

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

**Criminal Revision No. 958 of 2010 (O&M)
Reserved On: 11.12.2023
Pronounced On: 22.12.2023**

Raj Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Salil Bali, Advocate
for the petitioner.

Mr. Viney Phogat, Deputy Advocate General, Haryana

HARKESH MANUJA, J.

By way of present revision petition, challenge has been made to the judgment of conviction dated 19.11.2007 and order of sentence dated 20.11.2007 passed by learned Chief Judicial Magistrate, Hisar, in criminal complaint case No. 715 of 1998 registered under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (**hereinafter referred to as "PFA Act"**), whereby the petitioner was convicted under Section 16(1)(1A) of PFA Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month; as also judgment dated 18.03.2010 passed by the learned Additional Sessions Judge, Hisar, whereby, the judgment of Trial Court was affirmed in appeal.

[2] Brief facts of the case are that on 27.07.1998, at about 6.15 p.m., complainant-S.L. Mahiwal, Food Inspector alongwith Dr. P.K. Gupta, inspected the premises of petitioner and found him in possession of 5 kgs. of Dal Moong for public sale in a bag. Upon serving a notice in writing on Form-VI to the petitioner, Dal weighing 600 grams was purchased, after mixing the whole contents, on payment of Rs. 15.60/- and were divided into three equal parts and were then put in three dry and clean bottles. Thereafter, samples were taken and one bottled sample part alongwith memorandum in Form-VII was sent to public Analyst Haryana, Chandigarh for analysis and the other two sealed bottles of samples, along with copy of memo in Form-VII were deposited with the Local Health Authority. The seal impressions with memorandum Form-VII were separately sent to public analyst by registered post. The sample was taken in the presence of Dr. P.K. Gupta and Ram Dhan son of Nand Lal. As per the report of public analyst, the sample was not found to conform to the specified standards laid down for Moong Dal, as it was recorded in the report of Public Analyst that sample was coloured, added with prohibited mentonil synthetic yellow food colour, whereas it should be free from the same and it was unfit for human consumption. Thereafter, complaint was filed by the Government Food Inspector in the Trial Court against the petitioner on 23.10.1998 and petitioner was subjected to trial.

[3] On appraisal of evidence on record, the learned Trial Court vide its judgment dated 19.11.2007 held the appellant guilty under Section 16(1) (1A) of PFA Act and vide order of sentence dated 20.11.2007 sentenced him to undergo rigorous imprisonment for a period of one year

and to pay a fine of Rs.2000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month. Appeal filed against the aforementioned judgment before the learned Additional Sessions Judge, Hisar, was dismissed vide judgment dated 18.03.2010. Hence, the present revision petition.

[4] Learned counsel for the petitioner submits that there has been contravention of mandatory provisions of Section 16A read with Rule 9(B) and 19 of the PFA Act, as the learned Trial Court adopted the procedure of warrant case instead of summary procedure without passing any order with reasons to that effect and due to this anomaly, the trial stands vitiated. To strengthen his argument, learned counsel for the petitioner relied upon the following judgments:-

- (i) **"Jarnail Singh Vs. State of Haryana"** reported as **2007(4) RCR (Criminal) 775**;
- (ii) **"Ramesh Kumar Vs. State of Haryana"** reported as **1991(2) RCR (Criminal) 87**;
- (iii) **"State of Punjab Vs. Subhash Chander"** reported as **2004(4) RCR (Criminal) 653**;
- (iv) **"Deepak Kumar Vs. State of Haryana"** reported as **1994(1) RCR (Criminal) 92**; and
- (v) **"Hari Ram Vs. State of Haryana"** reported as **2009(5) RCR (Criminal) 561**.

[4.1] Secondly, making another submission with respect to the Defective Sample Testing, learned counsel for the petitioner submits that report of public analyst exhibited as Ex.PD, wherein it has been recorded that the sample contained mentonil synthetic yellow colour which is a prohibited colour, is defective as it does not state as to what test was

applied to ascertain the presence of this colouring material. He further submits that the learned Courts below rejected this argument by recording that petitioner has raised only a presumptive argument that paper chromatography test was done and to this effect, he could have called public analyst for cross- examination. With respect to the same, he submits that this observation was totally contrary to the law as the prosecution has to stand on its own leg and in the present case, the sample report Ex.PD does not talk about any test, therefore, there is nothing to prove that the test, which was conducted, was prescribed specifically to ascertain the colouring material in the sample. In support of his contentions, he placed reliance upon the case "**Bansi Lal Vs. State of Haryana**" reported as **1993(1) CLR 695**.

[4.2] Thirdly, learned counsel for the petitioner submits that there was a gross violation of Section 13(2) of the PFA Act as the receipt of public analyst report allegedly sent to petitioner through registered post had the address mentioned as "Rajkumar, Kiryana shop, Dabra Chowk, Hisar", which was incomplete address as this does not match with the address given in the complaint; further no parentage and full name of the petitioner was written on it, therefore, as the report of public analyst was not supplied to the petitioner, his case was prejudiced.

[4.3] Lastly, learned counsel for the petitioner submits that in the instant case, the complaint was presented in the printed format, which completely lacks the full details of the procedure so adopted by the complainant while recovering the sample. Further, there was no specific details in the complaint regarding on which date and by what medium, the

report of public analyst was sent to the petitioner, as well as there being no averment in this regard, there was non-compliance of Section 13(2) of the PFA Act. He further submitted that on account of the aforesaid lapse as well, the present petition shall be allowed. In support, he placed reliance upon a case titled "**Jarnail Singh Vs. State of Haryana**" reported as **2007(4) RCR (Criminal) 775**.

[5] On the other hand, learned State Counsel opposed the prayer made on behalf of petitioner by submitting that all these arguments were made before the Appellate Court as well and after duly taking into consideration all these submissions as well as examining all the aspects, appeal was dismissed.

[6] I have heard learned counsel for the parties and gone through the paper-book of the case. I do not find much substance in the arguments raised by learned counsel for the petitioner.

[7] First argument by learned counsel for the petitioner regarding adopting procedure of warrant case instead of summary procedure is not tenable in view of the judgments of the Hon'ble Apex Court in "**Radhey Shyam Aggarwal vs. State N.C.T. Delhi**", reported as **2009(1) Recent Criminal Reports (Criminal) 973 (S.C.)**, which has also been relied upon by the Appellate Court as well. It was held in **Radhe Shyam's case (supra)** that to take any objection on this account, it is necessary for the accused to show that any prejudice has been caused to him. Relevant para of this judgment is reproduced hereunder:

"4. From the order of the trial Court it is clear that the case was proceeded in the manner provided for trial of warrant cases and the prosecution was directed to lead pre

charge evidence and such evidence was led. At no stage there was any challenge to the procedure adopted. In fact second proviso to Section 16A permits such a course to be adopted.

5. *It is the case of the appellant that the Magistrate had not heard the parties and/or recorded an order to the effect that the case was such that sentence of imprisonment for a term exceeding one year may have to be passed.*

6. *As noted above, this was not the case of the appellant at any stage and for the first time in the Special Leave Petition such a stand was taken.*

7. *Additionally, as rightly contended by learned counsel for the State no prejudice has been shown. In that view of the matter we are not inclined to accept the stand that there was any violation of the requirements of Section 16A of the Act. However, we find that the occurrence took place nearly two decades back and the infractions related to a small quantity of 'lal mirch'. The sentence imposed is 15 months. It is accepted that the appellant has already suffered custody for more than a year. That being so, in the peculiar circumstances of the case we reduce the sentence to the period already undergone. Bail bonds executed for giving effect to the order for bail dated 11.2.2002 shall stand discharged. With the aforesaid modification of sentence the appeal is disposed of."*

[7.1] In the present case, petitioner has duly cross-examined the witnesses of the prosecution and this objection was raised before the Appellate Court straightaway without raising any objection at the stage of trial. Additionally, no prejudice caused to the petitioner has been put forward before this Court, so it cannot be a ground to set aside the said judgment.

[8] Second ground taken by the petitioner that procedure adopted for sample testing is defective, also cannot be accepted. In the report of the public analyst, test procedure adopted by him has not been specified, therefore, it cannot be concluded that 'paper chromatography test', as alleged by the petitioner was used. Learned counsel for the petitioner has not been able to substantiate his argument by bringing on record any statutory provision of the PFA Act, Rules or any other judgment that specifying the procedure adopted is necessary to mention in the report by the public analyst. In the absence thereof, since there is no mentioning of the fact that the procedure adopted is paper chromatography test, as rightly noted by the Appellate Court, submission in this behalf are presumptive and accordingly, neither this ground is maintainable nor judgment cited by him is applicable in the facts and circumstances of the present case.

[9] Third submission made by learned counsel for the petitioner that on account of incomplete address and missing complete name/parental information in the registered post, there has been non-compliance of Section 13(2) of the PFA Act is also bereft of any sound basis. In view of Section 27 of General Clauses Act, 1977, postal receipt of registered post is a sufficient proof regarding delivery of the same until contrarily proved. In the present case, a postal receipt regarding sending of public analyst report to the petitioner, has been brought on record as Ex. PW3/B. In that circumstance, when the address mentioned on the post is sufficient enough to effectuate the delivery, merely missing out other details from the address like complete name or parental information or

mismatch with the address specified in complaint, cannot be a ground to hold that Section 13(2) of the PFA Act has not been complied with, specifically taking into consideration of the fact that registered post was not received back. Accordingly, when report of public analyst was presumptively delivered to the vendor / petitioner and was brought to the notice that sample taken from him was found to be adulterated, non-compliance of section 13(2) of the PFA Act cannot be held on this account.

[10] Last submission made by learned counsel for the petitioner that on account of failure to mention the particulars in the complaint regarding the date when the report of public analyst was received and its subsequent forwarding to the petitioner, there has been non-compliance of Section 13(2) of the PFA Act and prejudice has been caused to him, also does not hold any substance. Even if these dates were not mentioned in the complaint, from the statement of PW-3, Jagdish Chander, Clerk Office of Civil Surgeon , Hisar, it has come on record that the report was received from the public analyst on 03.09.1998, the case against the petitioner was instituted on 23.10.1998 and report was sent to the petitioner on 28.10.1998. As such, relevant information was present on record and available to the petitioner, so no interference is warranted on this account as well.

[11] Therefore, in view of the discussion held above, no interference is warranted in the judgment of conviction against the petitioner. But at the same time, it is also required to be taken into consideration that this case has been going on since 1998 and petitioner

has faced the agony of protracted trial for the last 25 years and he has not been found to be involved in any other case despite passage of so many years. In similar circumstances, the Hon’ble Apex Court in ***Radhe Shyam's case (supra)*** reduced the sentence of accused to the period already undergone. Similarly, Co-ordinate Bench of this Court in case ***"Dilbag Singh vs. State through Govt. Food Inspector"***, reported as ***2009(13) R.C.R.(Criminal) 285*** as well as in case ***"Anokh Singh sv. State of Punjab"***, reported as ***2009(3) R.C.R.(Criminal) 264*** also ordered the same. Accordingly, keeping in mind that petitioner has already suffered protracted trial for the past 25 years, in the present case as well, the sentence of petitioner is reduced to the period already undergone.

[12] Revision petition is **disposed off** accordingly.

[13] Pending miscellaneous application(s), if any, shall also stand disposed off.

December 22, 2023
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>