

(2022) 03 CAL CK 0091
In the Calcutta High Court
Case No : C.R.R. No. 1052 Of 2011

M/S. Bhattacharjee Mahasaya & Anr.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 31-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 397, 401, 482
Prevention Of Food Adulteration Act, 1954 — Section 2(ia)(f), 2(ia)(m), 7, 11(1)(b),
11(3), 13(2), 16(1)(a)(i), 17

Citation : (2022) 03 CAL CK 0091

Hon'ble Judges : Ananda Kumar Mukherjee, J

Bench : Single Bench

Advocate : Swapan Kumar Mallick, Sudeshna Das, Bidyut Kumar Roy, Pratick Bose, Goutam Dinda, Anindya Sundar Chatterjee

Final Decision : Disposed Of

Judgement

Ananda Kumar Mukherjee, J

1. This application for revision under section 397 and 401 of the Code of Criminal Procedure, 1973 read with section 482 of Cr. P.C has been filed by the two convict petitioners, being aggrieved and dissatisfied with the judgment and order dated 17.09.2010 passed by Learned Additional District and Sessions Judge, 9th Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 24 of 2010, thereby affirming the judgment and order dated 26.02.2010 passed by Learned Municipal Magistrate, 2nd Court, Calcutta in Case No. 3-D of 2009, where the petitioners were convicted for the offence punishable under section 16(1)(a)(i) read with section 17 of the Prevention of Food Adulteration Act, 1954 and sentenced petitioner no. 2 to suffer simple imprisonment for two years and to pay a fine of Rs.3.000/- in default to suffer simple imprisonment for six months and further imposed a fine of Rs. 3.000/- against the accused petitioner no. 1, the firm.

2. Brief fact of the case leading to this revisional application is that, petitioner no.

1, M/s. Bhattacharjee Mahasaya is a partnership firm, running a business of sweetmeat at 125/110, Diamond Harbour Road, Calcutta- 700008. Petitioner no. 2, Pannalal Bhattacharjee, is one of the partners of petitioner no. 1. On 29.01.2009 Mr. Shyamal Kumar Chakraborty, Food Inspector under Kolkata Municipal Corporation visited the shop of the petitioners and found Sweetmeat, 'Dohi' and Paneer stored for sale and human consumption. The Food Inspector purchased 750 grams of Paneer for Rs. 90/-. Thereafter the Food Inspector prepared a Notice in Form No. VI in carbon process and served the same upon petitioner no. 2. The Notice has been marked as Exhibit 3. He seized the purchased Paneer in presence of witness and cut the same in three equal parts and kept it in three clean, dry and empty glass bottles and added formalin in each of the glass bottle.

3. The Food Inspector who is Opposite Party No. 2 prepared sample coupons in four parts and tied them on each bottle. Signature of petitioner no. 2 was obtained on the sample coupons and on the receipt regarding cost. One of the sample was sent to the Public Analyst and the other two glass bottles were sent to the office of Local Health Authority. After receiving the sample analysis report from the Public Analyst, Opposite Party No. 2 placed all the documents before the Local Health Authority for necessary instruction for the purpose of prosecuting the appellant. After considering the documents and the Public Analyst's Report permission was granted to the Food Inspector to prosecute the petitioners (Exhibit 9). A letter was issued by the Chief Municipal Health Officer and Local Health Authority on 01.04.2009 address to Mr. Pannalal Bhattacharjee of M/s. Bhattacharjee Mahasaya along with the report of Public Analyst No. JP/08/09 dated 24.02.2009, informing him that the food sample collected from his establishment was found adulterated, unfit for human consumption and the same was misbranded and that prosecution has been instituted against him under section 16(1)(a)(i) read with section 7 of Prevention of Food Adulteration Act, 1954, the letter is marked as Exhibit 1. The intimation was received by petitioner no. 2 along with Public Analyst's report on 04.04.2009. No objection was raised by petitioner no. 2 on receiving the letter with report.

4. A complaint was lodged before the Learned Municipal Magistrate Cum Metropolitan Magistrate, 2nd Court, Kolkata on 30.03.2009 under section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 read with section 7 of Prevention of Food Adulteration Act. Summons were sent to the petitioners and after framing of charge on 09.07.2009 prosecution examined four witnesses. Mr. Swapan Kumar Das an Upper Division Assistant in the office of the Local Health Authority and Food Cell of Kolkata Municipal Corporation has been examined as PW-1. He produced the letter and a copy of Public Analyst Report forwarded by him to Pannalal Bhattacharjee the petitioner no 2. The letter has been marked as Exhibit 1. Mr. Shyamal Kumar Chakraborty, the Food Inspector attached to Kolkata Municipal Corporation borough-13 who held inspection on 29.01.2009 has been examined as PW-2. He has proved the complaint as Exhibit 10. The Public Analyst Report as Exhibit 8 and the sample coupons prepared by him at

the time of seizure of sample and sealing of bottles as Exhibit 4, 4/1 and 4/2. He also proved the original Notice in Form No. VI and the signature of the witnesses and accused Pannalal Bhattacharjee in presence of whom the seizure was made, as Exhibit 3, Exhibit 3/1 and 3/2. Sushil Kumar Kujur, an employee of Kolkata Municipality is examined as PW-3. He produced the Trade License of the petitioners' Establishment, as Exhibit 11. Jaharlal Bhattacharjee a witness of seizure, who was present in the shop at the time of visit by the Food Inspector and seizure of the sample, is examined as PW-4. The accused petitioner no. 2 was examined under section 313 of Cr. P.C. He admitted that on 29.01.2009 at 12:30 P.M the Food Inspector came to his shop and at the relevant time the petitioner was conducting his business. He admitted that the inspector took Paneer as sample which was kept in the Refrigerator of his shop. He also admitted that 750 grams of Paneer was purchased by the Food Inspector and sample was taken in three parts, in three different containers were petitioner no. 2 put his signatures. When asked if he wants to state anything regarding the report of the Public Analyst, petitioner no. 2 stated that he did not receive any report and the Paneer was not for sale and it was kept in a 'gamla' in the kitchen. The accused petitioner examined one witness, Sunil Kumar Sadhukhan as DW-1, who deposed that the Paneer was not in good condition for which it was kept separately but the Food Inspector insisted to take sample from that Paneer. He further deposed that Pannalal Bhattacharjee had disclosed to the Food Inspector that the Paneer was not in good condition. The witness denied that on 29.01.2009 he was not present in the shop when the Food Inspector collected sample and that he was not an employee of the shop. After considering the evidence on record the petitioners were found guilty of the offence for keeping misbranded and adulterated food for sale and were convicted and sentenced. The judgment was affirmed by the Appellate Court.

5. Being aggrieved with the impugned judgment and order, the petitioners have come before this court praying for setting aside the same on the ground that the same is bad in law, arbitrary and mala fide, that the judgment passed by the Appellate Court and the trial court are not sustainable. It is contended that the Appellate Court failed to consider the infirmities of the prosecution case. According to the petitioners the Food Inspector did not follow the procedure laid down in section 11 (1)(b) of the Prevention of Food Adulteration Act and due to such non-compliance the court below ought to have held that prosecution failed to prove the case against the petitioners beyond reasonable doubt.

6. Learned Advocate for the petitioner strongly contended that the food sample of Paneer seized by the Food Inspector was neither for sale nor was it displayed in the shop on 29.01.2009. It is argued that the Food Inspector on his own insistingly took the Paneer without paying heed to petitioner no. 2 that it was not for sale. It is alternatively argued that the Food Inspector did not follow the provision under section 11(3) of Prevention of Food Adulteration Act and did not send the sample to the Public Analyst of the local area immediately by the succeeding working day. Therefore, the complaint filed in this case is not

maintainable.

7. Learned Advocate for the petitioners drew my attention to the opinion of the Public Analyst in his report marked as Exhibit 8. It is argued that the Public Analyst in his report has stated that, "The sample of Paneer does not conform to the prescribed standard in respect of moisture and Milk Fat content of the dry matter. Hence, it is highly adulterated." However simply stating that the sample is highly adulterated does not attract the penal provisions. Relying upon a decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Kacheroo Mal (AIR 1976 Supreme Court 394), it is argued that apart from a report to the extent that the food sample is adulterated, it should clearly specify that the same is unfit for human consumption. Without such report the petitioners cannot be convicted.

8. Further argument of the petitioner is that the report of the Public Analyst was not served upon the petitioner which is a mandatory requirement before lodging a complaint against the petitioner for adulteration of food. According to the petitioner the Public Analyst Report ought to have been served upon him under section 13(2) of Prevention of Food Adulteration Act.

9. Referring to Exhibit 11 it is argued that PW4 Jaharlal Bhattacharjee is another partner of M/s. Bhattacharjee Mahasaya but the Food Inspector did not initiate any proceeding against him and the present case filed against only one of the partners cannot succeed. It is argued that if at all the petitioner is found guilty of the offence, being a senior citizen he has suffered lot of anxiety during the long pendency of this appeal as such the substantive sentence of imprisonment for two years may be reduced to a sentence of fine wholly. It is finally argued that the judgment of conviction and sentence passed by Learned Metropolitan Magistrate cum Municipal Magistrate 2nd Court, Calcutta in Case No. 3 D of 2009 and the impugned judgment passed in Criminal Appeal No. 24 of 2010 is bad in law and the same are liable to be set aside and the appellants acquitted from this case.

10. Learned Advocate for the Kolkata Municipal Corporation controverting the arguments advanced on behalf of the petitioners, submitted that prosecution has been able to prove the case against the accused petitioners to its hilt.

11. Refuting the claim of the petitioner that the sample of Paneer collected from the shop was not meant for sale. It is argued that on 29.01.2009 at the time of visit to the shop of petitioner no. 2. the Food Inspector found the Paneer in the refrigerator and he purchased 750 grams of the same at a cost of Rs. 90/-. Learned advocate drew my attention to Exhibit 4/2 which is an endorsement on the reverse of the sample coupon and the same bears the endorsement of cost of Rs. 90/- and the signature of petitioner no. 2. It is argued on behalf of the Opposite Party that the Food Inspector issued notice to Pannalal Bhattacharjee in Form VI for the purpose of collecting the sample of Paneer from the premises of M/s. Bhattacharjee Mahasaya. The said receipt bears the signature of Pannalal

Bhattacharjee, the accused and Jaharlal Bhattacharjee as a witness. It is submitted that on the same day one of the bottles containing sample was delivered to the Physical Analyst of L.H.A which was received by one J. Patra by putting his signature on 29.01.2009, which is produced Exhibit 5. After analysis of the sample, the local health authority submitted a report which has been produced as Exhibit 8 which indicate that the sample was not in Conformity to the prescribed standard in respect of moisture and Milk Fat and was found to be highly adulterated.

12. Mr. Dinda, learned advocate for the Calcutta Municipal Corporation argued that the report of the Public Analyst was sent to the Local Health Authority and a copy of the report was sent by the Chief Municipal Health Officer and Local Health Authority to Mr. Pannalal Bhattacharjee the petitioner, informing him that on analysis the sample was found adulterated and unfit for human consumption and misbranded and accordingly a prosecution has been instituted against him under section 16(1)(a)(i) read with section 7 of Prevention of Food Adulteration Act, 1954 and that section 13(2) of the Act was complied. It is argued that the Food Inspector made over all the documents and the test report to the office of Local Health Authority and after going through the relevant documents permission was granted to prosecute the petitioner. Accordingly the complaint was filed against petitioner no. 1, the establishment and petitioner no. 2. It is argued on behalf of the Food Inspector, Kolkata Municipal Corporation that all provisions have been complied and it has been proved beyond doubt that the sample contains 77.6% of moisture where the maximum limit was 70% and it contained Milk Fat to the extent of 3.5% of the dry matter, whereas it should not been less than 50% of the dry matter. It is argued that the accused person never challenged the finding nor did he seek any further analysis of the sample according to the provision under section 13(2) of the Act. Therefore, the petitioners have been justly found guilty for the offence punishable under section 16 (1)(a)(i) for selling adulterated food within the meaning of sub-clause (m) of clause (ia) of section 2 of Prevention of Food Adulteration Act. It is argued that the decision in the case of Municipal Corporation of Delhi Vs. Kacheroo Mal (AIR 1976 Supreme Court 394) is not applicable as adulteration of food in the present case was not due to insect infestation rendering the food unfit for human consumption. Learned advocate drew my attention to the definition of adulteration in sub-clause (f) of clause (ia) of section 2, wherein the adulteration relates to filthy, putrid, rotten decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for consumption. It is submitted that the expression "unfit for human consumption" is related to insect infested food and the same is not essential in case where the quality of the food falls below the prescribe standard or its constituents are present in quantities not within the prescribe limits of variability but which does not render it injurious to health, as it appears in section 2 (ia)(m) of Prevention of Food Adulteration Act. It is urged that the revisional application is without merit and the same is liable to be dismissed.

13. Learned advocate for Opposite Party No. 1/State argued that the arraignment against the petitioners have been proved by the complainant with the help of clinching and trustworthy evidence and there is no infirmity in the finding of the Learned Magistrate as well as the First Appellate Court. It is urged that the revisional application is without merit and is liable to be dismissed.

14. Heard learned advocates for the petitioners and as well as Opposite Party no. 1 and 2. I have carefully considered the petition of complaint, the materials in the lower court record, evidence adduced by Prosecution Witness No 1 to Prosecution Witness No 4, the answers given by petitioner no 2 during his examination under section 313 of Cr. P.C, the evidence adduced by Defense Witness No. 1 and the two consistent judgments passed by learned Municipal Magistrate and learned Additional District and Sessions Judge, 9th Fast Track Court, Bichar Bhawan. There is a clear admission on the part of petitioner no 2 that the sample of Paneer was seized from his establishment M/s. Bhattacharjee Mahasaya. The contention of the petitioners is that the Paneer was not for sale and it had been repeatedly informed to the Food Inspector at the time of his visit to the shop. From the endorsement of receipt of petitioner no. 2 made on the reverse of the sample coupon it is found that the cost of 750 grams of Paneer was Rs. 90/- and it was kept for sale and human consumption. The endorsement has been marked as Exhibit 4/2 at the time of cross examination of PW 2, who proved the document. No suggestion was given to the witness that any force was applied on petitioner no 2 to make such endorsement regarding price in the Paneer. In his examination under section 313 of Cr. P.C petitioner no 2 has stated that he had kept the Paneer in the kitchen and inform that it was not for sale. It may be recalled that the Food Inspector (PW 2) visited the shop premises of the petitioners at about 12:30 P.M. If the Paneer was not for sale, it would certainly have been disposed and removed from the shop much earlier but the very existence of the material indicates that the petitioner no. 2 had kept the same with an object to sale it to the customers.

15. The second limb of petitioners' contention is that the provisions of Prevention of Food Adulteration Act were not complied and the sample was not collected according to the provisions under the Act and the Public Analyst's Report was not communicated to the petitioner. After considering the evidence on record it appears that all the formalities were duly complied by the Food Inspector. He collected the sample and put it in three separate dry containers on which he affixed sample coupons and wrapped the containers with paper and affixed adhesive tape horizontally and vertically to seal the containers after having added necessary preservative. One of the samples was handed over to the Public Analyst of L.H.A on the same day and thereby he complied the provision under section 11(3) of Prevention of Food Adulteration Act. He also deposited two other samples to the office of Chief Municipal Health Officer and Local Health Authority. After the analysis of the sample was complete, it was duly communicated to petitioner no. 2 by means of a letter bearing no. H/PFA/A/128/09 dated 01.04.2009, which is produced as Exhibit 1. The letter bears the receipt of

petitioner no 2. After having gone through the documents and the report of Public Analyst the Chief Municipal Health Officer and Local Health Authority Kolkata gave necessary permission to prosecute the offender as per Prevention of Food Adulteration Act, 1954. The endorsement to that effect has been produced as Exhibit 9/1. The certificate of establishment, that is the Trade License of M/s. Bhattacharjee Mahasaya has been produced before the court by PW 3 Sushil Kumar Kujur and the documents has been marked as Exhibit 11. The Trade License reveals that Pannalal Bhattacharjee is a partner of M/s. Bhattacharjee Mahasaya.

16. During trial there was a futile attempt on the part of the petitioners by examining one Sunil Sadhukhan as DW 1 to establish that the Paneer collected by the Food Inspector was kept in the workshop and it was not for sale and in cross examination DW 1 stated that he did not have any document to show that he was an employee of that shop at that time.

17. From the facts and circumstances of the case it has been proved beyond doubt that the food sample was collected from the shop of the petitioner and the same was found to be in adulterated condition. In the instant case the Municipal Authority has been able to prove that the petitioner firm as well as petitioner no. 2 a partner of the firm who conducted the business was guilty of the offence of keeping adulterated food for sale. Accordingly, the petitioners were found guilty of the offence punishable under section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 read with section 17 of the Act. The nature of adulterated food which was kept in the shop room of the petitioners did not conform to the quality and purity of the article which fell below the prescribe standard. The nature of adulteration therefore comes under the definition of section 2 (ia)(m) of Prevention of Food Adulterated Act. In this context it is pertinent to note that the decision relied on behalf of the petitioners was in respect of the nature of adulteration, as define in section 2(i)(f) which relates to adulteration by insect, rendering the food material unfit for human consumption. The adulteration involved in the present case is distinguishable from the nature of adulteration dealt with in the cited decision. Therefore, due to non inclusion of the expression 'unfit for human consumption' it would not rendered the report of the Physical Analyst nugatory.

18. On a conspectus of the aforesaid material and foregoing discussion I hold that there is no infirmity in the two consecutive judgments in which the petitioners have been found guilty of an offence under section 16(1)(a)(i) read with section 7 and 17 of the Prevention of Food Adulteration Act 1954. Therefore, I find no infirmity in the impugned judgment to interfere with the conviction of the petitioners.

19. The petitioner no. 2 herein has been sentenced to simple imprisonment for two years and a fine of Rs. 3,000/- in default to suffer simple imprisonment for six months. On considering the materials on record it appears that petitioner no. 2 is over seventy years of age and he has suffered to a great extent due to long

pendency of this case for over twelve years. The substantive sentence which has been imposed against petitioner no. 2 appears excessive and harsh. In my considered view it would be appropriate, adequate and reasonable if the minimum substantive sentence of simple imprisonment for three months prescribed under the Act is imposed against the convict the petitioner no. 2 along with a fine of Rs. 5,000/- in default to suffer simple imprisonment for one month.

20. An award of fine of Rs. 3,000/- imposed against the petitioner firm is perfectly valid as no sentence of imprisonment could be passed against a juristic person. In view of my above discussion, I hold that the finding of the First Appellate Court relating to the question of conviction suffers from no infirmity and there is no reason for interfering with the same. So far as the sentence against petitioner no. 2 is concerned, I hold that it would be just and appropriate to reduced the substantive sentence of imprisonment to simple imprisonment for a period of three months in place of two years and to enhance the fine to Rs. 5,000/- in default to simple imprisonment for one month. The revisional application is accordingly allowed in part and the sentence is modified.

21. Interim order if any stands vacated. All connected applications are disposed of. The petitioner is directed to surrender before the trial within a period of fifteen days from the date of this order for undergoing the sentence ordered herein. Let a copy of this judgment be sent to the Learned Additional and Sessions Judge, 9th Fast Track Court, Bichar Bhawan for information and another copy of judgment along with Lower Court Record to Learned Municipal Magistrate cum Metropolitan Magistrate 2nd Court Calcutta for execution of the sentence in the light of my above findings.

22. Urgent Photostat certified copy of this judgment, be supplied to the parties if applied for, maintaining all formalities.