

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRA 540 of 2019

**Debabrata Saha @ Debobrata Saha
Vs.
The State of West Bengal**

**For the Appellant : Mr. Anjan Bhattacharya
Ms. Anita Shaw**

For the State: Mr. Mirza Firoz Ahmed Begg

Heard on : 17.12.2021

Judgment On : 17.12.2021

Bibek Chaudhuri, J.

The instant appeal is directed against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 1st Court, Bongaon in Sessions Case No.157/18 (SC 207/18) on 26th June, 2019 thereby convicting the appellant for committing

offence under Sections 272/273 of the Indian Penal Code and sentencing him to suffer simple imprisonment for a term of five years and to pay fine of rupees one lakh with default clause for the offence punishable under Section 272 of the Indian Penal Code and simple imprisonment for a term of six months and fine of rupees fifty thousand, in default, simple imprisonment for one month more for the offence punishable under Section 273 of the Indian Penal Code.

The Office Superintendent of Bongaon Municipality lodged a written complaint on 5th May, 2018 against the appellant for storing and selling unhygienic and rotten meat and other food products in his restaurant to the customers. It is alleged that on 5th May, 2018 a team of Bongaon Municipality under the leadership of the de facto complainant conducted raid in wifi restaurant at Bongaon to check the quality of food sold in the said restaurant to the customers. During raid, they found the appellant cooking rotten meat in the kitchen of the said restaurant. The rotten meat was seized at the spot. Sample was taken for scientific and forensic examination and then complaint was lodged against the appellant.

On the basis of the said complaint police registered Bongaon Police Station Case No.313 of 2018 under Sections 272 /273 of the Indian Penal Code and section 16 of Prevention of Food Adulteration

Act, 1954 and Section 284 of the West Bengal Municipal Act, 1994. The accused was arrested and produced before the trial Court. On completion of investigation police submitted charge sheet against the accused under Section 272/273 of the Indian Penal Code. The learned trial Judge convicted and sentenced the accused in the manner as stated above.

The appellant has assailed the said order of conviction and sentence in the instant appeal.

It is submitted by the learned advocate for the appellant that the appellant was convicted under Sections 272 and 273 of the Indian Penal Code but the evidence on record does not incriminate the appellant under either of the aforesaid sections of the Indian Penal Code.

Sections 272 and 273 of the Indian Penal Code 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."*

It is submitted by the learned advocate for the appellant that according to the complaint the appellant was cooking rotten meat in a restaurant. Admittedly, he is not the owner of the restaurant. One Sarabindu Saha is the owner of the restaurant. Trade licence stands in the name of Sarabindu Saha and the appellant might be only an employee of the said restaurant. There is absolutely no evidence that he adulterated food products with the intention or knowing it to be likely that the same will be sold to the customers. There is absolutely no evidence that he was selling noxious food in the restaurant.

Learned advocate for the appellant has produced certain documents, being the trade licence and other connected papers issued by different authorities wherefrom it is ascertained that the

father of the appellant, namely, Sarabindu Saha was the owner of the said restaurant and he used to run the restaurant business. The appellant is in no way connected with the running of the said business.

Section 273 of the Indian Penal Code is a penal provision for sale of noxious food or drink. There is absolutely no evidence to show that the appellant was connected in any way with the sale of any such article in question. Therefore, the provision of Section 273 of the Indian Penal Code is not attracted against him.

As far as Section 272 of the Indian Penal Code is concerned, the only allegation shall 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.

However, it is already recorded that when raid was conducted by the de facto complainant with a team of the employees of Bongaon Municipality, the appellant was found engaged in cooking such food. There is absolutely no evidence that such food was being adulterated by the appellant with intention to sell, or even knowing it to be likely that the same would be sold as a food. The evidence on record is absolutely insufficient to incriminate the appellant of any violation of Section 272 of the Indian Penal Code.

Surprisingly enough along with the appellant six other persons faced trial in the trial Court for the offence committed under Sections 272/273 of the Indian Penal Code. According to the prosecution they were the suppliers of rotten food materials. Therefore, if at all the charge of adulteration of food was sought to be invoked, the suppliers were held to be responsible.

That apart, there is no evidence on record at all even to indicate 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 appellants 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.

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.

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 540 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.

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.

Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Bibek Chaudhuri, J.)