

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

**CRR-1474-2012**

**Reserved On: 04.07.2022**

**Pronounced On: 13.07.2022**

HANIF

...Petitioner

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**

Present : Mr. Sarfraj Hussain, Advocate  
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

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**SURESHWAR THAKUR, J.**

1. The learned Judicial Magistrate Ist Class, Ferozepur Jhirka, through a verdict of conviction drawn, on 22.11.2011, upon Criminal Case No.12/31.01.2006, drew a verdict of conviction against the accused. The above verdict of conviction was made against the accused in respect of a complaint, constituted under Section 7 read with Section 16 of the Prevention of Food and Adulteration Act (hereinafter referred to as “the Act”). Through a separate sentencing order drawn on 23.11.2011, by the learned trial Magistrate concerned, he proceeded to sentence the convict to undergo Rigorous Imprisonment for a period of six months, and, also sentenced him to pay a fine of Rs.1,000/-, for commission of an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Act. Further, upon default of payment of fine amount, the convicting Court sentenced the accused to undergo further simple imprisonment for one month.

2. The aggrieved-convict preferred thereagainst, criminal appeal No.190 of 2011, before the learned Additional Sessions Judge, Nuh, and, through a decision made thereons, on 25.04.2012, the learned Appellate

accused, by the learned trial Magistrate concerned, hence proceeded to sustain the verdict (supra), and, also proceeded to validate the consequent therewith sentence (supra), as become initially imposed, upon him, by the learned convicting Court. The convict became aggrieved from the concurrently made verdicts of conviction, and, consequent therewith sentence(s) (supra), as become imposed, upon him, by both the learned Courts below, and, has chosen to assail them, through his instituting the instant revision petition.

3. In the complaint allegation is made against the accused that, on 20.11.2005 at 12.00 P.M. Govt. Food Inspector intercepted accused having in his possession of about 10 Can's of 40 liters of mixed milk for public sale in Tata-407 No.HR-28-1738. The complainant demanded a sample of mixed milk by giving notice in writing on Form VI prescribed under the Act and purchased 1500 Mls. of mixed milk against payment of Rs.18/-, which was divided into three equal parts and bottled in three dry, clean empty bottles. Two drops of 40% formalin per 25 Ml were added as preservative in each bottle. Said bottles were stoppered tightly and sealed, labelled and wrapped in strong thick papers as per rules and a paper slip bearing Code No.GN-CS/FH/F1-2=111. Thumb impressions of accused were taken on each wrapper. One sealed bottle along with memorandum in Form II was sent to the Public Analyst, Haryana Chandigarh for analysis in sealed packet through messenger Sh. Sajjan Singh, CIV. The other two bottles were deposited with Local Health Authority on 21.11.2005 vide No.GFI/05/325 in a sealed packet. A copy of memo in form VII and a specimen impression of seals used to seal the sample and packet were sent to Public Analyst, Haryana, Chandigarh. The report of public Analyst shows that the sample contains 6.30% of milk solids not Fat against the minimum specified limit of

8.5% laid down for mixed milk in the Table below item No.A.11.01.11 of the PFA Rules, 1955 and thus the sample was found adulterated.

4. The samples of the purportedly adulterated food items were taken through Ex. PA, at the crime site concerned, by the Food Inspector. At the relevant time, he was also accompanied by PW-2 Dr. N.D. Khangwal, and, on Ex. PA rather exist the thumb impressions of the convict-revisionist herein Hanif. Prior to the drawing of Ex. PA, the Food Inspector concerned, as divulged by Ex.PC, had made the relevant purchase, in a sum of Rs.18/-, from the convict-revisionist herein. A reading of clause 5 of Ex.PC reveals, that at the crime site, the Food Inspector, had divided the sample of 1500 mls/mgs of mixed milk, into three equal parts, and, had thereafter put them into three dry, clean bottles/packets, and, after his making the sample representative, his labelling, fastening, and, sealing besides making marks, upon each part, as required under Section 11 of the Act. Moreover, it is also echoed in Ex. PC, that the paper slip, issued by Local Health authority became pasted from top to bottom, on each part of the sample(s). Ex. PC also unfolds that, the sample was taken in the presence of Shri Kallu Khan. Even on Ex.PC, the thumb impressions of the convict-revisionist herein are carried. Ex. PE is the intimation by the Food Inspector to the Local Health Authority, Gurugram (erstwhile Gurgaon) about the despatch thereto, of the food samples hence for their examinations being made there. The Public Analyst concerned, whereto, the seized samples became sent, for analyses, his in his report embodied in Ex.PF, made the hereinafter extracted opinion.

*“The sample contains 6.30% of Milk Solids not fat against the minimum specified limit of 8.5% laid down for Mixed Milk in the table below item Number A.11.01.11 of the PFA Rules, 1955. Hence the sample is adulterated.”*

After the making of an opinion by the Public Analyst

concerned, upon the seized samples concerned, the Local Health Authority, Gurugram (erstwhile Gurgaon) proceeded to, through Ex.PW-3/A, transmit the apposite report to the convict, with an intimation to him, that in case he intends, to controvert the report of the Public Analyst, as carried in Ex.PF, he may choose to ask for further analysis thereof, by the Director, Central Food Laboratory Mysure. Ex. PW3/A was sent through receipt, to which Ex.PW-3/B is assigned.

6. It appears that, despite an intimation being made through Ex.PW-3, to the convict about the report of the Public Analyst, as carried in Ex.PF, and, appertaining to the recovered samples being an adulterated sample(s) of the recovered food item concerned, yet, he did not choose to controvert the findings as made against him, and, as carried in Ex.PF, hence through his asking for a further analyses thereof, from the Director, Central Food Laboratory, Mysure. The effect of above is that, there is a rife, and, open abandonment, by the petitioner, with respect to his statutory right to controvert the findings against him, as made, by the Analyst concerned, upon the recovered samples of the purportedly adulterated food item, and, as became collected, at the crime site. The further consequence thereof, is that, the petitioner becomes estopped to make any contention before this Court, that, the findings adversarial to him, and, as become embodied in Ex.PF, are unworthy of any evidentiary vigor becoming assigned thereto.

7. As above stated, the convict had appended his thumb impressions on Ex.PA, and, also appended his thumb impressions on Ex. PB, besides had appended his thumb impressions also on Ex.PC. However, if the existences thereons of the thumb impressions of the convict, were forged or were false, thereupon, it was open to the convict to make a contest, and, to

thumb impressions, his making a plea, before the learned trial Magistrate concerned, that comparisons thereof be made, with his purportedly forged thumb impressions, as carried on the above exhibits. However, he did not take up the above plea, therefore, he has to be concluded that, he has admitted that his authentic thumb impressions, rather becoming carried on the above referred exhibits. The further sequel thereof is that, it is not open to him, to deny all the displays, and, echoings, as carried therein, especially with respect to the adoption of the statutory procedures relating to purchase from him, at the crime site, of the purportedly adulterated food item, and, nor it is open to him, to challenge the adoptions of the statutory procedure, as reflected thereins, and/or, appertaining to the makings of samples, and, also the makings of other markings thereons, besides, he becomes forbidden to challenge all the relevant pastings, as become statutorily enjoined to be done, at the crime site, by the Food Inspector concerned, and, which become also made thereons.

8. The makings of the above exhibits, has been proven, by the Food Inspector concerned, rather during the course of his stepping into the witness box, as PW-1, and, in the cross-examination, as, made upon him, by the learned defence counsel, there is no contest with respect to there being any defect qua the adoption(s) of the statutory procedures, at the instance, of the Food Inspector concerned, at the crime site. If so, and, when the deposition of PW-1 has been corroborated by the unshattered deposition of PW-2, thereupon the allegations carried in the complaint, as, instituted against the accused, are to be concluded to be satisfactorily proven.

9. PW-1 has in his examination-in-chief unequivocally deposed that, he had homogeneously stirred, the purchased food item, hence with a  
plunger, and, with the above deposition remaining unattempted to be a

ripped of its efficacy through any suggestion being meted to PW-1, during the course of his cross-examination, and, nor when any admission thereto ensued from PW-1. Therefore, it is not open, at this stage, for the learned counsel revisionist, to make any contention before this Court that, the Food Inspector concerned, had not homogeneously stirred the purchased purportedly adulterated food item, and, nor can he argue, that the resultant effect thereof, is that, it ultimately vitiating the uncontroverted report of the Public Analyst, as made in respect thereof, and, as becomes comprised in Ex.PF.

10. The learned counsel for the petitioner, has yet depended, upon a judgment made by this Court, in Criminal Revision No.257 of 1994, decided on 18.09.2007, verdict whereof, is titled as '***Gugan V. State of Haryana***'. He refers to the findings recorded therein that, since qua the deficiencies, as observed in Ex.PF, deficiencies whereof, are also reported to exist in the food items appertaining to the instant case, inasmuch as, theirs being of "deficiency of milk solids only, and, not in the fat", it has been propounded in the verdict (supra), to be a sequel of either the sample being not properly analysed or the cow being not properly fed, and, also that the above inference, becoming concluded to be amenable rather for benefit of doubt being accorded to the accused. Therefore, he argues that, when in a verdict (supra) a verdict of acquittal was made qua the revisionist therein, thereupon a similar verdict of acquittal be pronounced even qua the revisionist herein.

11. However, the above made argument is misplaced, and, cannot be accepted. The reason being that, it is not open for the learned counsel for the petitioner to argue, that the sample was not properly analysed, rather by

open to the petitioner, to make the above contention, after his being intimated through Ex.PW-3/A, about the making of a report by the Public Analyst concerned, and, to which Ex.PF is assigned, his asking for the apposite re-analyses. However, despite the petitioner becoming intimated with respect to an adversarial opinion being pronounced qua the purchased from him adulterated food item, he did not choose, to controvert it, through his asking, within the statutorily stipulated period, rather qua it becoming re-analysed by the Central Food Laboratory concerned. As above stated, the above abandonment of a statutory right, does estop him, to rear the above contention before this Court, hence the report of the Public Analyst, obviously acquires the completest conclusivity.

12. Be that as it may, the above deficiencies (supra), though has been detailed in verdict (supra), to be also amenable to stem from the cow, being not properly fed, but if so, evidence even in that respect evidence was to be adduced, as without any apposite support from cogent evidence, any inference about the cow being not properly fed, rather would be completely surmisal or hypothetical. Since evidence in respect of the cow being not properly fed, and, thereupon the above deficiencies arising, has not become adduced, thereupon, the inference/recorded qua the accused, in judgment (supra), is not available to be accorded to the petitioner.

13. There is no merit in the petition, and, the same is dismissed. The concurrently made verdicts of conviction, and, consequent therewith sentence (supra), against the convict-revisionist are upheld, and, maintained. Case property be dealt with, in accordance with law, after the expiry of period of limitation. Records be sent down forthwith.

**July 13, 2022**

**( SURESHWAR THAKUR )  
JUDGE**

ITHLESH KUMAR  
2022.07.13 19:05  
I attest to the accuracy and  
authenticity of this order

*'Ithlesh'*

**Whether speaking/reasoned:-  
Whether reportable:**

**Yes/No  
Yes/No**