

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVITIONAL JURISDICTION  
(APPELLATE SIDE)**

Present:  
**The Hon'ble Justice Rai Chattopadhyay**

**C.R.R 76 of 2013**

**Chandra Sekhar Khan & Anr.  
Vs.  
The State of West Bengal & Anr.**

|                     |                                                         |
|---------------------|---------------------------------------------------------|
| For the petitioners | : Mr. Uday Sankar Chattopadhyay.                        |
| For the K.M.C       | : Mr. Goutam Dinda,<br>: Mr. Anindya Sundar Chatterjee. |
| For the State       | : Ms. Sreyashee Biswas                                  |

**Hearing concluded on: 15/05/2023**

**Judgment on: 19/05/2023**

**Rai Chattopadhyay, J.**

- 1) In this revision, the judgment and order of the first appellate Court, that is, of the Additional District and Sessions Judge, Fast Track 1<sup>st</sup> Court at City Sessions Court, Bichar Bhawan, at Calcutta, dated 29.11. 2012, has been assailed.

- 2)** At the genesis, is the judgment of conviction and sentence dated 12. 03. 2012, passed by the Municipal Magistrate, 3<sup>rd</sup> Court, Calcutta in case No. 9D/2008. The Court was holding trial against the present petitioners/accused persons, for an offence under section 16 (1) (a) (i) and section 7 of the Prevention of Food Adulteration Act, 1954. It examined witnesses and exhibited documents. Finally, the Court has found the petitioners/accused persons guilty of the offence as above, convicted them and has imposed to each of them, a sentence to suffer simple imprisonment for a period of six months and to pay a fine of Rs.1000/- each, in default of which, each one of them would be liable to suffer simple imprisonment for a further period of 10 days.
- 3)** The said judgment and order of sentence of the Magistrate was challenged by the present petitioners, before the first appellate Court, in the appeal as aforesaid. The Court has affirmed the judgment of conviction and order of sentence of the judicial Magistrate, by dint of the impugned judgment. Hence, this appeal, to challenge the said impugned judgment, as well as, the verdict of the Magistrate, regarding conviction and sentence.
- 4)** The complaint dated 16.7.2008, submitted in the Court of the Municipal Magistrate, Kolkata, may be discussed in a nut shell, at the very outset. One Sri Bishnu Prasad Samanta, a '*food inspector*' by designation, from the concerned department, was the complainant. He said that on May 13, 2008, he inspected the shop/manufactory situated at 144, Kalighat Road, Kolkata - 26. The food article, namely, '*dahi*', which was stored/exposed for sale for human consumption, was examined by the complainant in his official capacity. Petitioner No. 1, was the owner and proprietor of the shop whereas petitioner No. 2 has been the salesman

present in the shop at the relevant point of time. 600 g of the said food article (dahi) was collected by way of purchase and was separated into three parts. One part of the same was sent to the Public Analyst, for analysis. The remaining two parts of the sample were packed and sealed and sent to the Local Health Authority, in accordance with law. The complainant has narrated that in accordance with the report of the Public Analyst dated June 9, 2008, the food sample as above was adulterated. Thereafter, consent was obtained in accordance with law, for initiation of prosecution, and finally the present case was filed against both the proprietor of the shop and the seller, that is, the present petitioners.

- 5) Mr. Chattopadhyay, who is representing the petitioners in this case has vehemently attacked both the impugned judgment and also the judgment of the Magistrate, as mentioned above. His initial point of argument is regarding the maintainability of the proceeding adopted by the Magistrate in this case. He says that, in terms of the statute, the Magistrate was to adopt a summary proceeding to dispose of this case. However, according to Mr. Chattopadhyay, in defiance of such a statutory provision, the trial Court has adopted procedure of a warrant case, lodged on the basis other than police report. He says that due to such erroneous approach of the Magistrate in dealing with this matter de hors the provisions in the statute, the petitioners have suffered prejudice by way of being drawn unnecessarily long in a court of law and having suffered serious mental agony for that. The other point envisaged by the Id. Advocate is that, it would have been statutorily required that the alleged contaminated food article should be declared as not fit for human consumption and injurious to health, before the petitioners could be convicted for storage or sale of the same, but the same has not been proved by prosecution in this case. Thus, he says, that the prosecution

has fallen short of the standard of proving the guilt of the present petitioners beyond all reasonable doubt. He says that the same may vitiate the trial. Further defence on behalf of the petitioners has been made to the effect that according to the evidence of the concerned witness, the said food item (dahi) alleged to be contaminated, was prepared by 'cow milk', whereas while examination of the same, the standard as regards 'buffalo milk', as envisaged in the statute has been applied. It is submitted that, on this ground the entire report of the Analyst, is erroneous and perverse and would be liable to be vitiated. He has further elaborated this point that the very basis and foundation of the trial and conviction shall have no sanctity in the eyes of law. Mr. Chattopadhyay, has finally put forth the point of violation of Rule 14, of the Prevention of Food Adulteration Rules, 1955 and has thus pointed out to the procedural irregularity as regards the method of collection of sample by the complainant. He says that failure of the authorities to maintain prescribed standard while collecting sample of the alleged contaminated food article shall result into erroneous finding in the analysis of the same. The conviction of the petitioners, if based on such type of irregularity, would not be tenable in the of law, he says.

The following judgments have been relied on by Mr. Chattopadhyay, for the petitioners, i.e, :

- (i) *Administrator of the City of Nagpur vs. Laxman & Anr.* reported in 1995 Supp (1) SCC 247,
- (ii) *Piare Lal vs. State of Haryana* reported in 1990 SCC OnLine P&H 1305,
- (iii) *Mohan Lal vs. State of Haryana* reported in 1990 SCC OnLine P&H 837,
- (iv) *Krishan Lal vs. State of Haryana* reported in 1990 SCC OnLine P&H 1304,

- (v) *Mahinder Singh Yadav vs. The State of Haryana* reported in 1991 SCC OnLine P&H 10,
- (vi) *Devi Prasad vs. The State of Uttar Pradesh & Anr.* reported in 2000 SCC OnLine ALL 1360.

6) Mr. Dinda, who is representing the Kolkata municipal Corporation in this case has not left any stone unturned, to challenge each and every point put forth on behalf of the petitioners in this case. Firstly he says that the law has bestowed discretionary power upon the Magistrate to choose as to the procedure to be adopted while conducting trial in a case like this. Therefore, according to him the petitioners cannot really challenge as to the procedure adopted by the Magistrate unless they can show to have suffered substantial prejudice for the reason of the same. According to Mr. Dinda, the first point of maintainability on the ground of adopting alleged erroneous procedure in this trial should not be tenable. It is his further argument that the petitioners having failed to produce any cogent document as regards the quality of the milk used for preparation of the said contaminated food item, the authorities have done no wrong in applying the tests and standards as regards that of 'buffalo milk'. He says that no infringement of any legal provision has been made by the authorities while doing so. He further argues that adulteration in the food item exposed for human consumption, proved from the report of the Analyst would be sufficient for conviction of the concerned responsible persons, in this case the petitioners and that the law has not mandated for the prosecution to bring on record sufficient proof as to the deadly effect of the same on the consumer. While confronting the points raised on behalf of the petitioners in the above way, Mr. Dinda has stressed on the aspect that after due consideration of the evidence on record both the Courts of first instance have come to a just and reasonable finding, which may not be interfered by this Court in this case.

Mr. Dinda has referred to the following judgments of the Hon'ble Supreme Court, on the point of procedure to be adopted by the Magistrate :-

- (i) *Radhey Shyam Aggarwal vs. State of N.C.T. Delhi* reported in (2009) 4 SCC 212.

- 7) Ms. Biswas is representing the State in this case. Her first contention is that the concurrent judgment of the Courts of first instance as above may not be interfered with by this court. She has relied on the two judgments of the Hon'ble Apex Court as follows:

Ms. Biswas has relied on the Supreme Court's verdict in *Radhey Shyam Aggarwal's* (Supra) case and also another judgment, i.e, reported in AIR 1980 SC 52. (*Supdt. & Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja & Ors.*)

- 8) The appellant has come up in this case to challenge the concurrent findings of both the Courts of first instance. The first point of challenge is centered on the very maintainability of the proceedings, that is, the same is vitiated being in contravention of the provisions under section 16A of the Prevention of Food Adulteration Act, 1954. Mr. Chattopadhyay, in his argument has stated that the Court must not had deviated from the provisions of the "special statute", like the Act of 1954, to undertake a procedure, which is not the intention of the legislature, to be adopted, in a case like this. It is better that the said provision be extracted, as herein below:

- a. "16A. Power of court to try cases summarily —
- b. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate

*of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:*

- c. Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year:*
- d. Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.”*

Therefore, undertaking a procedure like trial in a warrant case has not been prohibited by the statute. Each and every provision of a special statute has a special implication as to why it has to be followed. A special statute is promulgated by the legislature keeping in mind certain special situations, which it desires to address and remedy the peril. If the legislature has thought for a summary trial in a case like this to curb down the time taken in conducting a trial in court and to facilitate earliest disposal of the case, the same has to be honoured by abiding by the letters and spirit of the statute. Nevertheless, the legislature, according to its own wisdom, has thought about the gravity and magnitude of the offence and the case, to provide for exercise of discretion by the Magistrate as to what procedure may be adopted for conducting trial, in such a case. Gravity of the case may determine if the Magistrate should exercise his discretion to adopt a procedure applicable to warrant cases. Gravity of a case may depend upon multiple factors,

like for example, the extent the adulterated article may be impactful for the population, how expansive range of articles may have been adulterated, etcetera. The Magistrate is however legally bound to record his reasons for adopting a procedure of a warrant case. Or else, it is a statutory mandate upon him to adopt summary proceedings in a trial for an offence under the Prevention of Food Adulteration Act, 1954.

- 9) In this case, one can find the Magistrate to have recorded such an order, in terms of the second proviso appended to section 16A of the Act, on September 9, 2008. It is very pertinent to note in this case that there the Magistrate has not only recorded the specific reasons for which he was adopting procedure of a warrant case, but also has recorded regarding prayer of the defence before the court, to adopt such a procedure in conducting trial. On consideration of this fact, it can be said that Mr. Chattopadhyay's client is now precluded to espouse any argument on the point that the procedure adopted by the Magistrate in conducting trial in this case is not tenable in the of law. The Magistrate, having complied with the statutory mandate, of having recorded reasons of adopting a procedure in this case, as that of a warrant case, the point raised by the appellant as to the maintainability of the same is not appreciable. Otherwise also, in view of the judgment of the Hon'ble Supreme Court, in the case of *Radhyey Shyam Aggarwal vs State N.C.T Delhi* [reported in (2009) 4 Supreme Court Cases][supra], this point shall not sustain. The Hon'ble Supreme Court has found in that case regarding no infirmity in the procedure (of a warrant case) adopted by the Magistrate, in view of the fact that the accused person has never raised any challenge against the procedure adopted, before the matter had reached the Supreme Court ultimately and also that he had not pleaded any prejudice suffered by him due to such adoption of procedure of a warrant case in the trial. The ratio applies in this case also.

10) The concurrent judgment of the Courts of first instance have been challenged again on the point that, both the Courts respectively, have not come to any finding in their verdicts regarding as to whether the alleged contaminated food article, being adulterated as alleged, was injurious to the health of the consumer. It has been argued that finding of the Court that the said food article was not eligible for human consumption as well as was injurious to health if consumed, was a sine-qua-non, for finding guilt of the accused persons/petitioners, under the provisions of the afore stated Act. The point has been raised that the impugned judgment as well as the judgment of the Magistrate in this trial are nonspeaking to the extent as stated above. Keeping in mind this argument and the counter argument on this point that there has been deviation as regards the standards of food component as prescribed under law, one can look to the statutory provisions at the outset, wherefrom we shall be able to get an answer. Section 2[(ia)] of the said Act describes an article of food, which shall be deemed to be adulterated, under the Act. It is an inclusive provision, to include several categories of articles, which would be deemed to be adulterated. Food article, nature substance and quality of which is to the prejudice of the purchaser is one category (Section- 2[(ia)]) whereas articles injurious by nature, substance or quality is the other category provided (Section- 2[(ib)] ). There are also other categories provided in the said statute. Any food article falling within the meaning and description of any of these categories provided in the statute, would be considered to be an adulterated food article within the provisions of the said statute. It is important to note as to what has been stated in Section 2[(ia)](m), of the said Act;

- a. *“2. Definitions —*
- b. *In this Act unless the context otherwise requires,—*
- c. *\*\*\*\*\**

- d. (ia) "adulterated"—an article of food shall be deemed to be adulterated—
- e. \*\*\*\*\*
- f. (m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:
- g. Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.
- h. Explanation — Where two or more articles of primary food are mixed together and the resultant article of food—
  - (a) is stored, sold or distributed under a name which denotes the ingredients thereof; and
  - (b) is not injurious to health, then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;"

Therefore, the food article, quality or purity of which falls below the standard prescribed in the statute, has also been incorporated within the definition of an adulterated food article, irrespective of the fact as to whether or not the same is injurious to health.

- 11) This brings us to the next point of argument, that an erroneous standard has been applied in this case, for analysis of the collected sample. Mr. Chattopadhyay has argued that the authorities have applied standard of test prescribed for examining "buffalo milk", though according to the witness, the constituent of the alleged adulterated 'dahi' in this case has been "cow milk". Counter argument to the same is based on Rule – A. 11. 02. 04 of the Appendix B, of the Rules, that in absence of any indication of class of milk, the standards prescribed for dahi prepared from buffalo milk shall apply. This is indeed a very pertinent and important question, in respect of this case, which touches the core regarding propriety of the decision of the two initial Courts.

- 12)** In this respect both the Courts of first instance have dwelled on the fact of absence of any corroborative documentary evidence as regards the source of milk, from which the alleged contaminated food article was said to have been prepared. PW. 2, that is the complainant has deposed about being informed that the alleged contaminated food article, that is 'dahi', was prepared from cow milk purchased from the open market. Since in spite of being asked, the petitioners were unable to produce any document in support of purchase of the cow milk, the Courts disbelieved truthfulness of the information revealed by the petitioners before the complainant, as above. It is however not in dispute, that any such information was not given to the complainant. This court does not find any incriminating situation which may negate the credibility of such information given by the petitioners to the complainant. The prosecution has not made endeavours to find out what kind of milk has been in use by the petitioners in preparing other food articles in the shop. Having not been supplied with any documentary evidence regarding the facts stated by the petitioners, as above, it was bounden duty for the authorities to enquire to find out the specific data regarding the ingredients and raw materials used for the preparation of the alleged contaminated food article. More so, as the authorities are more equipped with the knowledge regarding the laws applicable and the effect of infringement of such law. By not being proactive in this regard, the authorities/prosecution has acted in this case in a protracted manner and mechanically, to act in terms of the afore stated rule. It is the prosecution's witness, who has deposed about the information having been obtained from the petitioners. The prosecution could not therefore avail the opportunity of taking shelter within the four corners of the said provision of the Rules, without undertaking proper data collecting mechanism, as to the authenticity or truthfulness of such information. Excepting seeking for

corroborative documentary evidence, no other measures have been taken to verify the statements made. It is noted that the Courts have heavily relied upon the fact of absence of any supporting documentary evidence as to the statement made by the petitioners regarding use of “*cow milk*”. On the discussion as above, this appears to be a misplaced reliance.

- 13)** This court is constrained to find that the prosecution was duty bound to justify a situation appropriate for application of the provisions promulgated under Rule – A. 11. 02. 04 of the Appendix B, of the Rules. It has been provided that only when there is no indication as regards the class of milk used for the preparation of alleged adulterated ‘dahi’, the standard prescribed as regards ‘*buffalo milk*’ shall be applicable. The word “indication”, as provided therein would generally mean a sign or piece of information as a pointer to something. Natural inference of this provision would be that any indication as regards the class of milk would not authorise the prosecution to apply the test specified in the said Rule, without further being equipped with all necessary information, on the basis of which an ‘indication’ can be said to be ‘no indication’, in accordance with the provisions of law. Since the question touches the very root of the matter and largely affects the process of finding guilt of the accused person, in a trial under the provisions of the aforestated statute, the trial court’s finding in this regard can be said to have based upon erroneous considerations, having led the same to a finding which is not just, legal and proper.

- 14)** It is therefore found that application of criteria meant for ‘buffalo milk’, at the time of analysis of the sample in this particular case, in terms of Rule – A. 11. 02. 04 of the Appendix B, has not been justified, proper and

legal. The findings in the impugned judgment and that of the Magistrate, are erroneous and thus are set aside. It is also held that the chemical analyst's report, to show the collected sample to be not in conformity with the prescribed standard, is not tenable in the eye of law. Therefore no conviction could be based on the same.

- 15)** Needless to mention about the gross violation as regards provision under rule 14 of the said Rules. Collection of food sample in conformity with the prescribed mode and standard is essential so as to reach to an appropriate finding in analysis of the same. This analysis is the foundation of any food article to be declared as adulterated, under the said statute, as that would determine as regards the conformity with or deviation from the prescribed standard, regarding purity or quality of the sample food. Any deviation from the standard at the time of collection of food sample would eventually lead to a wrong chemical analysis report, that being marred with other external contaminating agencies. Admittedly in this case not any clean dry bottles or jars or other suitable containers, capable of being tightly closed, has been used, while collecting the food sample. Instead, the witness has deposed, to have used mug, for the said purpose. There is no specification about cleanliness of the container used. There is no deposition also as to whether the mug in which the sample was taken, was a closed container or not. The language of this specific provision of law would show its mandatory nature, whereas in this case there has been a gross infringement of such mandatory provision of law. In their respective judgments, the Magistrate as well as the first appellate Court, has failed to consider this aspect. This court is constrained to hold that the same has led the Courts to an erroneous finding. The impugned judgment and that of the Magistrate, are not maintainable, on this score too.

- 16)** Therefore, this revision succeeds. The impugned judgement dated 12.03.2012 and eventually also the judgment of the Municipal Magistrate, 3<sup>rd</sup> Court, Calcutta in case No. 9D/2008, are found improper, illegal and not maintainable. Hence, those are set aside.
- 17)** The prosecution has not been able to prove its case to the standard of beyond all reasonable doubts. Hence the petitioners are found not guilty and acquitted in this case.
- 18)** Criminal Revision being C.R.R 76 of 2013 is disposed of.
- 19)** Urgent certified copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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**(Rai Chattopadhyay, J.)**