

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3087 of 2013

**Nemai Chandra Dey @ Nimai Dey and Anr.
-Vs-
State of West Bengal and Anr.**

For the Petitioner : Mr. Tapas Sinha
Mr. S. C. Dhara

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on : 14.07.2023, 19.09.2023, 11.10.2023

Judgment on : 10.01.2024.

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by petitioners against the judgment and order dated 31.07.2013 passed by the Learned Additional Sessions Judge, 2nd Court, Bankura in Criminal Appeal No. 11 of 2011 affirming thereby the judgment and order of conviction and sentence dated 31.01.2011 passed by the Learned Additional Chief Judicial Magistrate, Bishnupur, Bankura, in Case No. 44-C of 1999 convicting thereby the petitioners under Sections 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and sentenced them to suffer rigorous imprisonment of 6 months each and to pay a fine of Rs. 1,000/- each in default simple imprisonment of 1 month each.

2. The brief facts of the prosecution case as alleged in the complaint were inter alia to the effect that on 16.04.1999 at about 11:00 a.m. while the Sub-Divisional Food Inspector, Bishnupur namely Iswar Chandra Jana (PW-1), along with his associates Gopal Chandra Chandra (PW-2) visited the grocery shop of Nemai Chandra Dey at Village – Karakberia, Police Station – Joypur, District - Bankura, he found that from the said shop the son of Nemai Chandra Dey namely Sunil Kumar Dey was selling Atta along with grocery items. It had also been alleged that on suspicion he took sample of Atta and sent the same to the public analyst for examination of the said sample. It had further been alleged that the sample as per Public Analyst Report was found to be adulterated. It had also been alleged that as a result the Local Health Authority, Bishnupur, permitted by issuing prosecution order to start criminal proceeding against the petitioners for such adulteration for the offence under Section 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act.
3. The Local Health Authority, Bishnupur issued written consent to initiate the criminal prosecution and subsequently the complaint was filed before the Court of Learned Additional Chief Judicial Magistrate, Bishnupur on 11.06.1999. The said complaint had been registered as Case No. 44-C of 1999 against the petitioners for committing an offence under Section 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and process was issued.
4. After receiving the summons from the Learned Trial Court the petitioners appeared and were enlarged on bail.

5. In order to prove the case the prosecution has examined as many as 4 witnesses namely Iswar Chandra Jana (PW-1), Sub-Divisional Food Inspector, Bishnupur, Gopal Chandra Chandra (PW-2), G.D.A. in the office of the A.C.M.O.H., Bishnupur, seizure witness Anil Sutradhar (PW-3), resident of Karakberia, also another seizure witness, Dr. Brajendra Nath Biswas – Local Health Authority, Bishnupur (PW-4) who sanctioned and passed order for prosecution, whereas the defence examined none and the prosecution also exhibited 11 documents i.e. Ext. 1 to Ext. 11.
6. On perusal of the materials on record, the evidence of the witnesses and submissions made by the Learned Advocate appearing for the respective parties in Case No.44-C of 1999 the Learned Additional Chief Judicial Magistrate, Bishnupur, Bankura by Judgment and Order dated 31.01.2011 convicted the petitioners under Sections 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, and sentenced them to suffer rigorous imprisonment of six (6) months each and to pay a fine of Rs.1,000/- each in default simple imprisonment of one (1) month each.
7. Being aggrieved by and dissatisfied with the aforesaid Judgment and Order of conviction and sentence the petitioners preferred appeal before the Learned Sessions Judge, Bankura which gave rise to Criminal Appeal No.11/2011. The said appeal was finally heard before the Learned Additional Sessions Judge, 2nd Court, Bankura on 31.07.2013 and after hearing the respective parties the Learned Judge affirmed the Judgment and Order of conviction and sentence passed by the Learned Additional

Chief Judicial Magistrate, Bishnupur in Case No. 44-C/99 and dismissed the Appeal.

8. The Learned Advocate appearing as Amicus Curiae submitted that:
 - i. The alleged sale receipt which had been marked as Ext-2 could not be treated as genuine one because a portion of the same was printed and the other portion was written. It was done at the instance of the Food Inspector who was the complainant. As such the said sale receipt had been manufactured by the complainant for some oblique purpose with some ulterior motive for the purpose of initiation of the present prosecution and the petitioner no.2 was forced to write something and put his signature thereon. As such the impugned order of conviction and sentence is liable to be set-aside.
 - ii. Out of four witnesses P.W.2 and PW-3 were alleged seizure witnesses, P.W.-2 in his cross-examination deposed before the Court that he was listed witness in all the cases filed by the Food Inspector. As such he was stock witness of the department and whenever he was asked to sign any document he signed and put his signature as such he is not an independent witness. So far P.W.-3 was concerned he was a local witness but during cross- examination he deposed that he could not remember on which paper he signed and what was written on that and he was not told about the same.
9. At the time of taking the sample the complainant i.e. Food Inspector did not properly follow the procedure as laid down in Section 11 of the Prevention of Food Adulteration Act, 1954.

10. PW-4 Dr. Brajendranath Biswas passed an order for prosecuting the petitioners and had given sanction mechanically as a routine manner. In his evidence before the Court he deposed that he did not mention in the prosecution order about the documents on which he banked upon to pass the order for prosecution. The said fact itself indicated that sanction order was not in terms of Section 20 of the said Act and not clear from the evidence as to whether there had been proper application of mind of the sanctioning authority and no proper sanction was accorded in terms of Section 20 of the said Act. As such the impugned order of conviction and sentence was liable to be set aside.
11. Sanctioning authority had not written that he was satisfied from the report that the petitioners have committed offence punishable under Section 16 of the said Act. It seemed that Sanctioning Authority had not applied its mind before granting sanction.
12. Ext. 4 – Public Analyst Report did not opine that the sample which was taken was unfit for human consumption and in absence of evidence to that effect that there could not be any prosecution against the petitioners. As such the impugned order of conviction and sentence was liable to be set-aside.
13. The Learned Advocate for the State submitted based on the evidence of the prosecution witnesses the report of the Public Analyst. The offence committed by the petitioner had been established and the revisional application should be dismissed.

14. On 16th April, 1999 the Sub-Divisional Food Inspector, Bishnupur visited grocery shop of the petitioner no. 1, Nemai Chandra Dey, and found that son of the petitioner no. 1, Sunil Chandra Dey was selling atta along with other grocery items. On suspicion, the said Food Inspector took sample of atta and had sent the said sample of atta to the Public Analyst. The Public Analyst in his report No. 549(4) dated 20th May, 1999 opined that the said sample is adulterated with high alcoholic acidity, living larvae and insects.
15. The Learned Additional Chief Judicial Magistrate, Bishnupur and the Learned Additional Sessions Judge, 2nd Court, Bankura did not consider the provisions of A.18-01 Appendix – B of the Prevention of Food Adulteration Rules, 1955. As such findings of both the Learned Courts below regarding adulteration relying on the report of the Public Analyst are perverse. There was delay of three days in sending the sample in violation of Section 11(3) of the Prevention of Food Adulteration Act, 1954.

A.18.01 of the Appendix- B of the Prevention of Food Adulteration Rules, 1955, provides:-

“A.18.01- [Atta or resultant atta] means the coarse product obtained by milling or grinding wheat. It shall conform to the following standards:

a) Moisture not more than 14.0 per cent (when determined by heating 130-133°C for 2 hours.

b) Total ash – not more than 2.0 per cent on dry weight basis.

c) Ash insoluble in dilute HCL- Not more 0.15 per cent (on dry weight basis)

d) Gluten (on dry weight basis) – Not less than 6.0 per cent.

e) Alcoholic acidity with 90 per cent alcohol expressed as H_2SO_4 (on dry weight basis)- Not more than 0.18 per cent. Rodent hair excreta shall not exceed [2 pieces per kg]/”

i. The report of Public Analyst being No. 549(4) dated 20th May, 1999 is as follows:-

“Moisture % (at 130°C for 2 hrs.)	= 11.6
Rodent Hair and Excreta	= Nil
Parasitic infestations	= Living insect & Larvae present
Microscopical Examination	= Wheat starch present

On dry weight basis

Ash %	Ash insoluble in dil. HCL%	Gluten %	Alcoholic (90%) acidity (as H_2SO_4) %
2.0	0.13	9.0	0.22

and am of the opinion that the sample is adulterated with high alcoholic acidity, living larvae and insects.”

It would be evident that Atta seized from the grocery shop of the petitioner no. 1 is not adulterated according to the provisions of the above mentioned Act and Rules.

16. Though the sample of Atta did not conferred to the standard prescribed under The Prevention of Food and Adulteration Rules, 1955. However the notice of the Public Analyst report was not communicated to the petitioner under Section 13 of The Prevention of Food and Adulteration Rules, 1954.
17. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal revisional application is allowed.

18. Under such facts and circumstances, the judgment and order dated 31.07.2013 passed by the Learned Additional Sessions Judge, 2nd Court, Bankura in Criminal Appeal No. 11 of 2011 affirming thereby the judgment and order of conviction and sentence dated 31.01.2011 passed by the Learned Additional Chief Judicial Magistrate, Bishnupur, Bankura, in Case No. 44-C of 1999 convicting thereby the petitioners under Sections 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 is set aside.
19. Accordingly, the instant criminal revisional application being CRR 3087 of 2013 stands disposed of.
20. There is no order as to costs.
21. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
22. 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.)