

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

SR. No.236

CRR-2007-2008 (O&M)

Date of decision:12.09.2023

Ashok Kumar

...Petitioner

Versus

State of Haryana and another

...Respondent(s)

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

Present: Ms. Shaveta Sanghi, Advocate and
Mr.Aditya Sanghi, Advocate for the petitioner.

Ms. Sheenu Sura, DAG, Haryana, for the respondent.

N.S. SHEKHAWAT, J.

1. The instant criminal revision petition is directed against the impugned judgment dated 22.9.2008 passed by the Additional Sessions Judge, Narnaul, whereby appeal of the petitioner against the impugned judgment of conviction dated 20.11.2004 and order of sentence dated 23.11.2004 passed by the Chief Judicial Magistrate, Narnaul, was dismissed, upholding the conviction and sentence of the petitioner

2. As per the case of the complainant, Abhay Ram, Food Inspector was appointed under the Prevention of Food Adulteration Act, 1954 vide Haryana Government Notification No. 36 (9)-794 HBA dated 30.07.1979 and inspected the premises of accused Ashok Kumar on 09.07.1993 at 2.00 P.M. and found that Ashok Kumar was having in his possession about 10

Inspector demanded a sample of tea leaves by giving notice to the accused on Form VI, prescribed under the Prevention of Food Adulteration Rules, 1955. 375 grams of tea leaves were purchased after stirring the whole contents properly and made uniform for analysis from accused Ashok Kumar for Rs. 32/- These were divided into three equal parts and bottled in three dry, clean, empty bottles and were sealed with the seal of Medical Officer and Food Inspector, as per rules. The signatures of accused Ashok Kumar were also obtained on each sealed bottle and one sealed bottle with memo in Form VII was sent to public analyst for analysis in a sealed box and remaining two sealed bottles of sample along with two copies of memo in Form VII were deposited with the Local Health authority in a sealed packet.

3. The report of public analyst dated 08.08.1993 reveals that result of analysis as follows;

1.	physical examination.	sample in a glass bottle
2.	Iron filings	present (291 PPM).
3.	total ash determined on tea dried to a constant wt. At 100 c	6%
4.	Total ash soluble in boiling distilled H ₂ O	56.7%
5.	Ash insoluble in dilute HCl	0.10%
6.	Alkalinity of water soluble ash as K ₂ CO ₃	1.58 %
7.	Water extract	40.08%
8.	Crude fibre	12.93%
9.	Test for colour	No added coalter dye detected.

4. The sample contains iron filings 291 PPM against the maximum

appeared as PW-1, whereas Abhay Ram GFI appeared as PW-2 and the petitioner was ordered to be charge-sheeted for the offence punishable under Section 16(1)(a) of the Act.

5. After framing of charges, Ram Krishan, Clerk was examined as PW-4 and the statement of the accused under Section 313 Cr.P.C. was recorded. After the recording the statement under Section 313 Cr.P.C., the petitioner/accused was examined three different witnesses namely, Kuldeep Sharma as DW1, Ashok Kumar as DW2 and Subhash Chand as DW3.

6. At the very outset, learned counsel for the petitioner submits that he does not wish to challenge the impugned judgment of conviction and leniency may be shown while awarding the sentence to the petitioner. Even though learned counsel for the petitioner does not wish to challenge the conviction of the petitioner, still this Court has examined the merits of the case, on the basis of the evidence led by the parties.

7. In the present case the prosecution had examined PW-1 Dina Nath Gupta, who had launched the prosecution in the present case. Abhay Ram was examined as PW-2, who had taken the samples and completed all the legal formalities. The statement of PW-1 was duly corroborated by the testimony of PW-2 and their testimonies could not be shattered in the any manner by the prosecution. PW-3 Dr. P.K.Jain also corroborated the statement of PW-2 Abhay Ram. Apart from that, PW-4 Ram Kishan, Clerk, stated that letter No.9 dated 26.04.1994 was sent to the petitioner under a registered cover and he proved Ex.PW4/A and Ex.PW4/B. Even the testimonies of all the witnesses were found to be reliable and the trial Court and as well as the lower appellate Court have correctly disbelieved the

defence evidence. Still further, it is also clear from the iron filings for the sample tested by the Public Analyst Haryana that the sample was having 291 PPM against the maximum limit of 250 PPM and the sample was clearly adulterated. Even otherwise, all the mandatory provisions of the Act were followed in the present case and no infirmity could be pointed out in the impugned judgment passed by both the Courts below. Further, I have examined the impugned judgment and there is no illegality or perversity therein and thus, the order of conviction passed by the Additional Sessions Judge, Narnaul, is ordered to be maintained.

8. It is not in dispute that in the present case, the petitioner is facing the agony of the trial since 1994, i.e., 29 years. Hon'ble the Supreme Court in the matter of **Nand Lal Vs. State of Uttarakhand and another**, 2010 (2) RCR (Criminal) 581, had reduced the sentence of the petitioner-accused in that case, while considering the fact that the incident had taken place almost 27 years ago. Further, in the case of **Ram Chander v. State of Haryana**, 2015 (3) RCR (Criminal), 245, while relying upon the case of **Sadhu Ram v. State of Haryana**, 190(1) RCR (Criminal) 259, this Court has reduced the sentence to the period already undergone, wherein the sample of the sweet soda water was not found as per the prescribed standard, but at the same time, was not found injurious to health. Apart from that, in the case of **Umrao Singh v. State of Haryana**, AIR 1981 SC 1723, this Court has held that for adequate and special reasons, the sentence under Section 16(1)(a)(i) of the Act could not be awarded lower than the minimum prescribed under the Act.

9. Having considered the above-said judgments, this Court find that the petitioner deserves to be extended the benefit of reduction in sentence. Moreover, learned counsel for the State has placed on record the custody certificate and as per the custody certificate, the petitioner has already undergone 01 month and 20 days of actual sentence out of total sentence of 01 year. He has been facing the mental agony for the last more than 29 years and he was a petty shopkeeper. Thus, in view of the facts and circumstances of the case, the ends of justice would be suitably met, if his substantive sentence is reduced to the period already undergone by him.

10. Keeping in view the above discussion, the impugned judgments of conviction dated 22.09.2008 and 20.11.2004 passed by the lower appellate court as well as trial court, respectively are upheld. However, the order of sentence is modified to the extent that the substantive sentence of imprisonment awarded by the trial Court is reduced to the period already undergone by the petitioner.

11. With the above modification, the present revision petition stands disposed of in the above terms. Pending application(s), if any, shall also stand disposed of.

(N.S. SHEKHAWAT)
JUDGE

12.09.2023
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO