

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1463 of 2015

Surendra Prasad Gupta

Vs.

The State of West Bengal & Anr.

For the Petitioner :Mr. Angshuman Chakraborty, Adv.

Mr. Shashanka Sekhar Saha, Adv.

For the State :Mr. Rana Mukherjee ,Adv.

Mr. Binay Kumar Panda, Adv.

Mr. Subham Kanti Bhakat

For the KMC :Mr. Goutam Dinda, Adv.

Mr. Anindyasundar Chatterjee, Adv.

Heard on :16.11.2023,13.12.2023,

24.01.2024, 26.02.2024,

18.04.2024, 07.05.2024

Judgment on : 21.05.2024

Bibhas Ranjan De, J.

1. The present application arises out of a proceeding under the prevention of Food Adulteration Act, 1954 (for short Act) where the present petitioner was convicted under Section 16(1) (a) (i) of the Act by the Ld. Municipal Magistrate, 4th Court, in connection with Case No. 11D of 1994. He was sentenced to undergo simple imprisonment for a period of six months along with a fine of Rs. 1000/- in default to suffer imprisonment for a further period of one month.
2. The appeal of the appellant against the order of conviction and sentence by the Trial Court was dismissed by the Additional District and Sessions Judge, Bench-II, City Sessions Court in connection with Criminal Appeal No. 36 of 2002 vide judgement and order dated 31.03.2015. Being aggrieved and dissatisfied with the said judgement and order of conviction the present petition has been preferred with a prayer for setting aside of the same under Section 482 of the Code of Criminal Procedure (for short Cr.P.C).

Background:

3. Brief facts leading to this present application are that on 31.03.1994 the Food Inspector/opposite party no. 2 herein

attached to the Kolkata Municipal Corporation (for short KMC) inspected the shop of the accused/petitioner and purchased 9 packets of chili powder of Double Star brand containing 50 gms. of chili powder in each packet. Thereafter, he divided the said packets of chili powder in 3 equal parts and sent one part of the sample to public analyst for examination. After proper examination, the public analyst opined that the said chili powder is mis-branded and the sample did not confirm to the prescribed standard hence it was adulterated. Thereafter, the opposite party no. 2 herein obtained written consent of the Chief Municipal Health Officer of the KMC to initiate prosecution against the accused and filed a complaint under Section 16(1) (a) (i) of the Act. The said complaint came up for trial before the Ld. Municipal Magistrate, Calcutta and on conclusion of trial the Ld. Magistrate found the accused guilty for committing offence under Section 16(1) (a) (i) of the Act and convicted and sentenced him accordingly. Being aggrieved and dissatisfied with the impugned judgment and order of conviction an appeal was filed by the petitioner herein which was then heard by the then Additional District and Sessions Judge, 9th Fast Track Court, Calcutta which was disposed of on merit

as none of the parties appeared and participated in hearing of the said appeal. After disposal of the said appeal the appellant moved this Court against the said order in Revision and the Co-ordinate Bench of this Court was pleased to set aside the order of the Additional District and Sessions Judge, 9th Fast Track Court, Calcutta and remanded back the appeal for disposal of the same after giving opportunity to both the parties which was then disposed of by the Additional District and Sessions Judge, Bench-II, City Sessions Court after proper hearing. On 31.03.2015 the Ld. Judge passed the order impugned which has been challenged in this present application.

- 4.** Ld. Counsel, Mr. Angshuman Chakraborty, appearing on behalf of the petitioner has contended that the Food Inspector did not comply with the proper procedure in collection of sample of chilli powder as provided Section 11(1) (b) of the Act and sending the same to the public analyst.
- 5.** Mr. Chakraborty further contended that the petitioner is not a manufacturer of Double Star Brand chilli powder and he only procured the same, which was duly licenced in the name of the manufacturer and during course of trial he produced the bill of the product and therefore he his

protected under Section 19(2) of the Act. Mr. Chakraborty further added that as the petitioner is a vendor, he is protected under Section 19(2) of the Act and as per Section 20(A) of the Act the manufacturer ought to have been tried for the offence, if any, committed.

6. Before parting with, Mr. Chakraborty alternatively, has argued that the substantive sentence imposed by the Ld. Magistrate can be reduced and only fine can be imposed as per the law currently applicable. In support of his contention he relied on a case of ***A.K. Sharma vs. The State of West Bengal & ors.*** reported in ***2024 SCC OnLine SC 248.***
7. On the contrary, Ld. Counsel, Mr. Goutam Dinda, appearing on behalf of the KMC has argued that the petitioner's plea that the Food Inspector did not comply with the requisite formalities is absolutely wrong. As per the evidence collected, he duly complied with the provision of Section 13(2) of the Act.
8. Mr. Dinda continued that the petitioner produced two cash memos to substantiate his plea that he purchased the seized article from a manufacturer with warranty but it is argued that those cash memos show that the name of the manufacturer is not Double Star Brand chilli powder but

rather it is mentioned as M/s. Krishna Guro Masala. Therefore, the petitioner is not entitled to any protection under Section 19(2) of the Act.

9. Ld. Counsel, Mr. Rana Mukherjee, appearing on behalf of the State has supported the argument advanced on behalf of the KMC.

Analysis:-

10. During the course of argument the Ld. Counsel appearing on behalf of the petitioner has mainly canvassed on the ground that the Food Inspector did not comply with the relevant provision of law in connection with collection of sample and sending the same to the public analyst.
11. Upon careful perusal of the evidence collected especially exhibit 10 i.e. the public analyst report it comes to my notice that the public analyst clearly mentioned that 3 plastic packets of chilli powder of 50gms each was sent to him. It further transpires that the public analyst physically examined the sample of chilli powder wherein it was printed 'Double Star spices'. In addition to that it has been specifically stated that there was no declaration regarding manufacture date, net weight and complete address which is in contravention of the provision of the Prevention of Food

Adulteration Rules, 1955 (for short Rules). Now coming to the evidence of PW2 i.e. the Food Inspector he has already stated that he collected 450 gms of chilli powder in 9 packets of 50 gms each in presence of independent witness(PW3) who testified that collection of sample of chilli powder from the shop of the petitioner took place in his presence. This being so, it cannot be said that the public analyst did not analyze the sample which was taken from the shop of the petitioner by the Food Inspector. The report of the public analyst further ratifies the bona fide of the Food Inspector and emphasizes that there has been a contravention of Rule 32(c),(d)& (f) of the Rules.

- 12.** Moreso, the petitioner herein also has not challenged the procedure of seizure by the Food Inspector. Actually, the petitioner himself has further buttressed the case of the prosecution by the reply given by him in course of his examination under Section 313 of the Code of Criminal Procedure (for short Cr.P.C). Therefore, I am sorry to subscribe to the argument advanced on behalf of the petitioner regarding the role of the Food Inspector in the matter of collection and sending of the sample not being in accordance with law.

13. Now, coming to the next point of argument advanced on behalf of the petitioner regarding the fact that petitioner is protected under Section 19(2) of the Act. After careful perusal of the relevant materials it cannot be said that the petitioner was able to discharge his onus to prove that he purchased the seized articles from a manufacturer with the warranty. He did not produce any evidence to that effect which shows that he purchased the seized articles from a manufacturer with a warranty in a prescribed form as per the provision of the Section 19 of the Act. The two cash memos which were produced by the petitioner could not clarify that the seized article was a product under warranty purchased from a manufacturer. Under such circumstances, the petitioner cannot claim the benefit of Section 19(2) of the Act.

14. In the aforesaid view of the matter, I find that there has been no irregularity committed by the Ld. Trial Judge regarding the order of conviction against the petitioner herein as he has properly dealt with the evidence on record and all the material points that have come before him on the way of adjudication.

15. But, although I uphold the findings of the Ld. Trial Court regarding the commission of offence but the only question now remains is of sentence. The plea of the petitioner is regarding reduction of sentence and if only fine can be imposed, which is permissible as per the law currently applicable i.e. the Food Safety and Standards Act, 2006. Section 52 of the present enactment provides for a maximum penalty of Rs. 3,00,000/- for misbranded food but there is no provision for imprisonment.

16. The only point left for consideration before this Court is whether the petitioner can be granted the benefit of the new legislation and be awarded a lesser punishment as is presently prescribed under the new law.

17. The Hon'ble Apex Court in this regard has held in various decisions including the case of **A.K. Sarkar** (supra) that **when an amendment is beneficial to the accused it can be applied even to cases pending in Courts where such a provision did not exist at the time of the commission of offence.**

18. In the present case, the offence itself is of the year of 1994. Almost 30 years have elapsed since the commission of offence. Considering all the aspects, more particularly the

nature of offence though I do not find any irregularity in the findings of the Ld. Trial Judge I hereby convert the sentence of the petitioner from six (6) months of simple imprisonment along with a fine of Rs. 1000/- to a fine of Rs. 75,000/- (Rupees Seventy Five Thousand). The amount shall be deposited with the concerned Court within a period of three (3) weeks from date.

- 19.** Accordingly, the revision application being no. CRR 1463 of 2015 stands disposed of.
- 20.** Interim order, if there be any, stands vacated.
- 21.** Connected applications, if there be any, stand disposed of accordingly.
- 22.** Trial Court Record be transmitted back immediately.
- 23.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 24.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]