

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 1970 of 2015

With

CRAN 10 of 2018 (Old No. CRAN 1014 of 2018)

Tapan Ghosh

Vs.

State of West Bengal & Anr.

For the petitioner

: Ms. Minoti Gomes,
Mr. Samrat Choudhury.

For the KMC

: Ms. Sreyashee Biswas,
Mr. Goutam Dinda,
Mr. Ananda Sundar Chatterjee.

Hearing on

: 13/02/2023

Judgment in court on

: 23/02/2023

Rai Chattopadhyay, J.

1. The long and short of the petitioner's case is that he is the employee of the eatery against which allegations of usage of adulterated food item has been made, resulting into his accusation under the Prevention of Food Adulteration Act, 1954 and subsequent trial and conviction of the petitioner under the provisions of the said Act.

2. Impugned in this revision is the judgment and order of sentence of the Trial Court dated 29th August, 2014 by dint of which the Trial Court has found the petitioner as guilty of offence under Section 16 (1) (a) (i) of the said Act read with Section 7 thereof and sentenced him to suffer rigorous imprisonment for a period of one (1) year and to pay fine of Rs.2000/-.
3. It was further directed that in default, of payment of fine, he shall suffer simple imprisonment for a further period of one (1) month.
4. Defying the said judgment and order of the Trial Court as above, the petitioner has moved the present revision case pivotally on two different grounds. Firstly, Ms. Gomes, learned Advocate appearing for the petitioner submits that the judgment of the Trial Court has basically relied on the report of the chemical analyst who has examined the collected sample of the food item (Paneer) and reported that the same contained 70 per cent more water/moisture than the prescribed standard and also 50 per cent more fat., as compared to the prescribed limit.
5. Ms. Gomes, has emphasized on the point that in spite of holding the food item having contained more moisture or fat, the report has not disclosed that the said food item was ineligible and unsuitable for human consumption and was in any way threatening for human life or subsistence.
6. Ms. Gomes, has pointed out that food, consumption of which may pose threat to the life of the consumer, may be considered as “adulterated” food,

in order to bring the user thereof that is, the accused person within the purview of an offence under the above-stated statute. She urges that in absence of any such record or material, her client should not have been held guilty.

7. The second limb of argument of Ms. Gomes is that the petitioner is a senior citizen. He has been no way directly involved in contamination of the collected food item which, according to Ms. Gomes may have gathered contamination due to natural course over a period of time being refrigerated.
8. Ms. Gomes has stressed upon the *bona fide* conduct and intention of her client. She has further argued that considering the period of sentence granted to his client vis-à-vis the nature of the offence for which he has been convicted, the sentence awarded may be modified in a manner as the Court thinks fit and proper.
9. Vehement objection has been raised and rightly so, on behalf of the Kolkata Municipal Corporation, which is the opposite party no. 2 in this revision through the Food Inspector. It has been submitted that the law is specific and categorical on the point as to what would be the standard quality of the food item, which is involved in this case.
10. Mr. Goutam Dinda, learned Advocate appearing for the KMC has relied on the specific provisions of law that is Section 2 (ia) (m) to submit that

“Paneer”, the food item which is involved in this case, is required to contain the moisture below the level of 70 per cent and fat below level of 50 per cent in accordance with law.

11. According to Mr. Dinda, this condition is a mandate under law and the present petitioner is entrusted to maintain the standard or else he should be held reasonable and guilty in case any violation to such standard is found. He says that in this case the chemical analyst’s report categorically finds deviation from the statutorily specified standard of the food item. This being the mandatory provision of law, the Trial Court has rightly held the petitioner as guilty of the offence and sentenced him in accordance with statute. He has urged that no interference to the said order may be made.

12. Section 2 (ia) (m) may be extracted for convenience of discussion and decision:-

“2.Definitions.—In this Act unless the context otherwise requires,—

(i a) “adulterated”- an article of food shall be deemed to be adulterated-

(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: 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.”

- 13.** So far as the findings of the Trial Court in the said judgment regarding the petitioner being the shop keeper and the primarily responsible person for management and overall affairs of the shop, seizure of the contaminated food item and the report of the chemical analyst confirming the standard of the food to be in deviation of the statutory standard are concerned – those are the facts not disputed in this revision.
- 14.** The argument advanced on behalf of the petitioner that though deviated from the statutory standard, the food item has not been declared to be ineligible and ill-suited for human consumption, does not raise much confidence in the mind of this Court. As discussed earlier, the provision of the law in this regard is absolutely unambiguous and categorical. Set standards have been provided. Any food items below the said standard would be considered as “adulterated” under the said Act. Anyone responsible for usage of such “adulterated” food, which the petitioner is in this case, would be amenable to be held guilty under the mandatory provisions of the Act of 1954.
- 15.** Therefore, findings substance in the argument advanced on behalf of the KMC, this Court is constrained to hold that so far as the impugned judgment is concerned, the Trial Court has come to a just and proper decision therein, in convicting the accused person for an offence committed under the provisions of the said statute. It is found that no interference to the same would be required in the facts and circumstances.

16. Here comes the second point of argument by the petitioner, that is, if any modification to the sentence part of the judgment could be made or not.
17. The petitioner is a senior citizen. His contention has been that the contaminated food item was bought and refrigerated resulting into accumulation of moisture therein. There was no intentional latches or ill will on his part to use any food item not consumable for human being, for making any wrongful profit.
18. It has been pointed out during arguments that this is also not the case of the prosecutors and indeed so.
19. On careful perusal of the impugned judgment it appears that there has been no antecedent of like nature against the present petitioner and the present case was the sole and maiden one against him. It has been noticed that the food item was refrigerated and increase of moisture contention due to the said fact cannot be also ruled out.
20. However, since on the abovementioned point, this Court has conceded to the portion of the Trial Court's finding, depending on the report of the chemical analyst, it is now for this Court to notice about the *mala fide* intention or ill will of the petitioner, if existent, in commission of the crime or not. There is no material on record to find as above.

- 21.** All these circumstances shall lead this Court to find it proper to interfere with the sentence portion of the impugned judgment and order dated 29th August, 2014 of the Trial Court.
- 22.** Accordingly, the sentence portion of the said judgment is modified to the effect that the petitioner shall suffer a sentence to pay fine of Rs.1,00,000/-, 50 per cent of which shall be remitted to the Kolkata Municipal Corporation and shall be exonerated from suffering the sentence of imprisonment. This order shall be complied with within a period of seven (7) days from date.
- 23.** With the directions as above, this revision is disposed of.
- 24.** Accordingly, CRR 1970 of 2015 is allowed in part.
- 25.** The impugned judgment and order of sentence of the Trial Court dated 29th August, 2014 stands modified to the extent as mentioned above.
- 26.** All pending applications, if any, are consequently disposed of.
- 27.** Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)