
(1998) 08 P&H CK 0091
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1263 of 1987

Deep Chand

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-08-1998

Acts Referred:

Citation : (1998) 4 RCR(Criminal) 421

Hon'ble Judges : V.S. Aggarwal, J

Advocate : H.S. Sawhney, Jasleen Sawhney, S.S. Pattar, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. The present revision petition filed by Deept Chand petitioner is directed against the judgment and order of sentence passed by the learned Sub Divisional Judicial Magistrate, Mohindergarh and that of the learned Additional Sessions Judge, Narnaul dated October 17, 1985 and December 9, 1987 respectively. The learned Judicial Magistrate had held the petitioner guilty of the offence punishable under Section 7 read with Section 16(i)(a)(i) of the Prevention of Food Adulteration Act, 1954. The petitioner was sentenced to undergo rigorous imprisonment for a period of 9 months and to pay the fine of Rs. 1500/. In default of payment of fine, he was to undergo further rigorous imprisonment for four months. The appeal filed by the petitioner was dismissed by the learned Additional Sessions Judge.

2. The relevant facts are that on February 28, 1981, Government Food Inspector Sham Lal accompanied by Dr. Hari Singh visited the shop of the petitioner in village Bhojawas. The petitioner has been running a shop near the bus stop. The petitioner was present at his shop. 10 kilograms of "Shakkar" had been kept in a gunny bag for sale. Food Inspector introduced himself and purchased 600 grams of "Shakkar" against payment. A notice was served on the petitioner. Thereupon, Food Inspector divided the purchased "Shakkar" into three equal parts. They were bottled in three separate dry and clean bottled. The bottles were labelled,

stopped and then wrapped in a strong thick paper. One sealed bottle was sent to the Public Analyst, Haryana alongwith a memorandum in Form 7 in sealed cover. The other two bottles alongwith Form 7 bearing the seal impressions were handed over to the Local Health Authority. Public Analyst found the sample to be adulterated. This led to the filing of the complaint against the petitioner. The trial court on appraisal of the material on the record and considering all facts and circumstances held the petitioner guilty and sentenced him as already mentioned above. The appeal filed by the petitioner was dismissed by the learned Additional Sessions Judge.

3. At the time of arguments, learned counsel for the petitioner raised many pleas. It becomes unnecessary to refer all those contentions because the contention which prevails is that prejudice has been caused to the petitioner. It has been urged that the petitioner had requested the second sample to be sent to the Director, Central Food Laboratory, but because of the damage to the seals and otherwise the sample could not be tested properly and in that view of the matter, not only the report of the Public Analyst was superseded, a prejudice has been caused to the petitioner.

4. Exhibit P1 is the report of the Central Food Laboratory. Perusal of it reveals that the seals on the container were intact and that out of ten seals four were of the court. They tallied it to the seal impression given on the memo. Most important is that other six seals did not tally. The seals on the outer cover were only intact.

5. It is well known that report of the Central Food Laboratory supersedes that of the Public Analyst. Herein, the report of the Central Food Laboratory cannot be relied upon because the seals were tampered with. Once the seals have been tampered, the chances of interpolation and any other fact cannot be ruled out. No care had been taken in this regard. Very close to the facts of the present case is the decision of the Supreme Court in the case *Chetumal v. State of M.P. and another*, 1981(II) Prevention of Food Adulteration Cases page 280. In the cited case sample of groundnut oil had been taken. The accused person challenged the opinion of the public analyst. The second sample was sent to the Central Food Laboratory for analysis. The Central Food Laboratory report indicated that specimen of the seal did not tally with the seal of the container. The Supreme Court held :

"It is clear that the conviction cannot stand. Under Section 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so superseded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seal, there was really no evidence before the Court on the basis of which the appellant could be convicted. The Court could not fall back on the report of the Public Analyst as it had been superseded. The only method

of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food Laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the Court to fall back upon the report of the Public Analyst to convict the appellant. The appeal is allowed, the conviction and sentence are set aside."

Identical is the position herein as noted above. There has been interpolation in the samples" seals that were sent to the Central Food Laboratory. The said report superseded that of the Public Analyst, but on basis of the said report conviction cannot be based. The petitioner is entitled to the benefit of doubt.

6. For these reasons, the revision petition is accepted and the petitioner is acquitted giving him the benefit of doubt.