

(2018) 04 GAU CK 0093
In the Gauhati High Court
Case No : Crl.Pet. 265 of 2011

ARUN CHANDRA GHOSH

APPELLANT

Vs

THE STATE OF ASSAM

RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2, 2(ia), 14, 19(2)
Prevention of Food Adulteration Rules, 1954 — Rule 29, 12A

Citation : (2018) 04 GAU CK 0093

Hon'ble Judges : MIR ALFAZ ALI

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This criminal petition is directed against the judgment & order dated 28.03.2011 passed by the learned Sessions Judge, Golaghat, in Criminal Appeal

No. 13/2008. By the said judgment, the learned Sessions Judge dismissed the appeal and upheld the judgment & order of the learned Chief Judicial

Magistrate, Golaghat, in C.R. Case No. 04/2004, whereby the petitioner was convicted u/s. 7/16(1-A)(i) of the Prevention of Food Adulteration Act,

1954, and sentenced to undergo rigorous imprisonment for 1(one) year and fine of Rs. 2,000/-, with default stipulation.

2. The facts of the case, in brief, is that, one Sri P. Banikya, Food Inspector, visited the business establishment of the petitioner, under the name and

style of M/s Ghosh Diary, on 09.08.2004, and purchased 3(three) packets of Sweet Supari of Rakhi Brand for the purpose of taking sample. The

said Sweet Supari containing 250 grams in each packets, were packed and sealed as per the Prevention of Food Adulteration Act, 1954(hereinafter

referred to as the PFA Act), and Prevention of Food Adulteration Rules,

1955(hereinafter referred to as 'PFA Rules') and 1(one) sample was sent to the Public Analyst for examination and the remaining the 2(two) samples were sent to the local Health Authority. The Public Analyst, after examination of the same, submitted report, stating that the sample of the Sweet Supari, a Pan Masala; was adulterated, as it contained synthetic colour which was not permitted to be used. Upon receiving such report, the Food Inspector lodged a complaint before the learned Chief Judicial Magistrate, Golaghat, and eventually, the present petitioner stood trial for offence u/s. 7/16(1-A)(i) of the PFA Act.

3. In course of trial, the prosecution examined 2(two) witnesses, and the petitioner also examined 1(one) witness as DW-1. On appreciation of the evidence, the learned Magistrate convicted the petitioner and awarded sentence; as indicated above.

4. Aggrieved, the petitioner preferred an appeal before the Court of the learned Sessions Judge, Golaghat, which stood dismissed. Aggrieved by the judgment & order passed by the learned Sessions Judge, the petitioner preferred the instant petition.

5. Mr. S. K. Ghosh, learned counsel, appearing on behalf of the petitioner and Mr. B. B. Gogoi, learned Addl. P.P., for the respondent State of Assam, were heard.

6. Mr. Ghosh, learned counsel for the petitioner, assailing the impugned judgment & order, contended that the Sweet Supari, sample of which was taken by the Food Inspector, was not adulterated within the meaning of Section 2 of the PFA Act, and, that the accused purchased the Sweet Supari

from the manufacturer 'M/s Shree Hans Supari Works' with warranty and as such, the accused/petitioner was protected u/s. 19(2) of the PFA

Act. Supporting the conviction and sentence of the petitioner, learned Addl. P.P. submitted, that the report of the Public Analyst clearly established

that the food item was adulterated and the petitioner was not able to satisfy the condition for getting the benefit of Section 19(2) of the PFA Act and

as such, the impugned judgment requires no interference by this Court.

7. The rival submission of the learned counsel and the materials on record, raises the following 2(two) questions in the present petition:

(i). Whether the food item was adulterated within the meaning of Section 2 of the PFA Act, and

(ii). Whether the petitioner is protected under section 19(2) of the PFA Act.

8. Mr. Ghosh, learned counsel, contended, placing reliance on a decision of this Court in Nikhil Chandra Saha v. State of Assam & ors., reported in

2001(3) GLT 56, that prosecution failed to show, by adducing evidence that the food item i.e. Sweet Supari, in the instant case, was injurious to health

or that any inferior or cheaper substance was substituted or any prejudice was caused to the purchaser. The decision cited by the learned counsel was

in respect of Bason, where added article of Pea Powder was found. There was no evidence brought on record to show that the said Pea Powder was

a cheaper substance than the Bengal Gram Bason, nor there was any evidence to show that the Pea Powder added with Bason, was injurious to

health. In the absence of such evidence, this Court held that prosecution had failed to prove the Bason seized in the said case, to be adulterated within

the meaning of Sub-clause(a), (b) and (c) of Section 2(i-a) PFA Act.

9. In the instant case, the food item seized was Sweet Supari and as per the report of the Public Analyst, the same was adulterated. Findings of the

Public Analyst, as appeared from the report, proved as Ext. 17, was, as under:

â??Total Ash -- 3.04% Acid

insoluble ash -- 0.08% (in dil.

H.Cl.) Test for artificial sweetening agent -- Saccharin present Added coal-tar colour -- Carmoisine & Tartrazine present.â??

10. Clause A.30 of Appendix B of the PFA Rules defined the Pan Masala and its ingredients, as under:

â??A.30. Pan Masala means the food generally taken as such or in conjunction with Pan. It may contain: Betel nut, lime, coconut, caegchu, saffron,

cardamom, dry fruits, mulethi, sabermusa, other aromatic herbs and spices, sugar, glycerine, glucose, permitted natural colours, menthol and non-

prohibited flavours. It shall be free from added coal-tar colouring matter and any other ingredient injurious to health. It shall also conform to the

following standards, namely- Total ash. - Not more than 8.0 per cent, by weight (on dry basis). Ash insoluble in dilute hydrochloric acid,- not more

than 0.5 per cent, by weight (on dry basis).â??

11. As per the standard prescribed in Clause A.30, the betel nut should be free from any added coal-tar colouring matter or any other materials

injurious to health. Thus, report of the Public Analyst reflected that the Sweet Supari in the instant case contained coal tar colour Carmozing and

Tatrazine. Clause (j) of Section 2(i-a) provides that "if any colouring matter or other than that prescribed in respect of thereof, is present in the

article or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability, the article

shall be deemed to be adulterated. Therefore, the food item, sample of which was taken by the Food Inspector in the present case, was adulterated

within the meaning of clause (j) of Section 2(ia) of the PFA Act as it contained prohibited colour.

12. Referring to the Rule 29 of the PFA Rules, learned counsel for the petitioner Mr. Ghosh, submits that such colour found in the seized Sweet Supari

was permitted to be used in the food articles. Rule 29 reads as under:

"29. Use of permitted synthetic colours prohibited."Use of permitted synthetic colours in or upon any food than those enumerated below is

prohibited :

(a) Ice-cream, milk lollies ;

(b) Biscuits, pastries, cakes, sugar boiled confectionery, lozenges and thread candies ;

(c) Bottled or canned peas, fruit syrup, fruit squash, fruit cordial, jellies, jam, marmalade, candied, crystallized or glazed fruit and synthetic soft drink

concentrates ;

(d) Non-alcoholic carbonated and non-carbonated ready-to-serve synthetic beverages including synthetic syrups, sherbets, fruit bar, fruit beverages

and fruit drinks;

(e) Custard powder ; and

(f) Jelly crystal and ice dandy."

13. A plain reading of the above rule 29 would show that synthetic colour is permitted to be used only in the food items enumerated in rule 29 of the

PFA Rules, as quoted above, which does not include the Sweet Supari. The Public Analyst report clearly indicating that the Sweet Supari in the instant

case, contained colouring material which was prohibited as per the standard prescribed for the pan masala, and as such, the food item containing

added colour was apparently adulterated within the meaning of Clause(j) of the

Section 2(ia) of the PFA Act. The decision of Nikhil Ch. Saha v. State

of Assam(supra), shall not apply in the instant case, reason being that the food articles and the nature of adulteration in the present case, attract the

provision of clause (j) of the Section 2(ia) and not the clause (a), (b) or (c). In view of the above position, this Court is constrained to hold that the food

item in the instant case, was adulterated. Accordingly, the point No. 1 is answered in affirmative.

14. Now, coming to the next question raised by the learned counsel for the petitioner as regards protection u/s. 19(2) of the PFA Act; it will be

beneficial to reproduce here, certain relevant provisions i.e. Section 19(2), Section 14 and Rule 12A of the PFA Act, which reads as under:

Section 19(2) - "A vendor shall not be deemed to have committed an offence pertaining to sale of any adulterated or misbranded article of food if

he proved—

(a) that he purchased the article of food—

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it."

Section 14 - "Manufacturers, distributors and dealers to give warranty.- No manufacturer or distributor of, or dealer in any article of food shall sell

such article to any vendor unless he also gives a warrant in writing in the prescribed form about the nature and quality of such article to the vendor ;

[provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of or dealer in

such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.] Rule 12A -

"any manufacturer, distributor or dealer, selling an article of food to a vendor, shall give either separately or in the bill, cash memo or label a

warranty in form VIA."

15. A combined reading of Section 14 of the PFA Act and rule 12A of the PFA Rules, make it clear that in addition to the written warranty, the bill,

cash memo, invoice, and also the label on the article, providing warranty, shall

be deemed to be warranty. In order to get protection u/s. 19(2) of the PFA Act, the accused has to satisfy the following conditions, namely: (i). he purchased the articles from a licensed manufacturer or distributor, or dealer; (ii). the articles contains a warranty, and (iii). the food articles while in possession of the accused, were properly stored and sold in the same state as it was purchased.

16. PW-1, the Food Inspector; stated that the packet of Sweet Supari containing 250 grams, each, which he procured for purpose of taking sample, were in sealed packet. PW-2, who was an employee in the Department of Health, Government of Assam, and accompanying the Food Inspector, stated that the Food Inspector seized the packet of Rakhi Brand Sweet Supari which was in sealed packet. He, however, stated that he did not notice clearly as to what was written on the label of the packet but he noticed the name of Rakhi Brand Supari. He also stated that the packet also contained the name of the manufacturer. PW-1, in his cross-examination, admitted that the name of the manufacturer was printed on the packet and he also impleaded the manufacturer as an accused. He also stated to have issued notice to the manufacturer in Form-VI. It was also stated by him, that he procured the sealed packet and did not open the packet. Admittedly, the sample of Sweet Supari, which were sent to Public Analyst and to the local health authority, were not produced before the Court, for inspection. However, the report of the Public Analyst i.e. Ext.17 clearly indicated that the Sweet Supari was in a packet which contained the description of the articles, and also the name and address of the manufacturer. Although the prosecution side was under obligation to produce those packets for inspection by the Court, the same was not produced before the Court, for examination, as to whether there was any warranty or not. But the Public Analyst's report indicated that the sample sent for analysis were in sealed packet, containing description of the articles as well as names and addresses of the manufacturers which clearly indicated that the label of the sealed packet containing warranty. Therefore, apparently, the food articles purchased from the petitioner, contained warranty on the label of the articles. When admittedly, the Sweet Supari purchased from the petitioner was in sealed packet containing the label with warranty, the first condition required for extending the benefit of Section 19(2) of the PFA Act, was evidently

satisfied in the instant case. As to the second condition; whether it was properly stored and sold in the same state; evidently, the Sweet Supari was in sealed packet and the Food Inspector purchased the same from the showcase of the shop, which goes to indicate that the food article i.e. Sweet Supari, purchased by the Food Inspector(PW-1) was properly kept, stored and sold in the same state as it was purchased by the petitioner in sealed packet. When the necessary conditions required for entitling the petitioner to get the protection under Section 19(2), were satisfied, protection under Section 19(2) could not be denied to the petitioner.

17. A contention was raised that notice of the case could not be served on the manufacturer who was impleaded as an accused. When evidently, the food article purchased by the Food Inspector contained warranty and the manufacturer was made an accused on the basis of warranty and information available on the sealed packet, non-service of notice of the case on the manufacturer, could hardly be a ground for refusing the benefit of Section 19(2) to the petitioner. The evidence and materials brought on record having satisfactorily established the necessary requirement for extending the benefit u/s. 19(2) of the PFA Act, the petitioner ought not to have been deprived of the protection under Section 19(2) of the PFA Act. Accordingly, the point No. 2 is answered in affirmative and in favour of the petitioner.

18. In view of the discussion made above, this Court is of the view, that it was a fit case where the petitioner was entitled to the benefit of Section 19(2) of the PFA Act, and as such, the conviction and sentence of the petitioner, is not sustainable.

19. Accordingly, the conviction and sentence of the accused petitioner is hereby set aside and the petition stands allowed. Bail bond, if any, shall stand discharged.

20. Remit the LCRs to the Court below forthwith.