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IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRR 3619 of 2012 (O&M)

Date of Decision: 01.04.2019

Munshi Ram

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present Ms. Anita Balyan, Advocate for the petitioner.
Mr. Manoj Sangwan, DAG, Haryana

MAHABIR SINGH SINDHU, J (ORAL)

Present Criminal Revision has been filed against judgment dated 07.11.2012 passed by learned Additional Sessions Judge, whereby the appeal against the judgment and order dated 12.10.2010/ 13.10.2010 passed by Sub Divisional Judicial Magistrate, Dabwali, whereby the petitioner has been convicted and sentenced under Section 16 (1) (a) (i) of The Prevention of Food Adulteration Act, 1954, (for short 'the Act'), to undergo RI for a period of six months and to pay a fine of Rs.1000/- alongwith default clause to further undergo rigorous imprisonment for one month has been dismissed.

Brief facts of the case are that a complaint was filed against the petitioner with the allegation that on 25.04.2005, his premises had been checked by the then Food Inspector Jatinder Yadav along with Dr. Mukesh Kamboj, and they found about 10 kg of '*Haldi powder*' in his possession for public sale contained in a jute bag. Out of which a sample of 1500 grams was purchased for an amount of Rs.60/- by giving him notice in Form VI prescribed under the Prevention of Food Adulteration Rules, 1955, for short 'the Rules' and after mixing the same properly, and making it homogenous

for analysis divided into three equal parcels which were put into three empty, clean and dry bottles. Two drops of formalin were added in each bottle and they were closed tightly and sealed with the seal of medical officer. The samples were labelled and rapped in strong paper and the ends of the paper were pasted with gum. Paper slips bearing Code No.SR-DH FI-2 Sr. No. 566 were pasted on each bottle from top to bottom and each of them were secured by means of strong twine and sealed with the seal of Medical Officer and Food Inspector on the spot which was duly signed by Local Health Authority, Sirsa. Thereafter, signatures of the petitioner were obtained in such a manner that both the paper slip and wrapper on each seal bottle bearing the part of signatures. The spot memo Ex.PC was prepared and documents Ex.PA to Ex.PC were signed by the petitioner and duly signed by the witnesses. Impression of seals was also taken on Form VII. One sealed bottle of sample along with copy of Form VII was sent to Public Analyst, Haryana, Chandigarh, for analysis in a wooden box, duly sealed through Railway parcel and other two sealed bottles of sample along with two copies of memo in Form VII were deposited with the local Health Authorities. The report of Public Analyst, Haryana, Chandigarh Ex.P1, was received on 15.06.2005 and reveal that the sample did not conform to the prescribed standards laid down for Haldi powder under the Rules due to the following reasons:-

- i) The sample is coloured with prohibited metallic yellow synthetic colouring mettlet;
- ii) The microscopic examination shows that there was presence of rice starch which is a foreign substance to haldi and use of the same is prohibited under Rule 44 (h) of Rules;

- iii) Sample is not in a packed container/ conditions and thus the same is in contravention of sub-rule 24 of Rule 49;

During pre-charge evidence, Food Inspector Subhash Chaudhary appeared as PW1, Jatinder Yadav, the then Food Inspector appeared as PW2 and on the basis of pre-charge evidence, the petitioner was charged under Section 7 read with Section 16 of the Act, to which he pleaded not guilty and claimed trial.

During after-charge evidence, complainant examined Government Food Inspector-Subhash Chaudhary as PW1 again as well as Atma Ram, Clerk of Local Health Officer as PW2, Jatinder Yadav, Government Food Inspector as PW3. Statement of petitioner was recorded under Section 313 Cr.P.C. where he claimed innocence by raising the plea of false implication.

In defence, petitioner examined Kanha Ram as DW1 and Sharda Devi DW2.

After hearing both sides, learned trial Court convicted and sentenced the petitioner to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- alongwith default clause to further undergo rigorous imprisonment for one month vide judgment and order dated 12/10.2010/ 13.10.2010 under Section 16 (1) (a) (i) of the Act and appeal preferred by the petitioner was dismissed vide order dated 07.11.2012 passed by learned Additional Sessions Judge, and hence the present criminal revision.

Learned counsel for the petitioner made following submissions, namely,--

- (i) both the learned Courts below have failed to take into consideration the proved fact that although the petitioner

was owner of the shop in question but the same was rented out to Pawan Kumar, son of Het Ram for 'Karyana' and petitioner was working as a Principal in a private School and thus, he has no concern with the alleged sample in question and this fact is duly corroborated by DW1 Kanha Ram as well as DW2 Sharda Devi, Principal of Sri Luna Ram Saraswati Vidhya Mandir;

- (ii) that neither any independent witness nor Dr. Mukesh Kamboj, Medical Officer, Primary Health Centre, Randhawa, (Sirsa) has been examined to support the prosecution case;
- (iii) that Rule 44 H of the 1955 Rules, already stands omitted way back in the year 2000 vide Government Gazette Notification No.G.S.R.716 (E) dated 13th September 2000.

On the other hand, learned State counsel has opposed the submissions of the petitioner and prayed for dismissal of the criminal revision.

Heard both sides and perused the paper book.

Rule 9 (a) of the Rules stipulates that it shall be the duty of the Food Inspector to inspect as frequently as may be prescribed by the Food (Health) Authority or the local Authority all establishment licensed for the manufacturer, storage or sale of an article of food within the area assigned to him. In terms of the above Rule, PW2 Jatinder Yadav being the Food Inspector accompanied by Dr. Mukesh Kamboj, Medical Officer, are alleged to have inspected the shop of the petitioner on 25.04.2005 and all three material documents i.e. Form No. VI Ex.PA, receipt for purchase Ex.PB and proceedings of inspection Ex.PC are claimed to have been signed by Dr. Mukesh Kamboj and although his name was mentioned in the list of witnesses but he has not been examined by the prosecution. The

explanation recorded by both the Courts below are that although summons

were sent to him as a prosecution witness but since he has left the Government job and gone to United States of America, therefore, he could not be examined.

This Court has gone through the record of the case carefully and it is amply proved that Dr. Mukesh Kamboj was very much available in India and he was duly served for 26.05.2009 and he made the following endorsement on the summons:-

“Respected Sir,

Respectfully submitted that I am unable to attend the Court on 26.05.2009 due to a family function. Kindly exempt my presence.”

The fact that he has left India and gone to USA and settled there although not proved by any cogent evidence but if still that is to be accepted, then it is not clear as to when he left this country but the fact remains that he was aware about the pendency of the case and he was duly served, therefore, the prosecution should have taken further steps to examine the said witness but in fact they did not take any steps and this can be termed as a lapse on the part of the prosecution and the prosecution cannot take the benefit of its own wrong as the law is well settled that criminal charge has to be proved beyond reasonable doubt and the petitioner should not suffer on that count. The fact remains that if subsequently, this witness has left the country, still he was a material witness in the facts and circumstances of the present case but there is no material available on record to suggest that any effort was made for recording the testimony of Dr. Mukesh Kamboj being a material witness, as his testimony was very much necessary to establish that petitioner was running a Grocery shop at the relevant point of time and the sample in question was purchased from him on 25.04.2002 as there is no other

independent witness to support this fact except the Food Inspector who is the defacto complainant. On the contrary, DW1 Kanha Ram categorically deposed that he is running Inverter and Battery shop for the last 10/12 years in the adjoining shop of the petitioner. Further stated that shop owned by the petitioner had been rented out to Pawan Kumar for Grocery shop and the petitioner was doing job in a private School. During cross-examination, this witness denied the suggestion that he has ever heard about taking sample of Haldi powder from the petitioner. Still further, DW2 Sharda Devi, Principal of Luna Ram Saraswati Vidhya Mandir, Village Gaur Ganga, deposed that she joined as Principal of the School in February, 2009, which is run by Hindu Shiksha Samiti, Kurukshetra, since 1994. She further deposed that petitioner had remained Principal in the School w.e.f. April 2002 uptill 01.02.2009. Therefore, there is cogent evidence available on record to prove that although the petitioner has admitted that he is the owner of the shop but his specific case is that he has rented the shop to Pawan Kumar and Pawan Kumar was running a Karyana shop in that premises, and since petitioner was working as a Principal in a private School w.e.f. April 2002 uptill 01.02.2009 therefore, he was not concerned with running the grocery shop or selling the Haldi powder. But both the Courts below have ignored this aspect of the matter which has resulted into great prejudice to the petitioner and that creates a reasonable doubt in the prosecution story, therefore, this Court has come to the conclusion that there is no evidence on record to prove that petitioner was running the Karyana shop and the alleged sample of Haldi powder was purchased from him on 25.04.2005 or that he was issued any license to run the Karyana shop by any competent authority.

Learned counsel for the petitioner has submitted that as per provisions of the said Act accused has a right under Section 13 (2) of the Act for seeking second opinion but the petitioner has been deprived of his legal right as sample was taken on 25.04.2005 and the Food Inspector filed complaint on 11.10.2005, there was no explanation by Food inspector for delay in filing the complaint. Food Inspector also violated Section 10 (7) of the Act as he failed to join any independent witness as the premises in question is in crowded place. As per law laid down by the Full Bench of this Court in **State of Punjab Vs. Raman Kumar, 1997 (4) RCR 772**, it is mandatory to join an independent witness. If the article seized was found to be adulterated and not fit for human consumption then also it comes within the meaning of adulteration of such article. But Section 2 (10) (m) (b) of the Act is an exception wherein it makes it clear that if such item is not injurious to health it cannot be termed as adulterated.

Learned State counsel has failed to point out any contrary judgment in this regard.

As per the report submitted by the public analyst there is no mention of sample being injurious to health.

In view of the facts and law as discussed hereinabove, it is apparent that the judgment of the trial Court is not based on proper appreciation of evidence. The allegation against the accused-petitioner has not been proved. Accordingly, this petition deserves to be allowed and the judgment of conviction and order of sentence passed by learned trial Court as well as the first Appellate Court deserves to be set aside.

In view of the above, this Court has no option except to set aside the conviction and sentence imposed by both the Courts below and

acquit the petitioner by giving him benefit of doubt while observing that prosecution has failed to prove its case beyond reasonable doubt.

Ordered accordingly.

The accused- petitioner is acquitted of the charge framed against him and the bail bonds already furnished stand discharged.

01.04.2019
ashwani

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No