

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 742 of 2005

**Sudhir Barman
-Vs-
State of West Bengal**

For the Petitioner	: Mr. Sukanta Ray Mr. Arabinda Manna Ms. Tuktuki Mondal
For the State	: Mr. Parvas Bhattacharya Mr. Mirza Firoj Ahmed Begg
Heard on	: 22.09.2023, 05.12.2023
Judgment on	: 07.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner against the judgment and order dated 24.02.2005 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Cooch Behar in Criminal Appeal No. 13 of 2001 modifying the judgment and order dated 28.02.2001 passed by the Learned Chief Judicial Magistrate, Cooch Behar in C.R. Case No. 256/1999 and convicting the petitioner for commission of offence punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act and sentencing him to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1000/- in default to suffer simple imprisonment for another 20 days.

2. The prosecution case as alleged against the appellant is as follows :-

On 5.8.99 the Food Inspector inspected the shop of the petitioner and found that besan (gram powder) and other food articles are kept stored and/or exposed for sale there; that, he first disclosed his identity and then intended to purchase sample thereof; that, he purchased the sample and sealed and labeled the same in 3 containers; that, one part of the sample was sent to the Public Analyst while 2 were kept in the custody of the Local Health Authority; that the proprietor of the shop failed to produce any valid licence as required under Rule 5 of the said Act; that, in the opinion of the Public Analyst the said food was adulterated.

3. The petitioner stated that thereafter the prosecution under Section 16(1) of the Prevention of Food Adulteration Act, 1954 read with Section 7 of the said Act/Prevention of Food Adulteration Rules, 1955 was started against the petitioner.

4. The petitioner stated that in compliance with the summons issued, the petitioner surrendered before the Court and was subsequently enlarged on bail.

5. Petitioner stated that thereafter the Learned Trial Court framed charges under Section 16 of the Prevention of Food Adulteration Act.

6. The petitioner pleaded not guilty and claimed to be tried.

7. In the course of trial, the prosecution examined as many as 3 witnesses. The defence examined none but through a process of effective cross examination sought to improbabilize the prosecution case.

8. On conclusion of the trial, the Learned Chief Judicial Magistrate, Cooch Behar by judgment and order dated 28.2.2001 in C.R. Case No. 256/99

convicted the petitioner under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 and sentenced him to suffer rigorous imprisonment for 2 years and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for 20 days.

9. Heard the submissions of Learned Advocates for both the parties.

10. On 05.08.1999 Sub Divisional Food Inspector, Cooch Behar (PW-2) inspected the shop of the petitioner and found that besan (gram powder) and food Articles were kept, stored and exposed for sale. Said Food Inspector purchased 600 gms of besan from the petitioner and the same was divided into 3 parts, one part was sent for examination to the public Analyst and other two parts were kept in the custody of the Local Health Authority. On 22.09.1999 report of the Public Analyst was received. As per the said report "besan" was adulterated with Khesari Pulse Powder. Thereafter prosecution under Section 16(i)(a) of Prevention of Food Adulteration Act, 1954 was started against the petitioner. During trial prosecution examined 3 witnesses and defense examined none. The Learned Chief Judicial Magistrate Cooch Behar by the Judgment and order dated 28.02.2001 convicting the petitioner under Section 16(1)(a) of the Act sentencing him to suffer rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for another 20 days. Being aggrieved, the petitioner preferred Appeal and by the Judgment and order dated 24.02.2005 Learned Additional Sessions Judge, First Track Court, Cooch Behar modifying the judgment of the Learned Court below convicting the petitioner under Section 16(i)(a) of the Act and sentencing him to suffer one

year rigorous imprisonment and a fine of Rs. 1,000/- in default 20 days simple imprisonment. Hence, the instant petition before the Hon'ble Court.

11. Mandatory provision under Section (2) of Section 13 of the prevention of Food Adulteration Act 1954 was not at all complied. PW-2 in his cross-examination stated that *"I myself did not send the report of the Analyst to the accused. The Local Health Authority sent to the same to the accused Ext. 7 shows that report was so sent to the accused, I have no other paper to show that the same was received by the accused. The A/d card send along with report under Registered Post has not been received by our office. We did not ascertain from the postal department as to whether the registered letter was actually received by the accused or not. Ext.8 does not show that the report of the Analyst was sent under Registered Post."*
12. PW-3 in his cross-examination stated that *"I sent the report to the shop in question by post. Ext.8 shows that the same was sent by post. I have no paper to show that the accused received a report, I myself did not post the report and the Learned Judge when passing impugned judgment categorically stated that it is true that A/d card bearing signature of the document did not return to the prosecuting office, but for this reason entire prosecution case can not be disbelieved."*
13. In this regard recent decisions of the Hon'ble Supreme Court of India categorically stated that mere despatch 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, otherwise conviction and sentence cannot be sustained.

14. In the case of **Narayana Prasad Sahu Vs. State of Madhya Pradesh**¹ the Hon'ble Supreme Court observed as follows :-

“8. ... More than one mode was prescribed by Rule 9B for serving the report of Public Analyst on the accused. In the present case, after the postal packet was returned not even an attempt was made to personally serve the report on the appellant.”

15. Second contention of the petitioner is that from the statements of PW-2 and PW-3, it is very much evident that they negligently handled the matter. They were not aware of fact and law and Sanction to the prosecution as accorded by the PW-3 was not proper because the same was granted in mechanical manner without applying his mind.

16. In cross-examination of PW-3 stated that *“I had no personal knowledge regarding the place where from the sample was collected or from whose possession the same was collected. I can not say what are the contains of unadulterated gram powder. Being the local health I have no idea about this, Nor can I say the method of collection of sample for testing. I did not receive the report of the Public Analyst. I have no document except Ext. 5/1 to show that I called for all relevant records in connection with this case from Inspector Shyamal Banerjee. I have no document excepting Ext. 5/1 to show that before according sanction I applied my mind.”*

17. If there is no public Analyst report question of initiation of proceeding against the petitioner does not arise at all. From the statement of PW-3, it transpired that he was negligent and sanction for prosecution was accorded without applying his mind.

¹ (2022) 1SCC (Cri) 184

18. The Learned Advocate for the appellant further submitted that Report of the public Analyst was a mere formality and technical in nature. There was no mention in the said report that the sample was harmful for human consumption.

19. In the case of **Prem Chand Vs. State of Haryana**² the Hon'ble Supreme Court observed as follows :-

“6...Moreover the report of the public analyst does not mention that the sample was either “insect infested” or was “unfit for human consumption”. In the absence of such an opinion the prosecution has failed to establish the requirements of Section 2(i-a) (f) of the Act”.

20. On the other alleged offence was occurred in the year 1999 but before that in the year 1995, the Ministry of Agriculture (Department of Agriculture and Co-operation) submitted one report regarding Khesari Dal. From the said report it was evident that Khesari pulses were not at all harmful for human consumption rather it was High Protein diet and cheaper and the department was demanding for lifting the ban of selling Khesari Pulses. In the said report, it was also stated although ban with regard to Khesari Pulses had been prevailing in all states, Union Territories except the State of M.P, Bihar and West Bengal.

21. Prevention of Food Adulteration Act has been amended, and the new Act is Food Safety and Standard Act 2006. In latest amendment with effect from 13.01.2021 in the Food Safety and Standards (Prohibition and Restrictions of Sales) Regulations, 2011 Regulation 2.22 is added and as per said regulation the maximum allowed limits for any incidentally occurring

² (2020) 3 SCC (Cri) 908

Khesari Dal in grams/powder shall be not more than 2% including other edible grams. As per Public Analyst Report there is no observation what percentage of Khesari Pulses was mixed in alleged gram powder or besan. So benefit of doubt is in favour of petitioner.

22. And, on the other as per Food Safety and Standard Act 2006 the punishment for the alleged offence is fine only. It is held by the Hon'ble Supreme Court that since the amendment is beneficial to the accused persons, it can be applied with respect to earlier cases as well which are pending in the Court.
23. The Hon'ble Supreme Court relying the decision of the Hon'ble Supreme Court in ***Nemi Chand Vs. State of Rajasthan***³ modified the sentence under Section 16(1)(a)(i) read with 7 of the Prevention of Food Adulteration Act 1954 imposed a fine of Rs. 5,000/- only.
24. On the other petitioner is a senior citizen more than 65 years old. He has no criminal back ground. Alleged offence is technical in nature and prosecution miserably failed to establish the case against the petitioner. Considering all aspects and decisions of Hon'ble Supreme Court of India conviction and sentence in the instant case is liable to be set aside.
25. No valid sanction was given as required under Section 20 of the Prevention of Food Adulteration Act, 1954 which was mandatory. The provision of Section 13(2) of the Prevention of Food Adulteration Act, 1954 was not complied with. Public Analyst report was not served upon the petitioner.
26. In view of the above discussions, the judgment and order dated 24.02.2005 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Cooch Behar in Criminal Appeal No. 13 of 2001 modifying the judgment and

³ 2019 (4) SCC (Cri) 194

order dated 28.02.2001 passed by the Learned Chief Judicial Magistrate, Cooch Behar in C.R. Case No. 256/1999 and convicting the petitioner for commission of offence punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act is set aside.

27. Accordingly, the instant criminal revisional application being no. CRR 742 of 2005 is allowed.

28. Accordingly, CRR 742 of 2005 stands disposed of.

29. There is no order as to costs.

30. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

31. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)