

(1989) 07 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 9 of 1987

Shahniwaj

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

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

Citation : (1990) CriLJ 1337 : (1990) 2 RCR(Criminal) 459 : (1990) 1 ShimLC 105

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Ranjana Parmar and Kamlesh Sharma, for the Appellant; M.S. Guleria, Asstt. A.G., for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—The petitioner, Shahniwaj, assails his conviction by the Courts below for an offence u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act (briefly hereinafter "the Act"). Sentence of six months" rigorous imprisonment and a fine of Rs. 1,000/- and for failure to pay the same further rigorous imprisonment for two months has been imposed by the trial court, and confirmed by the Appellate Court, in its judgment in case No. 2-N/10 of 1986 decided on 1-12-1986.

2. The facts, in brief, are that the petitioner was found carrying 24 Kgs. of mixed milk for sale on the outskirts of Paonta Sahib by the Food Inspector Shri G. R. Puri on 26-11-1979 at 1-30 p.m. Milk to the extent of 660 Mls. was purchased from the petitioner for the purpose of analysis against payment of Rs. 1.32 P., the price of the same, against receipt (Ex.P-2), Gian Chand (PW-2), an independent witness, was present at that time.

3. The sample milk was divided into three equal parts and was put in three clean and dry bottles. Formalin, 18 drops, was added as preservative in each of the

bottles. These bottles were then closed and sealed. One out of the three was sent to the Public Analyst, Kandaghat, while the other two were deposited with the Local Health Authority. The Public Analyst reported (Ex.P-6) that the percentage of milk fat was deficient by 3% and milk solids not fat by 42% of the minimum prescribed standard. So, the sample was reported to be adulterated within the meaning of the Act. Consequently, prosecution was launched against the petitioner and after trial he was convicted as aforesaid. The matter was carried in appeal to the Court of Addl. Sessions Judge, Solan and Sirmour districts. However, no success could be achieved. This is how the petitioner has come to this Court by way of this petition.

4. Mrs. Ranjana Parmar, learned counsel appearing for the petitioner, submits that both the Courts below have committed gross illegality in convicting the petitioner although there is no cogent and convincing evidence on the record of this case. It is also submitted that this Court may, in exercise of its revisional jurisdiction, interfere with the findings of the trial court as well as the appellate court, to eliminate the miscarriage of justice that has occurred in this case. In addition to this, it is further contended that the provisions of Section 13(2) of the Act are mandatory and that the reasons given on this aspect of the matter on the submissions of the petitioner by the courts below are thoroughly inept and outside the legal parameters.

5. Shri M. S. Guleria, learned Asstt. Advocate General, assails these submissions and urges that in view of the concurrent findings of facts, this Court may not interfere in the conviction of the petitioner.

6. I proceed to examine the respective contentions of the parties by reference to the evidence on the record to appreciate whether the conclusions and conviction recorded in this case are legally sustainable.

7. Shri G. R. Puri (PW-1) is the Food Inspector. He states that the petitioner was carrying 24 Kgs. of milk when he was intercepted by him on the outskirts of Paonta Sahib Municipal limits. The petitioner stated that the milk was mixed milk. He took a sample and notice (Ex.P-1) was thumb marked by the petitioner as well as Gian Chand (PW-2). Thereafter he stirred the milk with the measure to make it homogenous. The measure was with the petitioner. Thereafter, he completed the formalities as required under the Act and Rules made thereunder and got the thumb mark of the petitioner and the witness at the appropriate places. The sample, after testing, was found adulterated and the prosecution was launched against the petitioner. Further, he states that he had authority to launch prosecution u/s 20 of the Act by a gazette notification. He denies the suggestion that the petitioner told him at the time of taking the sample that he was not a milk vendor and that he was taking the same to one Kartara to be used in Jagrata at Haripur. He also denies that the milk was only 8/10 Kgs. However, he admits that the petitioner has no license to sell milk. He further states that he did not challan the petitioner for failure to obtain the license to sell milk. Subsequently also, he neither checked his license nor challaned him for the

same. He denies the suggestion that the petitioner did not have the measure with him at the time when the sample was taken and also that the milk was straightway taken from the drum into the bottles. He also denies that the petitioner was not given a notice u/s 13(2) of the Act.

8. Dr. Mrs. Sunita Mangla is the Local Health Authority. She states that on receipt of the report of the Public Analyst, a copy of the report was sent to the accused (petitioner) by a registered letter with acknowledgement which was received back by the office (Ex.P9).

9. Gian Chand (PW-2) is an independent witness. He has been declared hostile. He states that the sample was taken from the petitioner who was carrying about 10/12 Kgs. of milk. The petitioner did not have anything else. He further states that he did not know that the petitioner had one litre measure with him at that time. He denies that the milk was stirred with the measure. He states that the petitioner had told the Food Inspector that he does not sell milk and he was carrying the milk to Haripur Dhar.

10. Kartara (DW-1) states that he knows the petitioner. He had asked for the milk from the petitioner for the Jagrata. The petitioner does not sell milk as he did not have his own milk, he had asked for the milk from the petitioner. The Jagrata party had been called from the Khara village. Among them was Raja Ram, Hari Ram and a person from Haripur, They were 5/7 persons in all. He had not paid any advance to this party as it had been called from an adjoining village where they had been doing Jagrata for the last three days. He asked for 8/9 Kgs. of milk. The purpose of Jagrata was the trouble in the family and his own physical trouble. Such Jagratas are held very often in the villages. The petitioner had only 10 Kgs. of milk and as the same was sufficient for his requirement, he did not ask for more milk from the residents of Haripur from whom he got a number of other items for the Pujan. For the Jagrata, Pandit Jana Ram of Samiapur was also invited. He denies the suggestion that on that day there was no Jagrata at his house.

11. The petitioner has denied the prosecution version in his examination u/s 313, Cr. P. C. He states that he was carrying the milk for Kartara (DW-1) of Haripur for the purpose of Jagrata and this fact he had stated to the Food Inspector who took his sample. The Food Inspector took his sample after threatening him that in case the same was not given, he would get the petitioner arrested. His signatures were taken by the Food Inspector at the shop where he was called through Gian Chand (PW-2) and he was told by the Food Inspector that he would settle this matter. In his statement to the Court, the petitioner has stated that he has three children -- three daughters -- aged three years, two years and five months. His father has died and his mother is aged 80 years. The whole family is dependent upon him and there is no one to look after the family.

12. A perusal of the statements of various witnesses, as described above, reveal that the explanation of the petitioner is quite natural, reasonable and convincing.

His version that he was carrying the milk to the house of Kartara (DW-1) to be used in Jagrata on that day cannot be considered to be without any basis. Comprehensive statement on this aspect has been given by the petitioner. The petitioner has gone to the extent of naming some of the members of the party and others who had been invited for the occasion. Simply because the petitioner failed to describe the details minutely, as pointed out by the Appellate Court, it does not mean that his version lacks reliability. Minor details are bound to be there after a lapse of time. There is another aspect of this matter. The factum of the petitioner carrying about 10/12 Kgs. of milk is evidenced by the statement of Gian Chand (PW-2) and Kartara (DW-1) and the version of the Food Inspector (PW-1) that it was 24 Kgs. appears to be simply based on approximation. In addition to this, the petitioner did not have any license for the sale of milk as required under the Municipal laws. The failure of the Food Inspector to challan the petitioner on this count either at the state of taking the sample or subsequently shows that the petitioner is not a milk vendor and the object of his passing through the Paonta Sahib Municipal area was simply to go to house of Kartara (DW-1) and not for the purpose of sale of milk. I am convinced by the explanation of the petitioner and the conclusions drawn by the trying Magistrate as well as the Appellate Court on this aspect are thoroughly unreasonable, inequitable and grossly inappropriate. It is well settled that in criminal law where there is scope to draw inferences, the same have to be drawn not for the prosecution but in favour of the accused.

13. There is another point raised by Mrs. Ranjana Parmar and the same relates to the application of Section 13(2) of the Act. It is asserted that the petitioner actually did not receive any notice. She contends that the same has been thumb marked by Nasiruddin who has not been identified to be the father of the petitioner. Therefore, it is asserted that there is no compliance of the mandatory provisions of Section 13(2) of the Act and this failure has caused great prejudice to the petitioner. It is true that this notice has been thumb marked by one Nasiruddin and it appears that the name of the father of the petitioner is Nasiruddin. In case this notice had been received by the father of the petitioner, naturally, the same would have been given to the petitioner by the father to enable him to apply to the court for sending the second part of the sample for analysis by the Central Food Laboratory, Ghaziabad, which is a right of the accused under the Act. Failure to do so is due to the non-receipt of this notice by the petitioner. The result is, this aspect of the matter becomes thoroughly doubtful entailing benefit in favour of the petitioner leaving open the question whether Section 13(2) of the Act requires not only sending of the notice to the accused but also receipt thereof by him and him alone, more so, when it is sent by a registered letter.

14. Lastly, I see that there is no order of sanction on the record of this case as required u/s 20 of the Act. By this time, it has been held in a number of decisions that prosecution under the Act cannot be launched without proper, legal and valid sanction. For want of sanction, proceedings under the Act are without jurisdiction

and liable to be quashed. This is also on a fundamental defect and the conviction of the petitioner is bad on this ground as well.

15. In view of the examination of the case, as aforesaid, it is not only unsafe but also hazardous to maintain the conviction of the petitioner and the result, therefore, is that there is merit in this revision and the same is accordingly allowed. The conviction and the sentence imposed upon the petitioner is set aside. He is acquitted of the charge. Bail bonds and surety bonds, if any, executed by him at any stage of this case are hereby cancelled. Fine, if deposited, be refunded to the petitioner.