

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3584 of 2014

M/s Dee Empresa Hotel & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Sanat Kumar Das
Mr. Sujan Chatterjee

For the Opposite Party : Ms. Sreyashee Biswas
Mr. Goutam Dinda
Mr. Anindya Sundar Chatterjee
Ms. Puja Goswami

Heard on : 21.06.2023, 01.12.2023

Judgment on : 12.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioners against the judgment and order dated 22.08.2014 passed by the Learned Additional District & Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in connection with Criminal Appeal No. 102 of 2013 arising out of judgment and order dated 08.10.2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection with Case No. 5D/10 under Section 7 read with Section 16(1)a(i) of the Prevention of Food Adulteration Act, 1954 thereby dismissing the Criminal Appeal No. 102 of 2013 and affirming the

judgment and order dated 08.10.2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection with Case No. 5D/10 under Section 7 read with Section 16(1)a(i) of the Prevention of Food Adulteration Act, 1954.

2. The petitioner No. 1 had been a Private Limited Company, carrying on the business of running a hotel under the name and style of M/s Dee Empresa Hotel situated at 12/2A, Dr. Md. Isaque Road, Kolkata-700016 (hereinafter referred to as the 'said premises'). Due to its quality of service, the hotel had gained sufficient repute and goodwill. The petitioner No.2 had been the Managing Director of the petitioner No.1, the petitioner No.3 and 4 were the directors of the petitioner No.1, whereas the petitioner No. 5 was the person-in-charge of the petitioner No.1's hotel. The petitioner Nos. 2 to 5 were not actively involved in the day to day business of the petitioner No.1's hotel but were merely executives of the petitioner No.1 Company.
3. On 9th December, 2009 at about 4 P.M. one Shaymal Kumar Chakraborty entered the said premises and introduced himself to the petitioner No.5 as the Food Inspector of the respondent No.1. The premises were inspected by him and certain quantity of 'biscuit powder' (hereinafter referred to as the 'said article') was found to be kept in the kitchen of the said premises. The petitioner No.5 was interrogated by the above-mentioned Food Inspector, wherein, the petitioner No.5 explained that the said article was merely kept in the said premises and not meant for cooking purposes or for sale.

4. A sample of the said article was taken by the Food Inspector allegedly for the purpose of testing. Such sample was taken in the presence of one Dhananjay Sinha Mahapatra (being PW-3) as the sample witness, who was also a Food Inspector of the respondent No.1. Despite the presence of local people and other nearby shop keepers the above-mentioned Food Inspector was chosen to be the sample witness. A part of such sample was to be sent to the Public Analyst for analysis, whereas the remaining parts of the sample were sent to the Local Health Authority & Chief Municipal Health Officer.
5. The Public Analyst's report bearing No.JP/59/09 dated 5th January, 2010 was received from the office of the Local Health Authority wherein it was allegedly reported that the said sample was adulterated and unfit for human consumption under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'said Act')
6. The Food Inspector submitted incomplete records of the above inspection along with the report of the Public Analyst to the Chief Municipal Health Officer of the Kolkata Municipal Corporation. The Local Health Authority without considering the relevant documents evasively granted written consent to file prosecution case before the appropriate forum.
7. The petitioners neither admitted before the Trial Court nor before the respective Appellate Court that the said article was meant for human consumption and for sale as such. The said article was commonly found in both residential and commercial kitchens and had been a waste by product of the raw materials. Such article was not meant for human consumption

and the petitioners observed due diligence to ensure the same. The petitioners kept such article in the premises without the intention to use the same for preparation of food stuff for sale. The findings arrived at by Learned Court below in considering such article to be subject matter of human consumption and available for sale was misconceived and derived from an erroneous interpretation of facts.

8. The Learned Trial Court as well as the Learned Appellate Court below failed to appreciate that the petitioner Nos. 2 to 5 did not have any active role in the day to day business of the petitioner No.1's hotel. The prosecution failed to adduce the sufficient evidence to establish the role of the petitioner Nos. 2 to 5 in the ordinary course of business of the petitioner No.1's hotel.
9. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the trade license (Exhibit-7) did not impute the petitioner Nos. 2 to 5's involvement in the ordinary course of business of the petitioner No.1.
10. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that corporate liability of the petitioner No.1 could not be fastened on the petitioner Nos. 2 to 5 in the absence of any proof of consent, connivance or neglect on their part.
11. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that evidence was not adduced by the prosecution for establishing the fact whether the biscuit powder found at the said premises was meant for human consumption.

12. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that no food item made by using biscuit powder as an ingredient have been recovered by the Investigating Officers for adducing as evidence before the Trial Court.
13. The Learned Trial court as well as the Learned Appellate Court below failed to consider the prosecution's inability to justify the use of biscuit powder in ordinary course of human consumption.
14. The Learned Trial court as well as the Learned Appellate Court below failed to take into account the biscuit powder was commonly found as a waste product in both commercial as well as residential kitchens. Therefore, the presence of biscuit powder as a waste by-product in the said premises was not unlikely and the same was not meant for human consumption or sale.
15. The Learned Trial court as well as the Learned Appellate Court below erred in placing reliance on 1998 (2) FAC 189 (P&H) (SB) as the present case was distinguishable on facts.
16. The Learned Trial court as well as the Learned Appellate Court below failed to consider that the process of sampling took place in the presence of interested witnesses. Therefore, the fact of due compliance of sampling procedures could not be held to have been proved by the prosecution.
17. The Learned Trial court as well as the Learned Appellate Court below failed to consider that PW-2 failed to mention in his report as well as in his evidence, details regarding the utensils used in the collection of the biscuit

powder samples and whether the same complied with the rules for collection of sample.

18. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the article of food was lying in an open tray as per the evidence of PW-2 therefore, the veracity of the test conducted by the Public Analyst was seriously in dispute.
19. The Learned Trial court as well as the Learned Appellate Court below failed to consider that the Public Analyst was not brought before the Trial Court for deposing and proving the report tendered by the Public Analyst the same cannot be looked into for the purposes of affixing liability on the petitioners herein.
20. The Learned Trial court as well as the Learned Appellate Court below failed to consider that any independent third party was not made witness for proving the proper conduct of inspection as per the requirements and procedures under the Act. This was despite the presence of nearby establishments and restaurants. Also, the prosecution had not produced any evidence to the effect that local people were called upon by the Food Inspector to volunteer as sample witness.
21. The Learned Advocates for the opposite party refuted the submissions of the Learned Advocate for the appellant and steadfastly supported the justifiability of the prosecution case.
22. Section 13 (2) of the Prevention of Food Adulteration Act, 1954 states as follows:-

“13. Report of Public analyst.— ...

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person , if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

23. From the documents marked as Exhibits 4, 5 and 6, it appeared that though the Postal Authority had given a report that the Public Analyst Report was delivered on 01.05.2010, however, did not produce the A.D. (Acknowledgment Due) Card as the same was not received by the Department.
24. The Learned Trial Court did not consider the dearth of proper communication of the Public Analyst Report to the petitioners who had lost their mandatory right to get the sample analyzed through Central Food Laboratory. Mere serving of the Public Analyst's Report through a forwarding letter of C.M.O.H./L.H.A. was not sufficient to comply Section 13(1) and (2) of the aforesaid Act. It should be complied strictly to the extent that the report must be received by the accused persons.

25. Section 2(v) of the Act defines “food” as *“any article used as food or drink for human consumption other than drug and water and includes - (a) any article which ordinarily enters into, or is used in the composition or preparation of, human food, (b) any flavouring matter or condiments, and (c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare by notification in the Official Gazette, as food for the purposes of this Act;]”*.

26. Biscuit powder can be the remnants of the biscuit or biscuit in powered form generally used as flavouring matter or condiments and not consumed as a wholesome food.

27. Proviso 2 to Section 2(m) of the aforesaid Act states as follows:-

“Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation.—Where two or more articles of primary food are mixed together and the resultant article of food—

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health.

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;]”

28. The Food Inspector/complainant did not mention the reason of utilization of the biscuit powder. It can be presumed that the biscuit powder could have

been prescribed or stored for the preparation of primary food. However, the evidence on record did not justify the consumption of biscuit powder as a food or to be an article of a primary food mixed together to prepare the resultant food. The resultant food to have been prepared by the aforesaid hotel had not been complained of being injurious to health.

29. If the biscuit powder had fallen below the prescribed standards the same was required to be proved by the prosecution as to the reason thereof whether to have been occasioned solely due to natural causes or beyond the control of human agency. The Food Inspector did not try to enquire as to whether the biscuit powder was manufactured by the hotel authority or had been purchased from a different source in accordance to Section 19(2) of the aforesaid Act.

30. In view of the above discussions, the judgment and order dated 22.08.2014 passed by the Learned Additional District & Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in connection with Criminal Appeal No. 102 of 2013 arising out of judgment and order dated 08.10.2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection with Case No. 5D/10 under Section 7 read with Section 16(1)a(i) of the Prevention of Food Adulteration Act, 1954 thereby dismissing the Criminal Appeal No. 102 of 2013 and affirmed the judgment and order dated 08.10.2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection with Case No. 5D/10 under Section 7 read with Section 16(1)a(i) of the Prevention of Food Adulteration Act, 1954 is set aside.

31. Accordingly, the instant criminal revisional application being no. CRR 3584 of 2014 is allowed.
32. Accordingly, CRR 3584 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
33. There is no order as to costs.
34. Let the copy of this judgment be sent down to the Learned Trial Court and the concerned police station as well for necessary action.
35. 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.)