

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.4632 of 2017

Date of Decision: 28.03.2018

Ramesh

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. S.S. Dinarpur, Advocate,
for the petitioner.

Mr. B. S. Virk, DAG, Haryana.

Amol Rattan Singh, J.

The petitioner in this revision petition has challenged the judgments of the learned Courts below, convicting him for the commission of an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter to be referred to as the 'Act') and further sentencing him to undergo rigorous imprisonment for 6 months as also imposing a fine of Rs.1000/- upon him, in default of payment of which, he has to further undergo simple imprisonment of one month.

2. As per the case of the prosecution, Shri K.K.Sharma, Government Food Inspector, Jagadhri, had inspected the premises of the petitioner on 08.02.2008 and found in his possession 2 kgs *Haladi* powder for sale to the public, which was contained in a tin. The Inspector demanded a sample of the powder, issuing a notice in writing on Form VI as is prescribed under the Prevention of Food Adulteration Rules, 1955 (hereinafter to be referred as the 'Rules').

600 gms *Haldi* powder are stated to have been taken after mixing the contents thereof properly for the purpose of analysis. The petitioner is stated to have been offered Rs.36/- for the purchase of the said powder though he refused to accept the payment.

The powder is then stated to have been divided into three equal parts which were bottled in three dry and clean empty bottles which were tightly 'stoppered' and thereafter sealed on the neck with the seal of the Medical Officer. The bottles were then labelled and wrapped, and ends of the paper were pasted with gum and a paper slip bearing Code no.YMN/Dis/EEE/C233 also pasted on each of the bottles, with the signatures of the Local Health Authority, Yamuna Nagar; and eventually the packets encasing the bottles are stated to have been secured with a strong twine, and again sealed with the seal of the Medical Officer and the Food Inspector, the entire process stated to have been done on the spot, i.e. the premises of the petitioner.

The petitioner having refused to sign on the sample bottle also, the Food Inspector and Medical Officer, Shri Sanjeev Kumar, signed on the packets containing the bottles in a manner that half of it came on the paper slip and the rest on 'khaki' paper.

3. A sealed bottle alongwith a memorandum in Form VII was sent to the Public Analyst, Haryana, through a messenger, with the other two sealed bottles/packets deposited with the Local Health Authority on 12.02.2008, again in a sealed packet.

4. As per the judgments of the Courts below, a certificate of the Public Analyst Haryana, Chandigarh, in terms of Section 13 (5) of the Act, was also exhibited in evidence stating that the contents of the sample received were in

powder form, the powder not being in a packed condition, though under the provisions of sub-rule (24) of Rule 49 of the Rules, powdered spices and condiments cannot be sold except in a packed condition.

Consequently, as per the certificate, the bottle was misbranded and further, it did not conform to the prescribed standards laid down for *Haldi* powder as prescribed in item A.05.20.01 of Appendix B of the Rules, as it contained added *Rice Starch* (Foreign Starch), also containing *Metanil Yellow Synthetic Colour*, and hence, the powder was also found adulterated.

5. The petitioner having been summoned upon the complaint filed, alleging therein the commission of an offence punishable under Section 7 read with Section 16 (1) (a) (i) of the Act, he appeared before the learned trial Court and on the basis of precharge evidence, including the testimony of the complainant, i.e. the Food Inspector, as CW1, he was charged with the commission of the aforesaid offences to which he entered a plea of not being guilty and was therefore tried.

6. In the post-charge evidence, Dr. Ashok Kumar and Dr. Sanjeev Kumar were also examined as CW2 and CW3, with the statement of the petitioner also recorded in terms of Section 313 of the Cr. P.C., he stating that the *Haldi* powder was not meant for sale and was being kept for use in a *dhaba* by him and he was, in fact, not running any shop.

By way of defence evidence, the petitioner examined one Satish Kumar as DW1, who also supported the petitioner-accused by testifying that he was not running any Kiryana shop and had opened a *dhaba*, with the name, 'Ramesh Dhaba'.

7. However, the learned trial Court held that other than pleading that no sample had been taken from the shop of the accused and that he had in

fact been running a 'dhaba' in which the *Haldi* powder was not for sale, no other evidence, other than the testimony of DW1, was led by the petitioner to show that he was actually running a dhaba, with not even a hoarding or display board produced to support the said stand.

It was also taken adverse against the petitioner by the trial Court that he himself did not step into the witness box to testify on oath in terms of his statement recorded under Section 313 Cr.P.C.

8. It was further held by the trial court that the petitioner did not make any application that he wanted to get the sample re-analysed by the Director, Central Laboratory, in terms of Section 13(2) of the Act and therefore, even the argument raised that he was deprived of his right, would not be sustainable.

In that context, reliance was placed by the trial Court on a judgment of a co-ordinate Bench of this Court in **Ramesh Chand @ Ramesh Kumar v. State of Haryana 2005 (1) RCR (Criminal) 333.**

The plea of non-joining of an independent witness at the time when the samples were taken, was also rejected by the trial court, on the ground that with the testimonies of the three witnesses for the complainant, who had no enmity with the accused so as to false implicate him in the present case, non-examination of another independent witness would not affect the case of the complainant.

9. Consequently, the petitioner was held guilty of the offence that he was charged with and sentenced to 6 months imprisonment, as already noticed at the beginning of this judgment, alongwith a fine of Rs.1000/- imposed upon him.

10. The appellate Court also, on the same reasoning essentially, with the same arguments having been raised before it, dismissed the appeal.

11. Before this Court, Mr. Dinarpur, learned counsel for the petitioner, has raised various arguments, the primary argument being that the report of the Public Analyst not having been sent within 14 days to the petitioner, and in fact, it never having been even served upon the petitioner in terms of Rule 9-B of the Rules, an important right of the petitioner for getting the sample reanalysed stood extinguished, thereby vitiating the entire case of the prosecution.

Other than the fact that the report itself was not received, Mr. Dinarpur submitted that the prosecution having been instituted on 18.09.2008, the report was sent only on 01.10.2008, though it was to be sent within 10 days as per Rule 9-B.

Learned counsel also reiterated what was argued before the Courts below, to the effect that the *Haldi* was used not for sale in a shop but in the 'dhaba' for preparing food, and that no independent witness was examined. Before this Court, he also argued that the powder was not made homogenous.

12. Finally, Mr. Dinarpur, learned counsel for the petitioner, submitted that even if this Court does not agree with the arguments raised, then alternatively, the quantum of sentence of imprisonment imposed upon the petitioner may be reduced to the extent already undergone, he already having suffered imprisonment for 4 months.

That contention was rejected by this Court at the stage when the argument was made itself, the minimum punishment to be imposed in terms of Section 16 (1) (a) (i), being 6 months imprisonment, which is what has

been imposed by the trial Court.

13. As regards the argument on powder not having been made homogenous, that argument is rejected, it having been shown before the Courts below to that effect, (with testimonies of three complainants' witnesses), and as regards the issue of *Haldi* not being used for sale but for used in preparation of food in the 'dhaba', learned counsel for the petitioner even before this Court could not point out that any substantive evidence (even photographs) were led in evidence before the learned trial court to show that it was in fact a 'dhaba' that was being run by the petitioner. Hence, I see no ground to interfere with that finding either.

14. Similarly, as regards non-joining of independent witnesses, no malafides having even been raised against any of the two witnesses who were present at the time when the powder was seized from the petitioners' premises, i.e. the Government Food Inspector and the Medical Officer, I see no reason to oust their evidence, with it having been proved that even the analysis of the powder collected, was both misbranded and adulterated.

There is also no allegation whatsoever that any of the seals on the samples were found to be tampered at the laboratory where they were desealed.

15. Coming therefore on the issue whether the petitioners' right of resampling was taken away or not, though I fully agree with the argument of the learned Deputy Advocate General, Mr. B. S. Virk, that no prejudice whatsoever was caused to the petitioner by the delayed sample, even if no evidence was led to show that the report was actually served upon him; however, Mr. Dinarpur, learned counsel for the petitioner has relied upon a judgment of a Division Bench of this Court in **State of Punjab**

v. Ashok Kumar 1991 (3) RCR (Criminal) 270 and one of the Supreme Court in State of Orissa v. Gauranga Sahu 2003 (4) RCR (Criminal) 208, to submit to the effect that simply posting of a report of the chemical analyst is not sufficient compliance of the provisions of Section 13 of the Act and therefore, with the accused not served with the report, he could not have asked for a second sampling before the Court.

16. In the opinion of this Court, even *dehors* actual proof of the report having been served upon the petitioner, he did not stand prejudiced in any manner, as he could still apply for a second sampling at the time when the summons of the Court had been issued, he obviously having been made fully aware of the report against him at that stage.

Hence, the rejection of that contention by the trial court is also not actually found to be illogical or unsustainable by this Court. Yet however, it was held by the Division Bench of this Court in *Ashok Kumars'* case (supra), in similar circumstances as follows:-

“A reading of section 13 (2) of the Act makes it clear that copy of the report of the Public Analyst is to be forwarded to the person from whom sample of food was purchased and he is further required to move the court within ten days from the date of receipt of such copy to get the sample of the article of food analysed by the Central Food Laboratory. Mere forwarding of the copy of the report by registered post is not enough. It is further to be established that copy of the report of the Public Analyst was received by the accused. It is only from such date that he can move the Court within 10 days for sending the sample to the Central Food Laboratory. PW2 Parveen Kumar, Clerk from the office of Civil Surgeon, Faridkot, stated that copy of the report of the Public Analyst was forwarded to the accused by registered post. He produced postal receipt-

Exhibit PH in this respect. He also produced copy of the letter of the Civil Surgeon, Faridkot, vide which copy of the report of the Public Analyst was communicated to Ashok Kumar. Copy of the letter is Exhibit PG. He was cross-examined in this respect. He admitted that 'Acknowledgement Due' receipt (for short referred to as A. D. receipt) was not received in the office and no enquiry was made from the postal authorities regarding delivery of the registered cover. From the aforesaid evidence produced by the prosecution it cannot be said that the letter, copy of which is Exhibit PG, was received by Ashok Kumar accused. In the case of registered letters sent through A.D. receipt, a certificate from the postal authorities regarding delivery of the letter to the addressee could be obtained if A.D. receipt had not been received back. Be that as it may, letter of the Civil Surgeon, copy of which is Exhibit PG, does not fulfil the requirement of Section 13 (2) of the Act.”

In *Sahus'* case (supra), it was held as follows:-

“Upon analysing all the evidence, the trial Court held that the prosecution had proved that the report was despatched by the C.D.M.O., Balangir to the accused along with the report of the Public Analyst. Similarly, the first appellate Court, after holding that the provisions of Section 13 (2) of the Act are mandatory in nature, had concluded that the copy of the report had, in fact, been served upon the accused person. In view of the oral testimony of PW1 and the documentary evidence in the form of Exhibits P-17 and P-18, the High Court was not justified in disturbing the findings of fact arrived at by two Courts of facts. The impugned order of the High Court is thus not sustainable and is liable to be set aside.”

17. Though in *Sahus'* case (supra) the findings of the trial Court, were upheld, Mr. Dinarpur argued that it was proved before the trial Court in that case that the report of the Public Analyst was actually served upon the accused. In the present case, learned counsel referred to the testimony of the Government Food Inspector (CW1), wherein he had admitted that he did not know whether the report sent by registered post was actually served upon the petitioner or not, with no documentary evidence exhibited to actually show such service.

Learned State counsel did not deny the factual position as already noticed hereinabove, but he further submitted that the petitioner could have applied for a second sampling even before the trial Court at the stage when he was summoned (which he did not do).

Mr. Virk has also relied upon the same judgment as was relied upon by the trial Court in *Ramesh Chands'* case (supra), a perusal of which shows that this Court had relied upon a judgment of the Supreme Court in **Tulsiram v. The State of Madhya Pradesh** 1984 (2) RCR (Criminal) 598, wherein it was held as follows:-

“If after receiving the Analyst's Report he never sought to apply to the Court to have the sample sent to the Central Food Laboratory, as in the present case, he may not be heard to complain of the delay in the receipt of the report by him, unless, of course, he is able to establish some other prejudice. Our conclusions on this question are: The expression 'immediately' in Rule 9-A is intended to convey of a sense of continuity rather than urgency. What must be done is to forward the report at the earliest opportunity, so as to facilitate the exercise of the statutory right under Section 13 (2) in good and sufficient time before the prosecution commences leading evidence. Non-compliance with Rule 9-A is not fatal. It is a question of

prejudice.”

In *Ramesh Kumars'* case also the issue was actually that the report of Public Analyst had been served late upon the accused, he thereby not having been able to apply for resampling, which contention was rejected on the basis of what was held by the Supreme Court in *Tulsirams'* case, to the effect that he could still have applied thereafter, which he did not.

18. To repeat, in my opinion, even in the present case, the petitioner similarly did not stand prejudiced by even non-service of the report upon him, even if it were to be presumed that the registered post did not reach him, though even that is difficult to believe. However, even presuming it did not reach him, he could easily have applied at the time when he appeared before the trial Court upon summons being issued to him, he being apprised of the charge against him, as also of the report at that stage.

19. However, this Bench naturally is bound by the ratio of the Division Bench in *Ashok Kumars'* case (supra) and consequently, it has to be held that it not having been proved that the report of the Public Analyst was delivered to him, the provisions of Section 13 (2) of the Act, read with Rule 9-B of the Rules, were not fully complied with.

Consequently, he has to be acquitted of the charge framed against him, in terms of the ratio of that judgment.

20. That being so, the judgments of the Courts below and the order of sentence are set aside and the petitioner is so acquitted.

His bail and surety bonds would be discharged, as per procedure.

March 28, 2018

dinesh

(AMOL RATTAN SINGH)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No