

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

2168

**CRA-S-2507-SB-2008 (O&M)
Date of Decision: 10.03.2023**

State (Food Inspector U.T. Chandigarh)	Versus	...Appellant
Titu and another		... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present:- Mr. Y.S. Rathore, APP, U.T., Chandigarh assisted by
Mrs. Sudha Singh and Mr. Yuvraj Singh Rathore,
Advocates for the appellant.

Ms. Anita Garg Jain, Advocate
for respondent No. 1.

Respondent No. 2 died.

N.S.SHEKHAWAT, J.

Assailing the impugned judgment dated 07.03.2007 passed by the learned Chief Judicial Magistrate, Chandigarh, whereby the respondents were ordered to be acquitted of the charge under Section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter to be referred as '**the Act**'), the Union Territory of Chandigarh has preferred the present appeal before this Court.

As per the complaint instituted by the appellant/State; at about 3.30 p.m., on 21.02.1986, Balbir Singh, Food Inspector inspected the premises of accused Dharam Pal and found the accused Titu having in his possession about 5 kgs of toned milk for sale in his sweat shop, namely, M/s Paul Sweets, stored in a '*Patila*' (steal pan). A notice was served by Food Inspector in writing in form VI and demanded a sample of toned milk and purchased 660 mls of milk for analysis after mixing against cash payment of Rs. 2.50/-. Milk was divided into three equal parts and was put into three dry and clean bottles. 18 drops of formaline were added as preservative in

each bottle. The bottles were labelled, stoppered, secured, fastened

and then wrapped in strong and thick papers and the ends of the wrapper were neatly folded and pasted with gum. A paper slip bearing serial number, code number and signatures of the Local (Health) Authority, Chandigarh was wrapped around each sample bottle from top to bottom and pasted with gum. The bottles were further secured by means of strong thread and sealed with four distinct seals. The thumb impression of accused was obtained on each bottle in such a manner that the paper slip and the wrapper both carried a part of the signatures. Thereafter, one sealed part of the sample was sent to the Public Analyst for analysis alongwith the copy of the memorandum on Form VII in a sealed packet. A copy of the memorandum and specimen impression of the seal used to seal the sample bottles were also sent to the Public Analyst in a sealed envelope separately under intimation to the Local Health Authority. The sample was taken in the presence of Shri Parveen son of Swaran Lal, resident of SCF No. 29, Sector 27-C, Chandigarh. The remaining two sealed samples were handed over to the Local (Health) Authority, for safe custody. The report of the Public Analyst was received through Local (Health) Authority, U.T., Chandigarh according to which the sample was deficient in Milk fat by 93% of the minimum prescribed standards. It is alleged that accused has committed an offence under Section 7 (i) of the Act punishable under Section 16(1) (a) (i) of the Act.

At this stage, it requires mention that the respondent No. 2 has already expired and the appeal qua him stands abated.

After hearing the parties, it was found by the learned trial Court that a charge under Section 7(i) of the PFA Act, which was

punishable under Section 16 (1) (a) (i) of the PFA Act was found to have been made out against the accused and was charge sheeted, accordingly. After the framing of charges, again the accused was given a chance to cross-examine PW1 Balbir Singh, Food Inspector and Gangai Yadav, Senior Assistant and the evidence was closed by the prosecution.

After the closure of the prosecution evidence, the statements of both the accused were recorded under Section 313 Cr.P.C. and they claimed that they were innocent and the sample was not taken properly by the Food Inspector. The accused did not lead any defence evidence.

Learned counsel for the appellant vehemently argued that the learned trial Court has wrongly held that the milk was not stored in the kitchen for the purpose of sale and the Food Inspector was not empowered to draw a sample. The learned counsel further submitted that the kitchen on the ground floor of the SCF could only be used for commercial purpose and only upper floor of the SCF could be used for residential purpose. Consequently, the kitchen on the ground floor of the SCF was attached to the restaurant and could not have been used for domestic propose. Learned counsel further submitted that the food inspector/complainant had duly followed the procedure prescribed under the Act and Rules, while drawing the samples and the samples were drawn in the presence of an independent witness. Even, the contents of spot memo clearly suggested that the toned milk was stored for public sale and was not meant for domestic use.

The said submissions have been opposed by the learned counsel for the respondent No. 1 by contending that the milk stored in the kitchen was not meant for sale and the learned trial Court has recorded detailed findings in this regard and the same are liable to be upheld by this Court.

I have considered the submissions made by both the sides and find that the learned trial Court has recorded well reasoned findings in this regard and the same are liable to be upheld. The prosecution examined PW1 Balbir Singh, Food Inspector/complainant, who clearly stated that at the time of inspection, Titu, respondent No. 1 was in their restaurant. Even the licence of the shop was not in his name. Still further, Titu was having 5 kgs of toned milk for sale and the sample was collected. However, there was no evidence that the milk was kept in the restaurant for the purposes of sale. Even though, it was found that the milk was kept in the kitchen, the appellant/State/prosecution was bound to prove that it was meant for sale. Still further, it was alleged in the complaint that the accused was in possession of 5 kgs of milk, however, PW1 Balbir Singh stated that in his cross-examination that quantity of the milk was approximately 1/1.50 kgs. Still further, it was apparent that the building in question was a shop-cum-flat. As per the accused, their residential kitchen was also on the ground floor, from where, the food article was taken from their kitchen. Even, a specific question was put to PW1 Balbir Singh, however, in his cross-examination, Balbir Singh expressed ignorance in this regard and stated that he could not say whether the kitchen of the family members was maintained on the

ground floor, where the food is prepared. The complainant was bound to hold a proper inquiry in this regard and to state expressly after inquiry that the milk was stored for the sale and not for personal consumption. Thus, the findings recorded by the learned trial Court are upheld and affirmed.

Learned State counsel further submitted that the report of public analyst was duly supplied to the accused as per the requirement of Section 13(2) of the Act and accused did not avail his valuable right to get the second sample reanalyzed. Learned counsel further submitted that the postal receipts testifying the fact of dispatch of the report to the accused were exhibited as Ex.PW2/B and Ex.PW2/C. Reports were duly sent by way of registered post and were not received back by the complainant, clearly establishes that those have been duly served upon the accused. Even, this also raises a presumption against the accused and the findings recorded by the learned trial Court are liable to be set-aside. The said submissions have been opposed by the learned counsel for the respondent No. 1 by submitting that there was no evidence to show the service of report of public analyst on the respondents/accused and the findings have been correctly recorded by the learned trial Court. I have considered the rival submissions made by learned counsel for the parties and also perused the findings recorded by the learned trial Court. I completely agree with the findings recorded by the learned trial Court. A perusal of the postal receipts Ex.PW2/B and Ex.PW2/C clearly shows that incomplete addresses of both the accused had been mentioned as “Titu Chd” and “Dharam Pal Chd”. Even, the complainant examined

PW2 Gangai Yadav, Senior Assistant, Municipal Corporation, Chandigarh and the said witness admitted that he did not know the name of the official, who had gone to the post office. He further admitted that the complete address of the accused was not mentioned in the postal receipts. He further admitted that the postal receipts were bearing the names “Titu Chd” and “Dharam Pal Chd” only. He could not tell as to whether the registered letters were delivered to the accused or not. Even his department never verified the said fact from the postal authorities. Thus, the learned trial Court has correctly observed that PW2 did not know the name of the official who had gone to the post office to dispatch the letter. Even the official could not make a categorical statement with regard to the service of registered letters on the accused. Consequently, it could not be presumed that the letters had been dispatched at the correct address. The learned trial Court has recorded well reasoned findings in this regard and are liable to be upheld.

In fact, Section 13(2) of the Act clearly provides that after the receipt of report and the result of analysis to the effect that article of food is adulterated, the Local (Health) Authority is bound to forward a copy of the report of the result of the analysis to such person/persons, as the case may be, informing such person or persons that if it is so desired either or both of them may make a statement to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of article of food kept by Local (Health) Authority analysed by the Central Food Laboratory. In fact, Section 13 (2) of the Act is a statutory right vested with the accused

and is not a formality. The learned trial Court has rightly recorded that the prosecution has failed to prove that the report of public analyst was supplied to the accused and, consequently, the accused had been deprived of their valuable right to get the second sample reanalyzed and the complaint has been rightly dismissed by the learned trial Court.

Still further, the parameters have been laid down by this Court and the Hon'ble Supreme Court in entertaining the appeal against the order of acquittal in catena of judgments. It has been held in the matter of *“Mahadeo Laxaman Sarane and another Vs. State of Maharashtra”, 2007 (3) RCR (Criminal) 2010*, by the Hon'ble Supreme Court that in an appeal against acquittal, the High Court ought not to interfere in the order of acquittal if on the basis of same evidence two views are reasonably possible – one in favour of the accused and other against him. In such a case, if the trial Court takes a view in favour of the accused, the High Court ought not to interfere with the order of acquittal. Even otherwise, I have gone through the judgment passed by the learned trial Court and I find that valid reasons have been recorded by the learned trial Court while recording the judgment of acquittal.

Consequently, the appeal is meritless and is liable to be dismissed by this Court. The impugned judgment dated 07.03.2007 passed by the learned Chief Judicial Magistrate, Chandigarh, is affirmed and the appeal is dismissed.

All pending applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

10.03.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No