

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2156-2009

Reserved on: March 16, 2023

Pronounced on: March 22, 2023

Raj Kumar Chawla		Petitioner
	Versus	
State of Punjab		Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. P.S. Brar, Advocate for the petitioner.
Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J

Present revision petition has been filed against the judgment dated 03.03.2008 passed by the Court of Chief Judicial Magistrate, Faridkot, affirmed by the Court of Additional Sessions Judge, Faridkot vide judgment dated 04.07.2009 upholding the conviction of the petitioner under the provisions of the Prevention of Food Adulteration Act, 1954, for short 'the Act'.

The facts of the case are that an inspection of 'Atta Chaki' situated at Shri Bhagat Singh Marg, Kotkapura, being allegedly run by the petitioner was carried out on 12.01.2004 by the Food Inspector along with other officials. Upon service of notice in Form VI, 600 grams of 'Atta' which was kept for human consumption by the petitioner, was purchased as sample against payment of Rs.4.80/-, the same was divided in three equal parts of 200 grams each and one sample of 200 grams was sent to Public Analyst Punjab, Chandigarh; whereas the remaining two were deposited with the Local Health Authorities, Faridkot. Upon receipt of report Ex.PG

from the Public Analyst, Punjab, Chandigarh, following deficiencies were found:-

- i) Ash Insoluble in Dilute HCL is 0.180% against maximum prescribed standard of 0.15%;
- ii) 0.10% grit.

Based thereupon, a compliant under Section 7 (1) of the Act was filed against the petitioner. Trial Court after relying upon the report Ex.PG of Public Analyst, Punjab, vide its judgment dated 03.03.2008, convicted the petitioner finding him guilty for an offence punishable under Section 16 of the Act and awarded sentence of rigorous imprisonment for a period of 02 years and to pay fine of Rs.2000/- and in default of payment of fine, to further undergo RI for a period of one month.

Aggrieved thereof, the petitioner filed first appeal, however, the same was dismissed by the Court of Additional Sessions Judge, Faridkot, vide judgment dated 04.07.2009. The plea raised by the petitioner to the effect that he was not running the 'Atta Chaki' in question and happened to be a mechanic was discarded by both the Courts below.

Challenging the aforesaid two judgments, learned counsel for the petitioner primarily raised the following two submissions:-

- i) As per Rule 22 of the Prevention of Food Adulteration Rules, 1955, for short 'the Rules', in case of 'Atta', each sample was required to be of 500 grams; whereas in the present case, the total quantity purchased from the petitioner was 600 grams which having divided into three parts; made

one sample each to be of 200 grams only and thus, the quantity of sample which was sent to the Public Analyst was much less than the quantity prescribed under the Rules, as such no reliance could have been placed upon the report submitted by the Public Analyst based on the said sample;

- ii) Copy of the report of the Public Analyst i.e. Ex.PG was never served upon the petitioner, thereby depriving him of his statutory right under sub-section 2 of Section 13 of the Act.

On the other hand, learned State counsel submitted that though the sample sent to the Public Analyst was less than the quantity prescribed under the Rules, however, in the absence of any observation made by the Public Analyst as regards his inability to analyze the sample, the Courts below were well within their right to rely upon the report submitted by the Public Analyst. As regards the non-supply of copy of the report of the Public Analyst to the petitioner, it has been pointed out that no such plea was ever raised at the instance of petitioner before the Courts below, thus, he was even estopped from raising any such plea in the present revision petition.

I have heard learned counsel for the parties and gone through the paper-book. I find some force in the submissions made on behalf of learned counsel for the petitioner.

Section 13(2) of the Act is in fact a valuable right conferred upon an individual from whom the sample of an article of food was taken

and the non-supply of report of the Public Analyst itself causes him a serious prejudice, the same being the statutory requirement. In fact, the non-supply of report of Public Analyst in the present case has defeated a valuable right vested with the petitioner so as to get the other sample analysed from the Central Food Laboratory and thus, the provisions of Section 13 (2) of the Act which were required to be treated as mandatory have been violated. Reliance in this regard can be placed upon the judgment of ***Narayana Prasad Sahu Vs. The State of Madhya Pradesh***, 2021 (4) RCR (Criminal) 669 and relevant para 5 of the same is reproduced hereunder for reference:-

“5. We have carefully considered the submissions. Sub-sections (1) and (2) of Section 13 of the said Act of 1954 reads thus:-

“13. Report of public analyst.—(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period

of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory”.

Under sub-section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-section (2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in the case of Vijendra (supra) held that mere dispatch of the report to the accused is not a sufficient compliance with the requirement of sub- section (2) of Section 13 and the report must be served on the accused.”

No doubt, in the present case, the plea of non-compliance of Section 13 (2) of the Act was never raised by the petitioner before the Courts below, however, the same being plea of law and a mandatory

statutory obligation having not been fulfilled, can be permitted to be raised even at revisional stage. Reference in this regard can be made to the judgment of ***Rameshwar Dayal Vs. State of U.P.***, 1996 SCC (CrL.) 75, and for reference, the same is reproduced hereunder:-

“The matter arises under the Prevention of Food Adulteration Act. The sample taken was found to be adulterated. On the record it appears that the report of the Public Analyst is not supplied to the accused as required under Section 13 (2) of the Act. Consequently, he could not get his own sample examined by the Central Laboratory. It is a very valuable right given to him. Rules also provide that such a report should be supplied to the accused within a certain period. The question arose in a similar case where this rule is mandatory or directory. We need not launch into such a discussion in this case. We are satisfied that serious prejudice has been caused to the appellant because of non-supply of the Public Analysts report as required under Section 13 (2) of the Act. The High Court having noticed this, yet rejected the plea on the mere ground that such an objection was not raised before the trial court. It is not a question of an objection, but it is a question of prejudice. Such a point can be raised even at a later stage if material on record supports the same. In the result, the conviction and sentence are set aside.

The appeal is allowed accordingly.”

In the present case, there is not even an iota of evidence on record led by the prosecution so as to prove either the dispatch of the report of Public Analyst from the side of respondent or even its receipt by the petitioner. Learned counsel for the petitioner has not been able to point out the same from the judgments passed by the Courts below; nor the Courts below have taken care of in this regard.

As regards the other plea raised on behalf of the petitioner about the lesser quantity of sample as compared to the same prescribed under Rule 22 of the rules, it may be pointed out here that in the absence of any statement made by the Public Analyst to the effect that on account of deficient quantity of sample, he was unable to analyse the same while making the report, mere lesser quantity of sample cannot be held to be fatal to the case of prosecution. Reliance in this regard can be made to a decision rendered by Hon’ble Supreme Court in **State of Kerala Vs. Alassery Mohammed**, AIR 1978 SC 933.

In view of the discussion made hereinabove, while having recorded finding to the effect that in the present case the report of the Public Analyst was never served upon the petitioner, as enjoined under Section 13 (2) of the Act, the present revision petition is allowed and the judgments dated 03.03.2008 passed by the Court of Chief Judicial Magistrate, Faridkot as well as that of Additional Sessions Judge, Faridkot dated 04.07.2009 are hereby set aside. Consequently, the conviction and sentence of the petitioner are set aside. Since the sentence of petitioner is already suspended, therefore, the bail bonds furnished by him shall stand discharged.

Pending application(s), if any, shall also stand disposed of.

March 22, 2023
sanjay

[HARKESH MANUJA]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no