

(2010) 03 GAU CK 0060

In the Gauhati High Court

Case No : Criminal Revision Petition No. 273 of 2003

Sailen Chanda and Another

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 360, 397, 401
Prevention of Food Adulteration Act, 1954 — Section 10(7), 16, 2, 20AA, 7
Prevention of Food Adulteration Rules, 1955 — Rule 12, 14, 15, 16, 17

Citation : (2006) 1 GLT 497

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : A.K. Goswami, for the Appellant; B.B. Gogoi, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—The judgment and order, dated 31.3.03, passed by the learned Addl. Sessions Judge No. 2, Tinsukia in Criminal Appeal No. 22 (2) of 2002 is in challenge in this revision petition, filed u/s 397 read with Section 401 of the Code of Criminal Procedure (hereinafter referred to as 'Code of Criminal Procedure').

2. The prosecution case as revealed during the trial, in brief, may be stated as follows:

On 3.7.98, the Food Inspector (PW1) visited the grocery shop owned by the Petitioners at Tinsukia and he purchased six hundred grams of iodised salt after observing all formalities as required by the Prevention of Food Adulteration Act, 1954 (hereinafter called "the PFA Act") and the Rules thereunder and by paying Rs. 1.50 only as the price of the purchased iodised salt. Though the Food Inspector requested some of the customers, available in the said shop to join him as witnesses with regard to taking of the said sample, the said customers refused to oblige. Therefore, one Mr. Tajmul Hussain (PW 2), who accompanied the Food Inspector, agreed to be the witness and accordingly, the sample was taken in his presence by observing all the formalities. The sample was divided in

three equal parts and each of the said parts were put in three separate clean and dry polythine bags which were tightly closed. Subsequently, one part of the sample along with the memo was sent to the Public Analyst keeping the other two parts with the local Health authority. The Public Analyst examined the sample and submitted the report indicating therein, that the iodised salt did not conform to the standard. The Public Analyst's report is as follows:

I hereby certify that I Dr. K.L. Chakraborty, Public Analyst for Assam duly appointed under the provisions of the Revention of Food Adulteration Act, 1954, received on the 18th day of July, 1998 from Sri T. Das, F.I. Tinsukia, a sample of iodised salt, bearing Code No. and SI. No. TD-98/005 of local (Health) authority, Tinsukia, vide Memo No. F.I-37/TSK/98-057 dated 4.7.98 by regd postal parcel, collected on 3.7.98 at Gunjan Ghat for analysis, properly sealed and fastened, and that I found the seal intact and unbroken.

The seal fixed on the container and the outer cover of the sample tallied with the specimen impression of seal separately sent by the Food Inspector and the sample was in a condition fit for analysis.

I further certify that I have/had caused to be analysed the aforementioned sample, and declare the result of the analysis to be as follows:

and am of the opinion that the sample of iodised salt does not conform to the standards. Signed this 21st day of August, 1998.

Accordingly, after obtaining necessary sanction from the local Health authority, the proceeding was initiated against the petitioners. At the request of the petitioners, another part of the sample was sent to the Central Food Laboratory, Gaziabad. The report submitted by the Central Food Laboratory also indicated that the sample did not conform to the prescribed standard of iodised salt. During trial, particulars of offence u/s 16 read with 7 of PFA Act was explained to the accused persons to which they pleaded not guilty. The prosecution examined two witnesses. At the close of the evidence for the prosecution, the accused persons were examined u/s 313 Code of Criminal Procedure. The accused persons denied that the sample was collected by the Food Inspector after paying the price thereof. Denying the allegations brought against him, the accused persons examined one defence witness to substantiate that the shop of the Petitioners was a partnership firm. Learned Judicial Magistrate, First Class framed the following points for determination:

- (i) Whether there was a violation of Section 10(7) of the Act?
- (ii) Whether there was violation of Rules-14, 15. 16 and 17 of the Rule?
- (iii) Whether sample in question was adulterated and was the article of food for human consumption?

3. The learned Chief Judicial Magistrate (CJM), Tinsukia by his judgment and order, dated 19.3.02, passed in case No. 34 of 1998 convicted the petitioners,

under Sections II 16 of the PFA Act and sentenced them to suffer simple imprisonment for six months each and also to pay a fine of Rs. 1,000/- each, in default, to suffer RI for one month.

4. Aggrieved by the said judgment and order of conviction and sentence, the petitioners, as Appellants, preferred the appeal aforesaid before the learned Addl. Sessions Judge, Tinsukia and the learned Addl. Sessions Judge, by the impugned judgment and order passed, in the above mentioned appeal, while dismissing the appeal upheld the conviction and sentence recorded by the learned CJM, Tinsukia. Therefore, challenging the correctness and legality of the said judgment and order, the Petitioners have come up with the present Revision petition.

5. I have heard Mr. A.K. Goswami, learned senior counsel for the Petitioners and Mr. B.B. Gogoi, learned Addl. PP for the State Respondent.

6. Mr. Goswami, learned senior counsel, appearing for the Petitioners submitted that the sample of the salt, collected by the Food Inspector on 3.7.98, was received by the Public Analyst on 18.7.98 and that the examination report was submitted on 21.8.98.

In view of the above, as contended by the learned senior counsel, the delay in examining the sample, caused evaporation of the iodine content of the salt and as such no fault could be found with the Petitioners for such loss of iodine content. The learned sr. counsel further submitted that except failure to conform to the standard of the iodine content, there was nothing on record to show that the sample was adulterated with any foreign substance. Learned senior counsel appearing for the petitioners, further submitted that the polythene packet/bag used by the Food Inspector was not the proper container and that the use of the polythene was not in conformity with the Rule 14 of the PFA Act and as such failure to use proper container facilitated entry of moisture into the polythene container resulting evaporation of the iodine content.

On behalf of the petitioners, it is also contended, that at the time of taking the sample the mandatory provision of Section 10(7) of the PFA Act was not complied with, that there was violation of Rules 12 and 14 of the PFA Act and that the benefit of Section 360 Code of Criminal Procedure should have been given to the petitioners. In view of the above, it is submitted that the impugned order of conviction and sentence was bad in the eye of law and therefore, the same was liable to be set aside.

7. Refuting the said argument, advanced by the learned senior counsel for the petitioners, Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State submitted that in view of Rule 14, as there was no bar in using the polythene packet. The Food Inspector taken the samples in clean and dry polythene bags and that the opening of which were tightly closed as per requirement. It is also contended that the evidence of the Food Inspector as well as the PW 2, regarding proper use of the container, was not challenged during the trial. Regarding the

iodine content of the sample, the learned Addl. Public Prosecutor referring to A. 15.01 of the PFA Act submitted that the prescribed standard of iodine content at the manufacture of level of iodised salt being not less than 30 ppm on dry weight basis the same should be 15 ppm on dry weight basis at the distribution including retail level, lire learned Addl. Public Prosecutor, referring to the report of the Public Analyst (Annexure-13) submitted that at the time of examination of the sample, i.e. on 21.8.98, the Public Analyst found that the iodine content of the sample was only 4.86 ppm which was much less than the prescribed standard. Referring to the Section 2 of the PFA Act, the learned Addl. PP submitted that, as the collected sample failed to conform to the prescribed standard of iodised salt, the iodised salt, sold by the Petitioners to the Food Inspector was found to be adulterated.

8. With regard to the contention that the provision of Section 10(7) of the PFA Act was not complied with, it appears from the record that the Food Inspector, failing to persuade anyone of the customers or other public to attend as a witness, had to take the sample in presence of his office peon. The said office peon deposing as PW 2 supported the evidence of the PW 1 in this regard. Though the said two witnesses were duly cross-examined, no contradiction could be elicited to render their evidence disbelievable. There is no dispute that the sample of iodised salt was taken by the Food Inspector. As the customers or other independent persons refused to act as witness, the taking of the sample in presence of the PW 2 was not fatal for the prosecution. Because nothing could be elicited to indicate that due to such taking of the sample prejudice was caused to the accused persons in any manner. The evidence of PW 1 i.e. the Food Inspector makes it clear that the customers, present in the said shop, refused to extend co-operation as witness and as such he had no other alternative but to take the sample in presence of PW 2 Mr. Tajmul Hussain, who had accompanied him. Therefore, it appears that there was sufficient compliance of the provision of Section 10(7) of the PFA Act. On behalf of the petitioners, it has been contended that the polythene bag was not the proper container and that the use of the same led to entry of moisture followed by evaporation of the iodine. Rule 14 of the PFA Act provides that the samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers, which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed. The Food Inspector deposing as PW 1 clearly stated, that he has used three clean and dry polythene bags and after putting he samples separately in the said polythene bags, he had tightly closed the opening of the bags and that the bags were put in plastic container, which was properly closed. The said evidence of PW 1 was corroborated by the PW 2. From the cross-examination of the said two witnesses, nothing could be shown to hold that the containers were not properly closed and that there was scope for leakage or evaporation. Rule 14 does not restrict the use of polythene bag. What is required by the said Rule is that the container should be dry, clean and it should be tightly closed so that there cannot be any

leakage or evaporation etc. In the present case, from the evidence of PWs 1 and 2, it appears that the samples were taken in proper manner as required by Rule. Therefore, I find no force in the contention, put forward on behalf of the petitioners, that the use of polythene bag was the cause of the loss of iodine content in respect of the sample.

9. From the record, more particularly, the evidence of PW 1, it is found that the Food Inspector purchased the sample on payment of price after serving notice in Form-VI. He has exhibited the Form-VI notice as Ext. 1 and the money receipt issued by the vendor Mr. Sarbu Chanda, (one of the petitioners)(Ext. 2). The said Ext. 2 indicates that an amount of Rs. 1.50 was paid by the Food Inspector to the said vendor/petitioner as price of 600gms of iodised salt. Ext. 1 i.e. Form-VI notice also bears the signature of the said Petitioner. Though the PW 1 was duly cross-examined on behalf of the defence, no contradiction could be established to negate the contention made in the Exts. 1 and 2. The PW 2 supported the evidence of PW 1 regarding service of the notice under Form-VI and the payment of the price of the sample. There is sufficient corroboration in the evidence of PW 1 and PW 2 regarding taking of sample after complying with the due procedural requirement.

In view of the above discussion it appears that the Food Inspector (PW 1) took the sample in presence of an witness i.e. PW 2 after causing service of notice under Form-VI and paying the price of the sample. Therefore, it stood established that the Food Inspector (PW 1) while taking the sample complied with the provisions of Section 10(7), Rule 12 and Rule 14 of the PFA Act.

10. The third point argued, on behalf of the petitioners, is that the loss of iodine was caused by the long delay in the examination of the sample. As discussed above, the samples were taken in proper container taking necessary care to prevent entry of moisture and evaporation. Therefore, after taking of the sample till the date of opening of the container, there was no scope for evaporation of the iodine content. The Public Analyst found that the iodine content of the sample was 4.86 ppm. The sample was taken on 3.7.98. Therefore, the report being prepared on 21.8.98, it appears that the examination was made after about 49 days. As per the standard prescribed by the Rule A. 15.01 of the PFA Act, the iodine content at the manufacture of level should be not less than 30 ppm while the same at the distribution channel including retail level should be not less than 15 ppm. In view of the above, it appears that on the date of examination i.e. after 49 days from the date of taking the sample, the iodine content was much below the prescribed standard. The Central Food Laboratory report i.e. Ext. 26 reveals that the iodine content was found to be 1.33 ppm on 26.2.99 i.e. after about 8 (eight) months from the date of taking the sample and 6 (six) months from 21.8.98 i.e. the date on which the Public Analyst found the iodine content to be 4.86 ppm, after about 49 days from the date of taking the sample. Hence, it appears that there was loss of 3.55 (4.86-1.33) ppm iodine content during the said six months and as such the monthly loss was about 60

ppm. Therefore, at best, there could be a loss of about 1.20 ppm iodine content and not 10.22 ppm (15-4.86) during the said 49 days. A comparative study of the said two reports does not inspire confidence to believe that on the date of taking the sample, the same contained the prescribed standard of iodine content i.e. 15 ppm. The statutory requirement, as prescribed by A. 15.01 of the PFA Act is that at the time of selling the iodised salt it must contain iodine not less than 15 ppm. From the evidence of PWs 1 and 2, it has been clearly established that the sample of the salt was purchased by the Food Inspector by paying an amount of Rs. 1.50 paise as its cost. Therefore, as the iodised salt was sold to the PW 1, the same should have contained the minimum prescribed level of iodine i.e. 15 ppm. As revealed from the evidence of PWs 1 and 2, the samples were kept in proper container and the Public Analyst also received the sample for analysis in properly sealed and fastened condition. The seal of the container was found to be intact. There is no evidence on record to find that after the collection of the sample in the said manner, there was any scope possibly for loss of iodine content in respect of the salt aforesaid. There is nothing on record to show the said minimum standard of iodine should remain for a particular period only and that after the expiry of any such period, the said iodised salt would lose the iodine content that too to the level of 4.86 ppm within a period of 49 days, even though the same was kept in proper condition. In view of the said prescribed provision of the PFA Act, the vendor who sells iodised salt, unless the contrary is otherwise proved, must be held responsible for considerable deficiency in the iodine content of the sold iodised salt. Therefore, in view of the above discussion, I find no sufficient force in the contention of the petitioners, that the iodine content of the salt, taken by the Food Inspector, got evaporated due to any defect in the process of taking the sample. Therefore, as the sample was kept in proper container without any scope for evaporation and in view of the receipt of the same by the Public Analyst in proper condition, it cannot be reasonably held that the delay of about 49 days, in examining the sample, was the cause for loss of the iodine content to such a minimum level, as noticed by the Public Analyst. As the iodine content in respect of the sample purchased by the Food Inspector, was found to be much below the prescribed level which was not in conformity with the prescribed standard, the petitioners, from whom the samples were taken on payment of price, were rightly held guilty of the offence under Sections 7/16 of the PFA Act.

11. In the Memo of appeal, it has been alleged that the learned trial Judge acted illegally by not granting the benefit of Section 360 Code of Criminal Procedure to the Petitioners for which the impugned judgment and order was liable to be set aside and quashed. The learned Addl. Sessions Judge, in the impugned judgment and order dated 31.3.03 has observed that in view of Section 20AA of the PFA Act, the Petitioners were not entitled to the benefit prescribed by Section 360 Code of Criminal Procedure. Section 20AA of the PFA Act reads as follows:

Nothing contained in the provision of Offenders' Act, 1958 (20 of 1958) or Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to

the person convicted of an offence under this Act, unless that person is under eighteen years of age.

Admittedly, the Petitioners were not under eighteen years.

12. In view of the above discussion, I am of the considered opinion that the learned appellate Court committed no illegality by upholding the conviction as well as the sentence recorded by the learned CJM, Tinsukia. Therefore, I find no sufficient merit in this revision requiring interference with the impugned judgment and order.

13. Accordingly, this revision petition stands dismissed. The Petitioners are directed to appear before the learned Chief Judicial Magistrate, Tinsukia within two months from this date to serve out the sentences. Return the lower Court records.