

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3935 OF 2007

KHOKAN GHOSH & ANR.

VS

CALCUTTA MUNICIPAL CORPORATION & ANR.

For the Petitioners : Mr. Shibaji Kumar Das, Adv.
Mr. A. Ahmed, Adv.
Mr. Dipendu Sarkar, Adv.
Mr. Aniket Karrar, Adv.

For the MKC : Ms. Sreyashee Biswas Adv.
Ms. Puja Goswami, Adv.

Last heard on : 24.06.2025

Judgement on : 02.08.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application under Section 401 and 482 of the Code of Criminal Procedure filed by the petitioners/accused person against judgement and order of affirmation dated 29.9.2007 in Criminal Appeal No. 123 of 2006 passed by the learned Additional Sessions, Judge, 6th Fast Track Court, Calcutta, in respect of the judgement and order dated 21.9.2006 passed by the Learned Senior Municipal Magistrate at Calcutta in connection with the case number 4D of 2003 under Section 16(1)(a)(i) read with section 7 of the prevention of food adulteration act, 1954 and sentencing both the petitioners

to suffer simple imprisonment for 6 months and to pay fine of ₹2000 in default to suffer simple imprisonment for two months.

- 2.** Brief fact of the prosecution case is that the Food Inspector, Dr Rana Chakraborty of Calcutta Municipal Corporation as it was known during that time, inspected the shop of Khokan Ghosh, the proprietor and petitioner No.1 on March 11,, 2003, in presence of the seller – cum– in-charge of the local affairs of the business, Biswajit Ghosh. The said Food Inspector purchased 750 gms of “chhana” from the shop of the petitioner, which was stored for human consumption. The Food Inspector took the sample in presence of the witness Biswanath Ghosh, from which one was sent to public analyst for analysis and remaining two were sent in sealed condition to the local health authority on 11.3.2003. On examination of the sample of Chaana, it was found by the analyst that it did not confirm to the prescribed standard and hence adulterated. On receiving such report and other papers, the case was submitted before the Chief Municipal Health Officer of Calcutta Municipal Corporation who gave written consent to the opposite party No.1 Food, Inspector and filed the complaint case No.4D of 2003, under section 16 (1) (a) (i) read with section 7 of the Prevention of Food adulteration Act, 1954, before the court of Learned Senior Municipal Magistrate, Calcutta, who took cognizance and issued the process against the accused petitioners.
- 3.** The petitioners duly appeared before the learned court, and during the trial, the prosecution examined three witnesses out of whom P.W.3. Bishwanath Ghosh/petitioner no 2. was declared as hostile.
- 4.** It is submitted by the Learned Advocate appearing on behalf of the petitioners that the judgement of both the learned Court suffers from severe irregularities

and are not maintainable in the eye of law. The public analyst was not examined by the prosecution when much reliance was put to his report and the learned court considering the evidences adduced and the reply given in the examination under Section 313 of the Code of Criminal Procedure by the accused persons passed the order of conviction. It is the contention of the learned advocate that Chief Municipal Health Officer who acquired the purported consent to institute the prosecution case did not apply his mind in terms of Section 20(1) of the said Act, No sample witness at the time of collection of sample support the case of prosecution. Furthermore there was non-compliance of section 13. (2) of the said Act as the notice and the report of the public analyst was received by one Brojo Kishore Banerjee, who was not related with the shop of the petitioners and no cogent evidence was adduced by the prosecution. The learned court affirmed the order of the learned court of Municipal Magistrate dismissing the Criminal Appeal No.123 of 2006 against the same this Criminal Revisional application has been filed.

5. The learned Advocate appearing on behalf of the Kolkata Municipal Corporation raises vehement objection and submitted that the standard quality of the food item which are to be maintained were not followed and it is law of the land and the present petitioner is under obligation to follow the said standard and violation of such norms attract the penal provision against the accused person. It is submitted that both the learned trial court as well as the Appellate court, considering the report of the analyst was of the opinion that the food item “channa” was adulterated and was not fit for human consumption and accordingly passed the order of conviction and therefore question of interference to the same doesn’t arise.

6. On perusal of the judgement of the Learned Appellate Court, it is seen that the points raised before the Learned Appellate court are the same as has been taken before this court and learned Court vividly discussed after assessing the evidence adduced on behalf of the prosecution. It is settled law that order of conviction can be passed on the basis of the sole testimony of the witness if found corroborated with the other materials and has not been shaken by the defence. In the appendix to the Food Adulteration Rules, the standard of a food Chhana or Paneer has been specified in A.11.02.05 wherein it is provided that Channa means the product obtained from cow or buffalo milk or a combination thereof by prescription with sour milk, lactic acid or citric acid. It shall not contain more than 70.0% moisture and the milk fat content shall not be less than 50.0% of the dry matter. The report of the public analyst marked with Exhibit 7 reflected that the sample of Chhana contained moisture of 73.52% and milk fat, 24.33% of the dry matter, so it did not confirm to the prescribed standard in respect of the milk fat and the moisture content and accordingly found to be adulterated..

7. Section 2 (i) (a) (m) needs to be looked into at this stage, which reads as follows.

2. Definitions .-In this Act unless the context otherwise requires,-

(i) ["adulterant" means any material which is or could be employed for the purposes of adulteration;]

(ia) [] [Clause(i) renumbered as Clause (ia) by Act 34 of 1976, Section 2 (w.e.f. 1-4-1976).] "adulterated"-an article of food shall be deemed to be adulterated-

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

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.

8. The above definition and the report of the analyst coupled with the observations made by both the Learned appellate court as well as the trial Court this Court has no hesitation to hold that both the courts came to a just and proper finding, and there was no irregularity in the order of conviction as passed for the offences committed under the provisions of the statute, for which any interference is required. No permissible grounds can be found for allowing the appellant to canvass the correctness of this finding .Hence; the instant criminal revision application is liable to be dismissed.

- 9.** At this stage, it is to be seen that the complaint is of the year 2003 and the judgement of trial court was of 2006 ,the judgement delivered by the Learned Appellate court was of 2007.This revisional application was filed in the year 2007 since when it is pending for disposal .This court do not find any case of criminal antecedents or similar complaint against the accused person and in view of this long passage of time it is now necessary to intervene and to modify the sentence passed by the trial Court dated 21.9.2006 duly affirmed by the Learned Appellate Court on 21.9.07 .
- 10.** Hence the period of sentence is converted to fine of Rs 10.000/- ,the 50% of which is to be paid to the Kolkata Municipal Corporation and the appellants shall be exonerated from the sentence of imprisonment .This order to be carried on within a period of fortnight from date.
- 11.** This revisional application is thus disposed of with the above directions.
- 12.** Hence the C.R.R stands allowed in part. Let a copy of the order along with the T.C.R be sent down for sending before the learned trial court for taking appropriate steps.
- 13.** The parties are at liberty to act on the downloaded website copy of the order.
- 14.** Certified copy of the order if applied for be supplied to the parties subject to compliance with all the requisite formalities.

(CHAITALI CHATTERJEE DAS, J.)