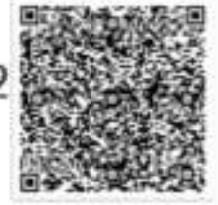


CRM-A-619-MA-2010 (O & M)

2025:PHHC:031662



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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(101)

CRM-A-619-MA-2010 (O & M)

Reserved on : 03.03.2025

Pronounced on:06.03.2025

Union Territory of Chandigarh

... .Appellant

Versus

Jagdish Prashad

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

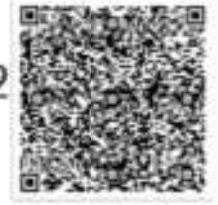
Present: Mr. Anil Kumar Lamdharia, Advocate with
Mr. Roopse Sharma, Advocate,
Ms. Kanta Lamdharia, Advocate, and
Ms. Harmanpreet Kaur, Advocate,
for the appellant-U.T., Chandigarh.

Ms. Ekta Thakur, Advocate, and
Ms. Sikha, Advocate, for the respondent.

JASJIT SINGH BEDI, J.

The present application under Section 378(3) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 21.08.2008 passed by the Chief Judicial Magistrate, Chandigarh.

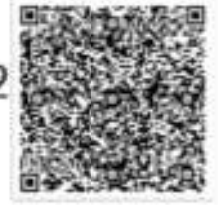
2. The instant complaint came to be instituted on 28.02.2001. The accused came to be acquitted vide judgment dated 21.08.2008. The present application for the grant of leave to appeal was filed on 24.05.2010. The matter has come up for final hearing now after 25 years of the institution of the complaint.



3. The brief facts of this case are that Sh. Sukhwinder Singh, Food Inspector on 22.12.2000 at about 7.00 a.m. intercepted a three wheeler bearing No.PB-08-X-7164 of accused Jagdish Prashad and found in his possession 20 sealed packs of Mrs. Bector's Cremica premium sandwich bread. He associated Pachnarain s/o Ram Kishore r/o House 3004, Sector-19/D, Chandigarh, as a witness to watch the proceedings initiated by him while taking a sample of Mrs. Bector's Cremica premium sandwich bread from the accused who also put his signatures on the documents prepared by him at the spot as an attesting witness.

4. The Food Inspector purchased three sealed pack of 500 gms each of Mrs. Bector's Cremica premium sandwich bread as sample from the accused against cash payment of Rs. 30/- for the purpose of analysis and examination and obtained a receipt thereof. The three packs of Mrs. Bector's Cremica premium sandwich bread were labelled and each pack was further put in plastic jar. The sample jars were properly labelled, secured, fastened and then wrapped in strong and thick papers and the ends of the wrapper were neatly folded and pasted with gum.

A paper slip bearing serial number, code number and signatures of the Local Health Authority, Chandigarh was wrapped around each sample jar from top to bottom and pasted with glue. The sample jars were further secured by means of a strong thread and sealed with four distinct seals. The signatures of the accused were obtained on each sample jar in such a manner that the paper slip and the wrapper both carried a part

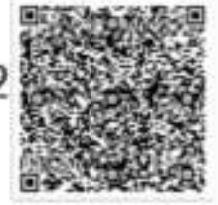


of the signatures. Thereafter, one sealed part of the sample was sent to the Public Analyst for analysis along with the copy of the memorandum on Form VII in a sealed packet. A copy of the memorandum and specimen impression of the seal was sent to the Public Analyst in a sealed envelope separately under intimation to the Local Health Authority. The sample was taken in the presence of witness Shri Pachnarain. The remaining two sealed samples of jars were handed over to the Local Health Authority for safe custody.

5. As per the complainant, the report of the Public Analyst, Punjab, Chandigarh was received through the Local Health Authority, U.T., admissible under Section 13 of the PFA Act which showed that the product had not been labelled in accordance with the provisions of Rule 32 of PFA Rules, 1955 as 'best before' has not been mentioned. Hence, the sample of Mrs Bector's Cremica premium sandwich bread was found to be misbranded. Since, the accused possessed misbranded Mrs. Bector's Cremica premium sandwich bread for public sale in his three wheeler, thereby he was found to have committed an offence under Section 7(ii) of the PFA Act, 1954 read with Rule 32 (i) Rules, 1955 punishable under Section 16 (1) (a) (i) of the PFA Act, 1954.

6. On finding a prima-facie case, the accused was ordered to be summoned to face trial.

7. Upon appearance, the accused was supplied with a copy of the complaint. After hearing on the point of notice of accusation, a prima-facie



case under Section 7 (ii) of the PFA Act, 1954 read with Rule 32 (i) of the Rules, 1955 punishable under Section 16 (1) ta) (i) of the PFA Act, 1954 was found to have been made out against the accused and he was accordingly served with a notice of accusation to which he pleaded not guilty and claimed trial.

8. In order to prove its case, the complainant examined Shri Sukhwinder Singh, Food Inspector as PW1, whereas PW-Panchnarain was given up having won over by the accused and PW-Public Analyst was given up as unnecessary and thereafter, the complainant closed the evidence.

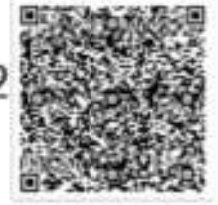
9. The statement of the accused was recorded under Section 313 Cr.P.C. in which the whole of the incriminating evidence was put to the accused but he denied the same and claimed him to be innocent.

10. In defence evidence the accused tendered in evidence certified copy of the judgment dated 08.03.2008 Ex. DA and closed the evidence.

11. Based on the evidence led, the respondent-accused came to be acquitted vide judgment dated 21.08.2008 passed by the Chief Judicial Magistrate, Chandigarh.

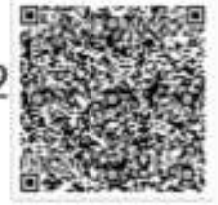
12. The aforementioned judgment is under challenge before this Court.

13. The learned counsel for the applicant-State contends that the Trial Court completely failed to appreciate that Sh. Sukhwinder Singh, Food Inspector had taken sample of Mrs. Bector's Cremica premium sandwich bread as per the provisions of the Prevention of Food Adulteration



Act (hereinafter referred to as 'the Act'). The contents of sample were also sent to the Public Analyst and as per the report, it was found that the product had not been labeled in accordance with the provisions of Rule 32 of the PFA Rules as 'best before' had not been mentioned and the sample was found to be mis-branded and therefore, the accused was liable to be convicted under Sec 7 (ii) of the Act.

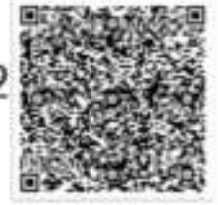
The Trial Court had erroneously relied upon the judgment of the Addl. Sessions Judge in the case of U.T. Chandigarh Vs. Ravi Kumar Kakkar. In that case the sample was taken by Sh.Sukhwinder Singh, Food Inspector, whereas in the instant case, the sample had been taken by Sh. Bharat Kanojia, Food Inspector. In fact Sh. Bharat Kanojia had already taken 03 months' training from Food (Health) Authority, Chandigarh. Thus, there was no question of any disqualification as he had already been imparted 03 months' training by the Food Authority (Health), Chandigarh. In fact, the complainant Food Inspector was duly authorized and qualified to take the sample of the food. Section 9 of the Act provides for Food Inspectors. Section 9 of the Act clearly provides that the Central Government or the State Government may, by notification in the official gazette, appoint such persons as it knows fit, having the prescribed qualifications to be Food Inspectors for such local areas as may be assigned to them by the Central Government or State Government, as the case may be. Thus, once there was a notification in the official gazette, appointing a particular person as a Food Inspector, the appointment becomes effective.



The provisions of Section 9 of the Act clearly provides that once there is a notification by the State, expressing its satisfaction regarding its qualification of Food Inspector, it is evidence of the fact that he was qualified and was properly selected. Section 9 of the Act as such does not provide for any qualifications and the Act empowers the State to prescribe the qualifications for the appointment of certain persons as Food Inspectors. There is no such finding that any such qualification was prescribed in the statute itself and the Food Inspectors did not possess the same. The qualifications prescribed in the Rules could be changed by the State at any time. Further, there are always two types of qualifications, fundamental and non-fundamental qualifications. In the instant case, there is no such finding that the Food Inspectors did not possess the basic and fundamental qualifications. Simply because of the fact that the training imparted to a Food Inspector was for a shorter duration would not vitiate the entire trial and an accused could not be acquitted on this sole ground.

The Trial Court completely mis-read the provisions of Section 12 and Section 20 of the Act. In fact, both the categories, have been authorized to launch prosecution in the capacity of Food Inspector and private consumer or registered consumer association, are different from each other and no one can be a substitute for the other.

He, therefore, contends that leave to appeal be granted and impugned judgment dated 21.08.2008 be set aside and the accused be convicted for the offences for which he has been charge-sheeted.



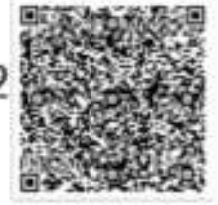
14. The learned counsel for the accused-respondent contends that the grounds raised in the application have been dealt with in the case of '**Ravi Kumar Kakkar versus State (Food Inspector), Crl. Appeal No.96 of 2003 decided on 08.03.2008**'. No appeal/revision was filed against the said order. Therefore, the present application seeking leave to appeal be dismissed.

15. I have heard the learned counsel for the parties.

16. Before proceeding further, it would be apposite to refer to the provisions of Sections 9, 12, 20 of the Protection of Food Adulteration Act, 1954 and Rule 8 of the Prevention of Food Adulteration Rules, 1955.

“9. [Food Inspectors.-(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be:Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Inspector under this section.(2)Every Food Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) and shall be officially subordinate to such authority as the Government appointing him, may specify in this behalf.]

12. Purchaser may have food analysed .-Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a Food Inspector [or a recognised consumer



association, whether the purchaser is a member of that association or not] [Substituted by Act 34 of 1976, Section 9, for certain words (w.e.f. 1-4-1976).] from having such article analysed by the public analyst on payment of such fees as may be prescribed and from receiving from the public analyst a report of his analysis:

Provided that [such purchaser or recognised consumer association shall inform the vendor at the time of purchase of his or its intention] to have such article so analysed:

Provided further that the provisions of sub-section (1), sub-section (2) and sub-section (3) of section 11 shall, as far as may be, apply to a [purchaser of article of food or recognised consumer association who or which intends] to have such articles so analysed, as they apply to a Food Inspector who takes a sample of food for analysis:

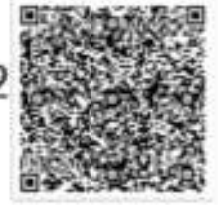
Provided also that if the report of the public analyst shows that the article of food is adulterated, the [purchaser or recognised consumer association shall be entitled to get refund of the fees paid by him or it] under this section.

[Explanation.-For the purposes of this section and section 20, "recognised consumer association" means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force.]

20. Cognizance and trial of offences. -

*1[(1) No prosecution for an offence under this Act, not being an offence under this Sec. 14 or Sec. 14-A] shall be instituted except by, or with the written consent of, 2[the Central Government or the State Government 3[***] or a person authorized in this behalf by general or special order, by the Central Government or the State Government 2 [***]:*

Provided that a prosecution for an offence under this Act may be instituted by a purchaser [or recognized consumer association] referred instituted to in Sec. 12 [if he or it



produces] in Court a copy of the report of the public analyst along with the complaint.

[(2) No Court interior to that of Metropolitan Magistrate or a, Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence, punishable under sub-section (1AA) of Sec. 16 shall be cognizable and non-bailable.]

***Rule 8 of the Prevention of Food Adulteration Rules, 1955:
Qualifications for Food Inspector.--***

- A person shall not be qualified for appointment as Food Inspector unless he-

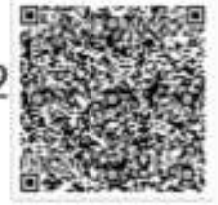
(a)is a medical officer incharge of health administration of a local area; or

(b)is a graduate in medicine and has received at least one month's training in food inspection and sampling work approved for the purpose by the Central Government or a State Government; or

(c)is a graduate in Science with Chemistry as one of the subjects or is a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science or a graduate in Food Technology or Dairy Technology or is a diploma holder in Food Technology or Dairy Technology from a University or Institution established in India by law or has equivalent qualifications recognised and notified by the Central Government for the purpose and has received three month's satisfactory training in food inspection and sampling work under a Food (Health) Authority or in an institution approved for the purpose by the Central Government:

Provided that the training in food inspection and sampling work obtained prior to the commencement of [rule 3 of the Prevention of Food Adulteration (Fourth Amendment) Rules, 1976,] in any of the laboratories under the control of-

(i) a Public Analyst appointed under the Act; or



(ii) a fellow of the Royal Institute of Chemistry of Great Britain (Branch E); or

(iii) any Director, Central Food Laboratory; or

the training obtained under a Food (Health) Authority, prior to the commencement of the Prevention of Food Adulteration (Amendment) Rules, 1980, shall be considered to be equivalent for the purpose of the requisite training under these rules:

[Provided further that a person who is a qualified Sanitary Inspector having experience as such for a minimum period of one year and has received at least three months training in whole or in part in food inspection and sampling work, may be eligible for appointment as Food Inspector, upto the period ending on the 31st March, 1985 and may continue as such if so appointed even though he does not fulfil the qualifications laid down in clauses (a) to (c):]

Provided also that nothing in this rule shall be construed to disqualify any person who is a Food Inspector on the commencement of the Prevention of Food Adulteration (Amendment) Rules, 1980 from continuing as such after such commencement.].

17. A reading of the above rules would make it apparent that in case of fresh appointment of a food inspector, in addition to the qualification provided under rule 8 (a), (b) and (c), it is further required that he should be imparted three months satisfactory training in food inspection and sampling work under a Food Health Authority or in an institution approved for the purpose by the Central Government.

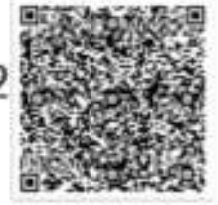
18. The question which arises is whether the Food Health Authority, UT, Chandigarh was duly approved for this training. The relevant



notification of the Ministry of Health and Family Welfare in this regard dated 29.05.1982 is reproduced as under:-

"G.S.R. 431 (E). In pursuance of rule 8 of the Prevention of Food Adulteration Rules, 1955 and in continuation of the Government of India, Ministry of Health and Family Welfare (Department of Health) Order No.P. 15014/76-PF (F & N), dated the 15th November, 1978 the Central Government hereby approves the Food (Health) Authorities of all States and Union Territories except the State of Manipur, Meghalaya, Nagaland and the Union Territory of Arunachal Pradesh, the Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Goa, Daman and Diu, Lakshadweep and Mizoram for providing training in food inspection and sampling work as provided in the said rule".

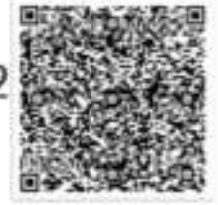
19. Section 9 of the Act provides the procedure for appointment of the Food inspector by way of a notification and this notification should be after the compliance of rule 8 of the Act. Then comes section 20 of the Food Act which provides how the prosecution for the commission of the offences under the food Act is to be launched and it says that no prosecution under the offence of food Act can be launched by a person unless he is authorised in this behalf by general or special orders, by the Central Government or the State Government. Thus, a notification authorising a food inspector to launch prosecution, after sampling and analysis as per the provisions of sections 10 to 13, can be done only by a qualified food inspector that too if he is authorised to do so.



20. In the present case it is the case of the prosecution that as per the notification 1997 the food inspector was authorised to launch prosecution after being appointed as a food inspector. However, from the notification of 1982 as mentioned above it stands established that the Food Health Authority, Chandigarh was not approved and authorised to impart training.

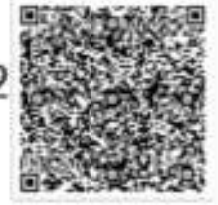
21. Further, the notification dated 8.10.1997 vide which the complainant was conferred with the powers under section 20 of the PFA Act by appointing him a Food Inspector and further authorising him and other Food Inspectors to institute prosecution for the offences committed under food Act was substituted with a new notification No.F-II-(6)-2003/6342 dated 30.09.2003 and after imparting fresh training to the complainant, food inspector and other inspectors from a competent laboratory, duly authorised, approved and fresh appointment and authorisation was notified for the complainant food inspector and other inspectors. This endorses the fact that the earlier notification was illegally issued .

22. No doubt as submitted by the learned counsel for the appellant Section 20 read with Section 12 of the Act empowers a private purchaser to launch prosecution for the commission of an offence under food Act. However, at the same time it is the case of the complainant food inspector that he had taken the sample of the article in question not in the capacity of a purchaser but as a food inspector that too for the purpose of analysis after complying with the procedure provided under section 11 of the Act and if it



is so he cannot be equated with a private purchaser. This question was considered by a Division Bench of this Court in *State of Punjab Vs. Sher Singh 1984(1) FAC 140* and it was held that where the complainant food inspector had taken the sample in the capacity of food inspector and not as ordinary purchaser the provisions of section 20 read with section 12 of the Act cannot be pressed into service and if such a view is accepted the provisions contained in section 20 of the Act that cognizance taken of an offence under the Act would loose its meaning.

23. After examining the provisions of Section 20 and section 12 of the Act, it is apparent that both the categories, which have been authorised to launch prosecution in the capacity of food inspector and private consumer or registered consumer association, are different from each other and one cannot be a substitute for the other. As is mentioned in Section 12 an ordinary purchaser can purchase a food article from a shopkeeper but while doing so he has not to inform or explain to him that he is purchasing the same for the purpose of analysis. But Section 12 gives an authority to him to get that article analysed by the public analyst on payment of a fee and to get the report. The provisions of Section 12 further shows that if an ordinary purchase intends to get an article for the purpose of analysis he or she will have to comply with the provisions of Section 11 sub section (i), (ii) and (iii) if he want to take action. However, under Section 11 a Food Inspector purchases a food article only for the purpose of analysis that too



after complying with the provisions of section 11 sub section (i), (ii) and (iii).

24. In view of the aforementioned discussion, I find no reason to interfere with the well reasoned judgment dated 21.08.2008 passed by the Chief Judicial Magistrate, Chandigarh whereby the accused-respondent, namely, Jagdish Parshad has been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed and leave to appeal is declined.

25. The pending application(s), if any, also stand disposed of accordingly.

(JASJIT SINGH BEDI)
JUDGE

March 06, 2025
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No