

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 464 of 2004

Order reserved on 11.12.2018

Order pronounced on 05.04.2019

Balwant Singh Yadav, S/o Rikhi Ram Yadav, aged about 51 years,
Occupation Labour, residence of Borasi Bhata, P.S. Pulgaon,
District Durg (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through Food Inspector, Office of Deputy
Director, Food and Medicine Administration, District Durg (CG)

---- Respondent

For Applicant : Smt. Indira Tripathi, Advocate

For Respondent : Shri Gary Mukhopadhyay, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Facts necessary for disposal of this revision petition in short are that on 29.10.1985 when the accused/applicant had brought to the market the mixed milk of cow and buffalo for sale, Food Inspector M.L. Goyal (PW-1) examined the same in presence of P.L. Murti (PW-2) and Santu Ram (PW-3). He also gave notice to the accused/applicant for taking samples of the milk and thereafter brought 750 Milliliter of milk for Rs.3.75 Paise under receipt. On that being done, the said milk was divided into three parts and kept in three separate phials and a Panchnama to this effect was also drawn. Out of three samples one was sent to Public Analyst Bhopal for chemical examination and the remaining two were deposited in the local office of Health Authorities. After receipt of the report from the Public Analyst, the milk was found to be adulterated and a complaint was accordingly made against

the accused/applicant under Section 7/1 read with 16-1 of the Prevention of Food Adulteration Act (hereinafter referred to as "PFA Act").

2. On the basis of material collected by the prosecution learned Judicial Magistrate First Class, Durg found the accused/applicant guilty for the offence alleged against him vide judgment dated 09.03.2004 passed in Criminal Case No.522/2002 and imposed the sentence of RI for six months with fine of Rs.1000/- plus default stipulation. On appeal being preferred by the accused/applicant, learned lower Appellate Court vide judgment dated 13.09.2004 passed in Criminal Appeal No.117/2004 approved the findings recorded by learned trial Court as a whole. Hence, this revision.

3. Counsel for the accused/applicant submits that the conviction slapped on the accused/applicant by both the Courts below is not in conformity with the evidence on record and, therefore, the judgment impugned is not sustainable in law. He further submits that apart from Food Inspector (PW-1), two independent witnesses examined by the prosecution in support of its case have not supported the case of the prosecution and, therefore also, the conviction of the accused/applicant based on the sole testimony of PW-1 loses its legs to stand.

4. On the other hand learned State counsel supporting the judgment impugned vehemently argues that both the Courts below have been fully justified in appreciating the evidence on record and ultimately arriving at the conclusion of holding the accused/applicant guilty under Section 7/1 read with 16-1 of the PFA Act.

5. Heard counsel for the parties and perused the evidence on record.

6. Of course, the independent witnesses being PW-2 and PW-3 before whom the milk was subjected to inspection by PW-1 have not supported the case of the prosecution and have chosen to turn hostile, the evidence of PW-1 clearly suggests that after buying the milk for necessary price, three samples were drawn, kept in three sealed phials and one of them was sent to Public Analyst for examination. Further, the report of Public Analyst (Ex. P-9) also establishes that in the milk sent for chemical examination there was 5.5 % of fat and 7.8 % of solids not fat, which was not up to the standard of mixed milk of cow and buffalo. Record further reflects that though the accused/applicant had made a prayer for examination of the sample from the Central Food Laboratory also but in spite of the order passed by the trial Court the necessary charges for doing so were not paid. In this view of the matter and also considering the report of the Public Analyst holding the milk so examined to be adulterated, the finding of conviction recorded by both the Courts below do not appear to suffer from any legal flaw. Accordingly the conviction of the accused/applicant as described above is hereby maintained.

7. Now turning to the sentence part of the judgment impugned, this Court considering the fact that the incident had taken place in the year 1985 involving the passage of considerable period of 34 years and further that the accused/applicant had already remained inside for about a week, is of the opinion that no useful purpose is going to be served if the accused/applicant is again sent to jail. Therefore this Court

thinks it appropriate to reduce the sentence imposed on him to the period already undergone. It is done accordingly.

8. Revision succeeds in part with the observations and modifications in the judgment impugned as shown above.

(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay