

(1989) 04 SHI CK 0034
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 75 of 1986

Parkash Chand

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 20

Citation : (1989) 1 ILR HP 247

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bhawani Singh J.

1. The Petitioner prefers this Criminal Revision Petition against the judgment of Sessions Judge, Una, dated 3-7-1986 in Criminal Appeal No. 10 of 1985. By this decision, the judgment of conviction imposed by the Chief Judicial Magistrate, Una, vide judgment dated 10-1-1985, convicting the Petitioner u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, sentencing the Petitioner to undergo rigorous imprisonment for six months and a fine of Rs. 1000/- and in default of payment of fine to undergo further rigorous imprisonment for four months, was confirmed. The Petitioner assails this judgment before this Court.

2. The prosecution version, in brief, is that the Petitioner was intercepted while carrying 52 kgs. Of mixed milk for sale on 30-3-1982 by PremKanwar, Food Inspector, near the shops in village Basal. Notice (Ex. P-I) was given to the Petitioner by the Food Inspector intending thereby to take sample of the milk then in possession of the Petitioner. Consequently. 660 mls. Of mixed milk was purchased after stirring the same in the container for the purpose of analysis. As required under the Act and the Rules, the milk was divided into three equal parts and each part was put into a clean and dry bottle. A Formaline-18 drop was added to each part of the sample as preservative. All the samples in the bottles

were Stoppard, wrapped, sealed and labeled in accordance with the Rules. One part of the sample was sent to the Public Analyst for analysis and copy of Form-VII along with specimen impressions of the seals were sent to the Public Analyst through separate cover. On analysis the Public Analyst, vide report dated 15-5-1982, opined that the contents of the milk were deficient in milk fat by 4% and in milk Solids-not-fat by 21% than the minimum prescribed standard, therefore adulterated. The Appellant was served with notice the Local Health Authority as contemplated under Section: 13(2) of the Prevention of Food Adulteration Act and the case was initiated against the accused.

3. The defense of the Petitioner appears to be that he is not a milk vendor by profession and the milk sold-by him to the Food, Inspector was cow's milk although his examination u/s 313 of the Code of Criminal Procedure, he admitted the sale -of milk to the Food Inspector but stated that the sample of milk was not put into clean and dry bottles. He exercised his right, under the law, to get the second part of the sample, analyzed which was found decomposed and when the third part was sent, the bottle was found broken with the result that the report of the Public Analyst could not be superseded by any other report from the Central Health Authority. Ultimately, the contention of the prosecution prevailed with the trying Magistrate and the Petitioner was convicted as aforesaid and the same was maintained by the Sessions Judge on appeal.

4. Shri S.S. Kanwar, learned Counsel for the Petitioner, has-made two subdivisions. The first relates to the casual way the Food inspector moved in the matter which caused great prejudice to his client. In this connection, he urges that the sample was taken on 30-3-1982. The sample was received by the Public Analyst on 3-4-1982. The report is dated 15-5-1982. The prosecution was launched on 9-9-1982. Notice u/s 13 of the Act was sent to the Petitioner on 10-4-82. The Petitioner applied for the second part of the sample to be sent-for analysis on 7-1-1984 which was found decomposed vide report dated 10-8-1984. The third bottle of the sample was found broken as per the report of the authority dated May 19/21, 1984. On the basis of these circumstances, the learned Counsel for the Petitioner submits (that the delay from the taking of the sample to 7-1-1984 or at least after September 10, 1982 (the notice u/s 13(2) of the Act is received after this date, is fatal and caused prejudice, in, the sense that the quality of the article stood deteriorated by this long lapse of time. To support this argument, Shri S.S. Kanwar has referred to number of decisions but reference to State of Madhya Pradesh v. Umar Din, Criminal Appeal No. 45 of 1984, decided on April, 1989 ILR1989 H.P.18; 1975 (1) F.A.C. 186 (Municipal Corporation of Delhi v. Ghisa Ram), 1988 F.A.J. 628 (Makhan Singh v. State of U.P.) 1972 F.A.C. 732 (Resham Singh v. the State of Punjab) and 1987 F.A.J. 442 (Gopi Ram v. State of Haryana) is quite sufficient to hold that by this gross delay, there is every possibility of the sample getting deteriorated and the benefit of this situation leans obviously to go to the accused.

5. On the other hand, Shri M.S. Guleria, learned Assistant Advocate General,

submits that there are cases which fix the period of ten months for the sample milk to deteriorate. I am of the opinion that the normal period within which the sample milk gets deteriorated is within four to six months, basing this conclusion on the pronouncements of majority of the High Courts, and conclude that in the present case, the authorities have not moved with speed as is expected in such like cases. The result, therefore, is that prejudice to the accused in the circumstances of this case is quite obvious and I hold so Adulteration of food is a crime which very seriously affects the society at large and it is in the larger interest of the health of the people that the Food Inspector must be vigilant, careful and prompt in handling such cases and launching prosecution.

6. The second part relates to the sanction to launch the prosecution with reference to Ex. P-5. Shri S.S. Kanwar contends that the same does not fulfill the requirement of Section 20 of the Act as it is just a printed form filled by someone and the Local (Health) Authority has only signed it. Such a sanction, the learned Counsel urges, is no sanction in the eye of law. It does not disclose application of mind by the sanctioning authority. Reference is made to Criminal Appeal No. 47 of 1985 (State of Himachal Pradesh v. Mussa), decided on January 6, 1989 JLR 1989 HP), as well as AIR 1948 82 (Privy Council) The relevant part is as under.

The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government has an absolute discretion to grant or withhold their sanction A sanction which simply names the person to be prosecuted and specifies the provision of time Order which he is alleged to have contravened is not a sufficient compliance with Clause 23 of the Cotton Cloth and Yarn (Control; Order, 1943.

7. Another judgment from which assistance is sought is Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, wherein their Lordships said as under:

What the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecution and must therefore be strictly complied with before any prosecution is launched against the public servant concerned.

8. After applying these principles, sanction Ex. P-5, is no sanction within the meaning of Section 20 and the prosecution, therefore, is illegal and without jurisdiction.

9. No other point was argued by the learned Counsel appearing for the parties.

10. In view of the aforesaid discussion, there is no other, conclusion except to hold that there is merit in this revision petition, the same is allowed; the conviction and sentence imposed upon the Petitioner is set-aside. The personal

bond and surety bond, if any, executed by the Petitioner at any stage of the proceedings, are hereby cancelled.