IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-963-SBA-2002 (O&M)
Date of decision: 06.02.2019

U.T. Chandigarh

….Appellant

Versus

Ashok Kumar and another

….Respondents

CORAM: HON’BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sukant Gupta, Addl. PP, U.T. Chandigarh.

Mr. R.S. Chahal, Advocate
for respondent No.1.

Mr. Lalit Thakur, Advocate
for respondent No.2.

******

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting aside the judgment dated 10.05.2001, vide which the respondents-accused were acquitted of the charge framed under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1994 (for short ‘the Act’) read with Rule 29 of the Prevention of Food Adulteration Rules, 1955 (for short ‘the PFA Rules).

In nutshell, the case set up by the prosecution in the complaint is that M.K. Sharma, Food Inspector, on 18.01.1996, inspected the premises of the accused and found 20 bricks of ice cream meant for public sale, kept in deep freezer in his shop premises. The Food Inspector served a notice on Form VI and demanded a sample of one brick of ice cream for Rs.60/-. On purchasing the same, it was mixed properly and divided into three parts and thereafter, it was kept in clean and dry bottles and 24 drops of formaline were added in each bottle, as preservative. The bottles were sealed separately and a paper slip, in triplicate, was issued and signatures of the accused were taken. One part of the sample was sent to the Public Analyst along with a copy of the memorandum on Form VII in a sealed packet and a copy of the memorandum and subsequent impression of the seal was sent to the Public Analyst under intimation to the Local Health Authority, Chandigarh and seals were kept in the safe custody of Local Health Authority, Chandigarh. On receiving the report of Public Analyst, it was found that the sample contains coaltar colours tartrazine and SSY FCF, which is not permitted as per the provisions of Rule 29 of the PFA Rules and thereafter, the complaint was filed before the trial Court and the respondents were summoned.

In pre-charge evidence, complainant M.K. Sharma, Food Inspector appeared and deposed on the lines of the complaint and the trial Court finding a prima facie case under Section 7(i) read with Section 2(ia)(j) of the Act read with Rule 29 of PFA Rules, punishable under Section 16(1-A)(i) of the Act, framed the charge. In the after charge evidence, the prosecution tendered the statement of Food Inspector PW1 and he was cross-examined by the accused. One Surinder Kumar, official of the Local

Health Authority, Chandigarh was also examined as one of the prosecution witness, who stated that report of the Public Analyst was sent to the accused through registered post.

The respondents-accused in their statement, recorded under Section 313 Cr.P.C., denied the allegations and pleaded innocence. However, no defence evidence was led.

Thereafter, the trial Court, vide judgment dated 10.05.2001, acquitted the respondents. The operative part of the judgment reads as under:-

> *"The first and foremost contention of the learned defence counsel is that the report of the Public Analyst is based upon the paper chromatography test only and since it is not a sure test, no reliance can be placed upon the report of the expert and the accused deserves acquittal on this ground alone. I have analyzed this contention and have come to the conclusion that the same does carry conviction with the Court. In case <u>Maya Ram Vs. The State of Punjab 1987 (II) F.A.C. 320</u>, the sample of barfi was taken and as per the report of the Public Analyst there was a red non permitted basic coaltar dye. The opinion of the expert was based upon two tests, micro-scopic examination and detection of colouring matter. In the case in hand also the colouring matter was detected by paper chromatography test and in this regard our own Hon'ble High Court has observed as under: -*

> *"So far as paper chromatography is concerned the same could not bring forward whether the coaltar dye used was permissible or non permissible – it has already been noticed that Rule 28 committed use of coaltar dye. The Public Analyst should have excluded in his opinion the possibility of all the five permitted coaltar dyes pertaining to red colour. As is plain, no such effort was made thus, the report of the Public Analyst cannot be taken as the gospel truth would outweigh normal judicial balancing. If the Courts were to blindly follow the reports of the Public Analyst, then to it would be in the nature of abdication of judicial functions. It is to be borne in mind that the Public Analyst is just an expert and his opinion evidence should normally be clear and unambiguous so that it is understandable, if not to all, at least a sizeable section of the people who are non experts."*

On the basis of aforesaid observations, the conviction order passed by the lower Court was set aside and the accused was acquitted. Following this very authoritative pronouncement our own Hon'ble High Court in Ravinder Kumar Vs. The State of Haryana 1988 (1) C.L.R. 309 acquitted the accused in a case of sample of patisa observing that Public Analyst has not given any other data in support of his opinion *except the paper chromatography test. In the case in hand the presence of metanil yellow colouring matter has been detected only by the paper chromatography test and no data is available as to how the Public Analyst concluded that the use of colouring matter was non permitted, therefore, I have no reason to deviate from the observations made in the above referred authoritative pronouncements.*

In another case Division Bench authority of our own Hon'ble High Court in <u>State of Haryana Vs. Girdhari Lal, 1992 (1) F.A.C. 233</u>, the accused was given the benefit of doubt because it was based upon the paper chromatography test and Public Analyst had opined that it contained unpermitted coaltar dye. Similarly in case law <u>Pawan Manocha Vs. State of Punjab, 1992 (2) F.A.C. 217</u>, the benefit of doubt was given and proceedings were quashed by our own Hon'ble High Court. In another case <u>Ghansham Dass Vs. State of Haryana and anr., 1993 (2) F.A.C. 8</u>, the sample of Haldi was taken and it contained metanil yellow colouring matter and since it was detected on the basis of paper chromatography test, the same was not believed and the proceedings were quashed. Similarly, in <u>Mahi Pal Vs. State of Haryana, 1994 (II) C.L.T 329</u>, the sample was of jalebi. In <u>Ram Niwas Vs. State of Haryana 1997 (2) F.A.C. 185</u>, the sample was of hard boiled confectionery and on analysis, it was found to be adulterated as it contained *red basic coaltar dye and the report silent about the particular type of coaltar dye used and the Public Analyst has not been examined as to the basis of his conclusion, the Public Analyst had not declared in his report the details of the colouring matters which were in contravention of the Food Health Authority Notification, the petitioner was acquitted because the paper chromatography test was not found to be a sure test. Similarly in Charanjit Ahuja Vs. Senior Health Inspector, Northern Railway, Ambala Cantt 1992 (2) RCR 5, the sample was of chilli powder and it contained unpermitted coaltar dye. The detection was made on the basis of paper chromatography test and accused was given the benefit of doubt and proceedings were quashed.*

No other contention has been raised.

Consequent upon my aforesaid discussion, the complaint fails, the same is hereby dismissed and the accused are acquitted of the charge. The file be consigned to the record room."

Present appeal has been filed challenging the aforesaid judgment.

Learned counsel for the appellant-U.T. has argued that it has come on record from the report of Public Analyst that sample was containing coaltar colours tartrazine and SSY FCF and therefore, it violates the provisions of Rule 29 of the PFA Rules. It is further submitted that the report was sent to the respondent-accused vide Ex.PA, through registered post and the same was duly served upon them. It is also submitted that the sample was drawn from the premises of respondents-accused, which was found to be sub-standard and therefore, the trial Court has wrongly acquitted them.

In reply, learned counsel for the respondents have argued that in fact, three samples were taken, however, the prosecution has failed to prove that the report was served upon the accused. Learned counsel have referred to the cross-examination of M.K. Sharma, Food Inspector, where he has made the following deposition: -

> *"I melted the bricks in a patila which was with the accused. It took about half an hour in melting. I put formaline 24 drops in each bottles. I did not added the formaline in entire one litre. I had sent one wrapper with the sample bottles to PA and did not deposit two wrapper with the office of LHA. I do not know what is the difference between ice cream and dessert. It is correct that colour is allowed in ice cream. It is incorrect that I did not take the sample properly."*

Learned counsel for the respondents have thus argued that two other samples were not deposited with the Local Health Authority and therefore, the accused have no occasion to get the second sample tested.

It is further submitted on behalf of the respondents that in cross-examination, PW2 Surinder Kumar, Clerk, office of Local Health Authority, Chandigarh has stated that he has not brought the register, in which entry of undelivered letter was made and further admitted that complete address of the shop was not given in the forwarding letter. This witness has further stated that he cannot say whether the same was delivered to the respondents or not. It is thus submitted that in the absence of serving the report of the Public Analyst to the respondents-accused, they were denied their valuable right of getting the second sample tested from the Central Food Laboratory within the time.

Learned counsel for the respondents have further submitted that the respondents are owners of M/s J.K. Agencies, Chandigarh and vide purchase letter Ex.D1 and vide bill Ex.D2, they have purchased the bulk stock from the manufacturer M/s Vadilal Enterprises Ltd. and drawn sample of ice cream was part of bulk purchased, which was kept in the freezer in proper manner. It is further argued that the manufacturer never appeared before the trial Court and never faced the trial and the respondents are only authorized distributor of the manufacturer. In this regard, learned counsel have relied upon invoice Ex.A2, vide which the respondents had purchased the goods worth Rs.68,206/- from M/s Vadilal Enterprises Ltd. and the sample of the ice cream, drawn by the Food Inspector, was part of this bulk purchased and the respondents being stockist cannot be held liable. It is lastly argued that while recording the statement of respondents-accused recorded under Section 313 Cr.P.C., report of the Public Analyst was never put to the them.

After hearing learned counsel for the parties, I find no ground to interfere in the impugned judgment passed by the trial Court.

(a) The trial Court has rightly recorded a finding that report of the Public Analyst is based upon paper chromatography test only, which is not a surety and therefore, no reliance can be placed on the same. A perusal of the record shows that though the prosecution has placed on record the notice Ex.PW2/A, which was sent to respondent-accused Ashok Kumar, with a clear mention that on receiving the notice within a period of 10 days, he can get the second sample analyzed from the Director, Central Food Laboratory, Mysore/Pune, however, the service of this notice is not proved on the respondent.

(b) It is apparent from the cross-examination of PW2 Surinder Kumar, Clerk, Office of Local Health Authority, Chandigarh, who has stated that he has not brought the register regarding the entry of undelivered letters and also admitted that in the notice, the complete address of the respondents is not given. He has further stated that he cannot say whether this notice was delivered or not. Therefore, in the absence of clinching evidence that the notice was duly served upon the accused, their right to get the second sample tested was denied by the prosecution.

Even otherwise, it has come in the statement of PW1 M.K. Sharma, Food Inspector that he never deposited the remaining two samples with the Local Health Authority and therefore, no proper procedure was followed.

It is worth noticing that the samples were drawn on 18.01.1996 and the respondents are facing the protracted prosecution for the last more than 22 years, despite the fact that they were acquitted in the year 2001 and it is not case of the Local Health Authority that the respondents were prosecuted subsequently for violation of the provisions of the Act.

For the reasons recorded above, present appeal is dismissed being without any merit.

[ARVIND SINGH SANGWAN]
06.02.2019 **JUDGE**
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No