

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

CRR-2423 of 2011

Reserved on : 08.05.2019

Date of decision : 28.05.2019

Parveen Kumar

.... Petitioner

Versus

State of Punjab

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

Present: Mr. Sham Lal Bhalla, Advocate,
for the petitioner.

Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

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RAJIV SHARMA, J.

1. The petitioner has laid challenge to the judgment dated 20.09.2011, rendered by learned Sessions Judge, Fatehgarh Sahib in Criminal Appeal No. 10 of 04.03.2010, dismissing the appeal filed by the petitioner and upholding the judgment and order dated 08.02.2010, passed by learned Chief Judicial Magistrate, Fatehgarh Sahib, in Complaint No. 41-T of 03.09.2007/2003, whereby the petitioner was convicted and sentenced under Section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') to undergo rigorous imprisonment for six months and to pay the fine of ₹ 5,000/-, and in default of payment of fine to further undergo rigorous imprisonment for two months.

2. The case of the prosecution, in a nutshell, is that Dr. Amarjit

Singh, with Paramjit Singh, Food Inspector, inspected the food joint (Dhaba) owned by the petitioner, on 28.05.2003 at about 1.30 PM. They found him in possession of 24 bottles of Pepsi cold drink, each containing 300 Mls, in his premises, kept for sale for human consumption. The crown of the bottles read as "Manufactured by Dhillon Kool Drinks and Beverages Ltd. Phillaur, best before six months from the date of manufacture". The neck of the bottle read as "MRP Rs.9/-". The Food Inspector disclosed his identity. He purchased six sealed bottles of Pepsi cold drink and issued a receipt for Rs. 54/- after giving him notice in Form VI as prescribed under the rules. The entire procedure was witnessed by Bhupinder Singh. The bottles, so purchased, were separated into three equal parts of two bottles each. Three parts were wrapped in a paper separately and paper seals bearing code No. PLJ/44/03 and serial No. 93149 of the Local Health Authorities, Fatehgarh Sahib, bearing his signatures, were pasted on each bottle length wise covering the mouth and bottom of the bottle. Each part of the sample was then secured with a strong twine. Then each sample was sealed with a seal bearing his signatures on four distinct places. The signatures of the vendor were obtained on each part of the sample in the prescribed manner, i.e. partly on the paper slip and partly on the wrapper. Thereafter, he sent one sealed part of the sample to the Public Analyst, Bathinda, along with memorandum in Form VII, after making 9 copies of memorandum. The other two sealed parcels of the sample were deposited in Form VII in sealed packet with the Local Health Authorities, Fatehgarh Sahib. The report of Public Analyst, Bathinda, was received. Thereafter, complaint was filed in the court.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated. He also took the defence that he never sold the bottles in question to the complainant. He did not own any food joint. He was convicted and sentenced by the trial court, as noticed here-in-above. The appeal filed by him against his conviction and sentence was dismissed by the learned appellate court. Hence, this revision petition.

4. Learned counsel appearing on behalf of the petitioner has vehemently argued that the prosecution has failed to prove its case against his client and both the courts below have misread the oral as well as documentary evidence. Learned counsel appearing on behalf of the State has supported the judgments of the courts below.

5. We have heard learned counsel for the parties and gone through the judgments of the courts below and record very carefully.

6. PW.3 Dr. Amarjit Singh expired on 10.05.2006. However, the prosecution had already examined him in pre-charge evidence. The fact of the matter is that PW.4 Dr. Paramjit Singh, Food Inspector, who was present along with PW.3 Dr. Amarjit Singh, has fully supported the case of the prosecution. The raid was conducted on the food joint (Dhaba) of the petitioner on 28.05.2003 at about 1.30 PM. 24 bottles of Pepsi cold drink were kept by him for sale for human consumption. It was established that crown of the bottles read as "Manufactured by Dhillon Kool Beverages Limited, Phillaur". Out of these 24 bottles, six bottles of Pepsi cold drinks were purchased as samples. The samples were separated in equal parts, i.e.

two bottles each. One of the samples was sent for analysis to Public Analyst, Bathinda. Report of the Public Analyst is Ex.PW.3/G. According to the report, the sample was found to be misbranded. The product was not labeled in accordance with the provision of Rule 32 of the PFA Rules, 1955 as the month and year of manufacturing were not given. The bottles were recovered from the custody of the petitioner. One of the samples was also sent to CFL Mysore. Report of CFL, Mysore, Ex.CX, was similar to the report of the Public Analyst, Ex.PW.3/G.

7. The date of manufacture was conspicuously missing on the bottles. The expiry date should have been mentioned. The petitioner was required to lead cogent and reliable evidence that he had purchased the bottles in question from a licenced manufacturer/distributor/dealer, or to produce some warranty. He has not produced any bill or warranty to establish that the bottles in question had been purchased by him in sealed condition from a manufacturer. The case set up by the petitioner in his statement under Section 313 Cr.P.C. was that he neither sold the bottles nor the stock was meant for sale and he was never employed in the shop. It has come in the statement of PW.4 Dr. Paramjit Singh that even upon enquiry, the petitioner did not disclose the name of his vendor. The plea raised by the petitioner that Section 19 of the Act was not complied with has rightly been rejected by the courts below.

8. The prosecution has established its case against the petitioner beyond reasonable doubt. The judgments rendered by both the courts below convicting the petitioner under Section 16 (1) (a) (i) of the Act are upheld. However, taking into consideration the fact that the sample was drawn on

28.05.2003 and the petitioner has faced the agony of criminal case for almost 16 years, the sentence of imprisonment of the petitioner is reduced to the period already undergone.

9. Petition is, accordingly, disposed of.

May 28, 2019
ndj

(**RAJIV SHARMA**)
JUDGE

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