

**In the High Court at Calcutta
Criminal Appellate Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

C.R.A No.460 of 2019

With

IA NO: CRAN 2 of 2020 (Old No. CRAN 2987 of 2020)

&

IA NO: CRAN 3 of 2020 (Old No. CRAN 2988 of 2020)

Swarup Sen

Vs.

The State of West Bengal

For the appellant	:	Mr. Anjan Bhattacharya, Ms. Anita Shaw
For the State	:	Mr. Ranabir Roychowdhury
Hearing concluded on	:	31.08.2021
Judgment on	:	01.09.2021

Sabyasachi Bhattacharyya, J:-

1. The appellant, who is in custody, has preferred a challenge against his conviction under Sections 272 and 273 of the Indian Penal Code (hereinafter referred to as "the I.P.C.").
2. The moot ground of challenge is that the evidence produced in the matter does not incriminate the appellant under either of the aforesaid Sections of the Indian Penal Code.

3. Sections 272 and 273 of the I.P.C are quoted below:

“272. Adulteration of Food or drink intended for sale.—*Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

273. Sale of noxious food or drink.—*Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”*

4. It is argued that the appellant was merely sitting in the hotel, which is run by his father, at the juncture of his apprehension.
5. It is argued that none of the documents seized or produced in evidence indicate that the appellant was connected in any way with the alleged cooking of rotten meat.
6. Learned counsel hands over photocopies of certain documents, being the trade license and other connected permissions issued by several authorities in the name of the appellant’s father, to lay stress on the contention that the hotel-cum-restaurant business is run by the father of the appellant and that the appellant is in no way connected with the running of the said business.
7. Learned counsel appearing for the State contends that the appellant was apprehended by the officials of the Bongaon Municipality while

the appellant was engaged in cooking such rotten food items in the restaurant. As such, it ought to be presumed that the yardsticks of Section 272 of the I.P.C are clearly satisfied.

- 8.** A perusal of the relevant provisions clearly indicates that Section 273 of the IPC pertains to sale of noxious food or drink. Since there is nothing on record even to indicate that the appellant was connected in any way with the sale of any such article-in-question, the said provision is not attracted at all in the present case.
- 9.** As far as Section 272 of IPC is concerned, the only allegation which might have been levelled against the appellant is that the appellant adulterated the rotten food, intending to sell such article as food, or knowing it to be likely that the same would be sold as food.
- 10.** However, mere evidence of the Bongaon Municipality officials that the appellant was “engaged” in cooking such food, without an iota of evidence that such food was being “adulterated” by the appellant with the intention to sale, or even knowing it to be likely that the same would be sold as food, is vague is utterly insufficient to incriminate the appellant of any violation of Section 272 of the IPC at all.
- 11.** Even if the appellant was seen to be engaged in cooking the rotten food, the expression “engaged” is as vague as can be and does not show any direct involvement of the appellant in any act of ‘adulteration’ of the food item.

- 12.** That apart, there is no evidence on record at all even to indicated that the appellant intended the said food to be sold or likely to be sold as food, at the nascent stage of cooking, which is, by no stretch of imagination, directly a part of the process of sale. It may very well be that the food was being cooked for the consumption of the employees of the hotel or the family of the owner thereof and/or for some other purpose. Without any credible direct link between the cooking and the act of adulteration, let alone such cooked food being intended to be sold, the entire superstructure of allegations against the appellant is rendered a castle in the sand, which not sufficient, by the standards of criminal trial, that is, beyond reasonable doubt, to indict the appellant under any of the Sections clamped against him.
- 13.** That apart, in view of the suppliers of the rotten meat themselves having faced custody trial but ultimately having been acquitted due to absence of reference of their names in the statement of the five witnesses recorded under Section 161 of the Code of Criminal Procedure, as evident from the order dated January 5, 2021 passed by a co-ordinate bench in C.R.A. No. 540 of 2019, with IA No: CRAN 2 of 2014 (Old No. CRAN 4479 of 2019), there is no question of holding the appellant, who had no part to play in any sort of adulteration and/or sale of such allegedly rotten meat, guilty of violation of Sections 272 and/or 273 of the IPC. The appellant has merely been sought to be made a scapegoat to vindicate the allegations of adulteration of food.

- 14.** Hence, the indictment and conviction of the appellant, by the impugned judgment and order dated June 26, 2019 passed by the Additional Sessions Judge, First Court at Bongaon, District: North 24 Parganas in Sessions Case No.157 of 2018 (SC 207/18) are set aside. CRA 460 of 2019 is, thus, allowed on contest. The appellant, who is at present in custody, is acquitted honourably and is hereby set free from custody. Necessary steps shall be taken by the concerned authorities, including the Superintendent of the Correctional Home where the appellant is in incarceration, to release the appellant from custody at the earliest, upon being intimated of this order.
- 15.** The office is directed to communicate this order immediately to the concerned Superintendent of the Correctional Home where the appellant is at present behind bars. The authorities and all concerned shall act on such communication and/or written communication of this order by the learned Advocates for the parties, accompanied by server copies thereof, without insisting upon prior production of a certified copy.
- 16.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)