

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 2665 of 2018

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IA No. CRAN 1 of 2021 (Old No. CRAN 2739 of 2019)

IN THE MATTER OF

Hindusthan Unilever Ltd.

Vs.

The State of West Bengal & Anr.

With

C.R.R. No.- 2666 of 2018

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IA No. CRAN-1 of 2019 (Old No. CRAN 2740 of 2019), CRAN 8 of 2023.

IN THE MATTER OF

Chandrakant Pagnis & Anr.

Vs.

The State of West Bengal & Anr.

**For the Petitioners : Mr. Sabyasachi Banerjee Adv.,
Mr. Anirban Dutta Adv.,
Mr. Abhijit Chaudhury Adv.**

**For the KMC : Mr. Gautam Dinha Adv.,
Mr. Anindyasundar Chatterjee Adv.**

**For the State : Mr. Imran Ali, Adv.,
Ms. Debjani Sahu Adv**

Judgment on : 27.09.2023

Subhendu Samanta, J.

The instant criminal revisions have been preferred u/s 397/401 read with Section 482 of the Code of Criminal Procedure for setting aside and quashing the judgments and orders dated 18th of June, 2018 passed by the Learned District and Sessions Judge, Fast Track 1st Court Bichar Bhaban, Kolkata in Criminal Appeal No. 33 of 2014 and 34 of 2014 thereby allowing the appeal and remanding back the matter to the court of Learned Municipal Magistrate for reconsideration of the matter from the stage u/s 313 of the Code of Criminal Procedure and further directing the Learned Magistrate to write a fresh judgment after considering the respective arguments on behalf of the parties.

The brief fact of the case is that one Food Inspector of Kolkata Municipal Corporation registered a criminal case against the present petitioner company and others duly represented by one Mr. Chandrakanata Pagnis for the offence u/s 16(1)(a) (i) and (7) The Prevention of Food Adulteration Act 1954 for the alleged offence of misbranding of “Red Label Natural Care Tea”. In the said proceeding the Learned Municipal Magistrate convicted the present petition along with others by an order and judgments dated 19th February, 2014 and thereby sentence them to suffer simple imprisonment for 6

months and fine Rs. 5,000/-each in-case of default to suffer simple imprisonment for one month. Being aggrieved by the said order the present petitioner preferred an appeal before the Learned City Sessions Court, Bichar Bhaban Kolkata, vide criminal no. 33 of 2014. The said appeal was heard by the Learned Fast track 1st Court, Bichar Bhaban, Kolkata. After hearing the parties the Learned Fast Track 1st Court allowed the appeal by setting aside the order of conviction and sentence. However, the matter was remanded back to the Learned Court of Senior Municipal Magistrate for fresh consideration from the stage of examination of the accused persons u/s 313 Cr.P.C. and directed the Magistrate to re-write the judgment after hearing the parties.

Being aggrieved by and dissatisfied with the said order the present revision has been preferred. Learned Advocate for the petitioner submits that the impugned judgment passed by the Learned Appellate Court suffers illegality the appellate court has though considered the judgment passed by the Learned Magistrate to be suffered by serious discrepancies and ambiguity, still then he remanded back the matter for fresh decision. The case of prosecution before the Magistrate was not at all proved against the present petitioner. The basic evidence of the prosecution case i.e. the analyst report was not proved

by the analyst himself. There is nothing before the Learned Municipal Magistrate to hold how the alleged food items 'Tea', was misbranded. The reason for such misbranding was not at all before the Learned Magistrate on that score the Learned Magistrate should have dismissed the prosecution case by acquitting the present petitioner. Learned Appellate court has categorically pointed out the discrepancies appeared in the judgment of Municipal Magistrate but, erroneously remanded the case back.

Learned Advocate for the appellant submits that the impugned order passed by the Learned Appellate Court is need be set aside and the present petitioner is liable to be acquitted as the case has not been proved before the Learned Municipal Magistrate.

Learned Advocate appearing on behalf of the Kolkata Municipal Corporation argued that the proceeding was sufficiently proceeded before the Learned Municipal Magistrate. The prosecution has proved the case beyond reasonable doubt. According to the provisions of Section 13(5) of the Prevention of Food Adulteration Act 1954, the report of the analyst is final and a conclusive evidence thus there is no error in the judgment passed by the Municipal Magistrate. However, it is true that some relevant question were not put forward to the

accused persons u/s 313 Cr.P.C.. He again argued that according to the provisions of Section 32 of the Said Act, packaging, Labelling of Food should be made according to the direction of the Provision 32 of the said Act. The petitioner company has not complied with the provisions u/s 32 of the said act thus there is an utter violation of the petitioner and the prosecution against the petitioner has been correctly proved.

Heard the Learned Advocates.

Perused the materials on record, apart from procedural irregularities let me consider what is the allegation levelled by the Food Inspector against the present petitioner in the case before the Learned Municipal Magistrate. It has been alleged in the case that product i.e. “Red Label Natural Care Tea” is misbranded. Report of public analyst stated it is violative to the Rule 38 and 39 of PFA Rule. The Rule 38 and 39 of the Prevention of Food Adulteration Rules 1955 mentioned about the misbranding of a food items as follows----

38. Labels not to contain reference to Act or rules contradictory to required particulars.—

The label shall not contain any reference to the Act or any of these rules or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these rules to be included in the label which directly or by implication, contradicts, qualifies or modifies such particulars or declaration.

39. Labels not to use words implying recommendations by medical profession.---

There shall not appear in the label of any package containing food for sale the words "recommended by the medical profession" or any words which imply or suggest that the food is recommended, prescribed or approved by medical practitioners [or approved for medical purpose].

Exhibit 4 is the label over the said tea. Exhibit 12 is the report of public analyst who is of opinion that the Brooke Bond Red Label Tea contravenes PFA Rule 38 and 39. Hence it is misbranded. Admittedly the said analyst was never produced by the prosecution to support/prove his opinion. The reason for misbranding has not been mentioned by the prosecution in anywhere in their case. On plain reading of Rule 38 and 39 it appears to me that there are several reasons of misbranding in the provision itself. The prosecution has failed to bring out the particular reason why the alleged tea was marked as misbranded.

The Learned Appellate Court has opined that without the evidence of public analyst the case of the prosecution cannot be said to be proved. Section 13 (5) of the said act makes it clear that the opinion and the certificate signed by the Director of Central Laboratory Food, shall be final and conclusive evidence; but such opportunity is not available with the public analyst. The report of public analyst should be proved beyond reasonable doubt; more so, the reason for

misbranding has to be elaborated/explained by the public analyst on the dock and the defence should have given sufficient opportunities to cross-examine the public analyst.

The entire judgment passed by the Learned Appellate court has mentioned about the contradictions in the prosecution case. He also perused the Rule 38 and 39 PF Rules instead of which the appellate Court has remanded the matter back. Learned Appellate Court has assigned no reason for remanding back the case. On such score the impugned judgment appears to me in proper.

When a judgment was challenged before an Appellate Court and when the Appellate Court is perused the discrepancies in the case of prosecution. Then it is the only option to the Appellate Court to dismiss the entire prosecution case by allowing the appeal itself. The deformity as well as the discrepancies appeared in the prosecution case cannot be cured by only remanding back the case from the stage of examination of accused u/s 313 Cr.P.C. Moreover, the appellate Court must not have allowed the prosecution to cure the defect by which the accused would be prejudiced. The Appellate Court has only duty on finding the discrepancies of the case of prosecution to acquit the accused.

Considering the entire materials and considering the impugned judgment passed by the Learned Appellate court it appears to me that the direction of Appellate Court in impugned judgment regarding remanding back the case before the Magistrate is erroneous.

The Judgment of Appellate Court in respect of setting aside the judgment and sentence by Senior Municipal Magistrate in connection with criminal case No. 2 (D) of 2011 is affirmed.

The petitioners appear to be not found guilty to the offence as alleged against them and they are hereby acquitted from the case.

Petitioners are on bail; they be set at liberty at once.

Thus, the criminal revision is hereby allowed on the above observations.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court during the continuation of instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)