

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 61 of 2001

**The Calcutta Municipal Corporation
-Vs-
Prabir Ghosh and Anr.**

For the Appellants	: Ms. Sreyashee Biswas Mr. Goutam Dinda Mr. Anindya Sundar Chatterjee Ms. Puja Goswami
For the Respondent No. 1	: Mr. Aman Gupta Mr. Ishan Bhattacharya
Heard on	: 11.10.2023, 18.01.2024, 19.01.2024
Judgment on	: 20.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of acquittal dated 31.05.2000 passed by the Learned Senior Municipal and Metropolitan Magistrate, Calcutta, Metropolitan Magistrate and Judicial Magistrate, 1st Class, Calcutta in connection with the Case No. 17D of 1999 for acquitting the accused persons charge under Sections 16(1)(a)(i)/7 of the Prevention of Food Adulteration Act, 1954.
2. The prosecution case, in short, was that on 08.10.99 Dr. C.K. Bose, Food Inspector of the Calcutta Municipal Corporation, who was the complainant of the present case, visited the shop owned by the accused no. 1 Prabir Ghosh

under the name and style 'Ms. Sweet Home' situated at 6, Kiran Sankar Road, Calcutta- 700001, and found an article of food, viz. Chana Dal, stored for using the same for preparation of food items for human consumption. The Food Inspector found the accused no. 2 Kalipada Jana present at the shop being the seller and person-in-charge of the local affairs of the business on behalf of the accused no. 1 to whom the Food Inspector disclosed his identity and thereafter the Food Inspector took the sample of 750 gms. of Chana Dal from the accused no. 2 on payment of price in presence of a witness after observing the necessary legal formalities. Thereafter, the sample was divided in three parts and one part was sent to the Public Analyst for analysis. In due course, the report of the Public Analyst was received wherefrom it transpired that the sample of Chana Dal was adulterated and unfit for human consumption.

3. Learned Advocate for the appellant submitted that –

- i. In view of clear evidence of the Food Inspector, the PW-2, Dr. Chinmoy Kumar Bose that intending to take sample of Chana Dal, he called a local witness and in his presence served a notice, in Form No. VI and such evidence remained unchallenged, the Learned Magistrate erroneously held that all the documents including the notice in Form NO. VI were prepared by them after the inspection was over.
- ii. There was no rule of law that conviction under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act could not be based on the sole testimony of the Food Inspector.

- iii. It was not the rule of law that the appellants of complaint must contain all details and it was sufficient if such complaint contained those facts which constituted the offence.
 - iv. In view of the clear finding of the Learned Court below that the articles of food in question was sold against price the impugned order of acquittal was liable to be set aside.
 - v. Sale of food for analysis was a “Sale” within the meaning of Section 2(xiii) of the P.F.A. Act and when such article of food was found to be adulterated the same amounted to an offence punishable under Section 16(1)(a)(i) of the P.F.A. Act. Hence, the impugned order of acquittal was liable to be set aside.
 - vi. The explanation to the Section 7 of the P.F.A. Act, prohibited storing of any adulterated or misbranded articles of food for manufacture therefrom any article of food for sale and as such the impugned order of acquittal was liable to be set aside.
 - vii. Admittedly it was the case of the defence that Chana Dal in question was stored in the Kitchen for preparation of food item for being served to the customer the impugned order of acquittal was liable to be set aside.
 - viii. The DW-1 made false statements.
4. Heard the submissions of the Learned Advocate for the appellant as well as the respondent no. 1.

5. The Learned Trial Court had assessed the entire evidence on record meticulously and observed that the sanction accorded for instituting the prosecution case was proper.
6. There were corroborative evidence of PW-2 and PW-3 with regard to the seizure of sample of 'Chana Dal' from the kitchen of the shop. However, the notice in Form VI was not served upon the appellant. Moreover, the prosecution failed to prove as to whether the 'Chana Dal' was used as a food for sale in the shop or for personal consumption.
7. There are contradictions and inconsistencies in the evidence of the prosecution witnesses and this Court is not inclined to interfere with the same.
8. In view of the above discussions, the instant criminal appeal being CRA 61 of 2001 is dismissed.
9. There is no order as to costs.
10. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
11. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)