, complaint Ex.PG and certificate issued by Central Food Laboratory, Mysore Ex.PH and Mark-A. PW3 Surender Singh, Assistant, LHA Office of Civil Surgeon, Karnal proved memo Ex.PW3/A and postal receipt Ex.PW3/B.

With that the after charge evidence of the complainant stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the same contending that he is innocent and has been falsely involved in this case.

Accused did not lead evidence in defence.

After hearing arguments, learned trial Magistrate convicted the accused for the offence punishable under Section 16(1)(a)(i) of PFA Act vide judgment dated 14.9.2011 and in terms of order dated 16.9.2011 sentenced the accused to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default thereof, to further undergo simple imprisonment for fifteen days.

The appeal preferred against the judgment of conviction and order of sentence passed by the Sub-Divisional Judicial Magistrate, Assandh was also decided against the accused by learned Additional Sessions Judge, Karnal, which left petitioner – accused aggrieved and he

has filed the present revision petition, notice thereof was issued to the respondent – State, which put in appearance through counsel.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record.

Learned counsel for the petitioner has contended that the case of the complainant is doubtful inasmuch as no person from the public was joined while carrying out inspection of premises of the accused and taking samples of Ghee, which adversely affects the case of the complainant. He has further contended that there is variation in the report by Public Analyst, Haryana, Chandigarh and report sent by Director of Central Food Laboratory, Mysore. The sample was not drawn properly in accordance with the rules and manufacturing company of the Ghee has not been impleaded as a party in this case.

However, a perusal of the judgment passed by the trial Magistrate goes to show that all these aspects have been dealt with and explained satisfactorily in the impugned judgment.

As regards non-joining of independent witness, learned trial Magistrate has observed that joining of PW1 was sufficient and his role was up to sealing process. Furthermore, independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly. Here no previous enmity between the witnesses examined by the prosecution and the accused has been alleged or proved prompted by which they might

have deposed falsely against the accused. Therefore, non-joining of any witness from public does not affect the prosecution case adversely.

As regards the variation between report of Public Analyst, Haryana, Chandigarh and Director, Central Food Laboratory, Mysore, the trial Magistrate has dealt with that aspect observing that in view of Section 13(3) of PFA Act, result of Ex.PH i.e. by Central Food Laboratory would prevail in terms of which sample of Ghee was not up to the standard laid down, therefore, report by Public Analyst, Haryana, Chandigarh stands superseded in view of Section 13(3) of PFA Act.

Coming to the aspect of the sample being not drawn properly, the trial Court has dealt with this aspect in detail in para No.14 observing that there was no need for mixing or stirring of the contents since as per the note of Rule 22 of PFA Rules the food sold in packaged condition (sealed container/package) shall be sent for analysis in its original condition without opening the package and along with original label to constitute the approximate quantity and any stirring for mixing would have been another Act to tamper with the container of the ghee.

As regards non joining of manufacturer, in para No.15 of the judgment, the trial Magistrate has dealt with that aspect observing that GFI was also not duty bound to make the company as accused because PW2 has admitted in his cross-examination that the accused did not produce any bill/warranty card regarding purchasing of the ghee and when the accused had moved an application under Rule 13(2) of the PFA Act for sending the 2nd part of sample to Central Food Laboratory, Mysore then in para No.3 of the application, he has specifically mentioned that the

ghee was purchased by him under bill and warranty but despite that he did not produce any bill or warranty card. As such, there was no need to file a complaint against the company.

Learned counsel for the revisionist has referred to *State of Punjab Versus Raman Kumar, 1997(4) R.C.R.(Criminal)772*, *Vijay Kumar Versus State of Punjab, 2012(1) FAC 402* and *Anil Kumar Versus State of Punjab and another, 2010(1) FAC 378*. Those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In the end, learned counsel for the petitioner has prayed for taking a lenient view stating that benefit of probation should be granted to the petitioner. In support of his contention, he has referred to citation *Makhan Lal Versus State of Haryana, 2009(2) FAC 482* by a Co-ordinate Bench of this Court. However, I am not inclined to accept this request of counsel for the petitioner. The accused by offering for sale sub-standard pure Ghee obviously played with the lives of innocent persons and his such act and conduct cannot be taken lightly. He deserves to be treated sternly so that the other potential criminals take lesson from his

fate and keep away from path of crime. No ground for grant of benefit of probation or to reduce the sentence of accused is made out.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision petition is found to be without any merit and is dismissed accordingly.

14.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No