
(2010) 12 GAU CK 0006
In the Gauhati High Court
Case No : Criminal Rev. P. No. 32 of 2003

Shri Jitendra Lal Gope

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1)

Citation : (2011) 2 GLR 829

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : P.R. Barman, for the Appellant; R.C. Debnath, Spl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—The Petitioner herein stands convicted u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. The Petitioner was initially convicted vide judgment dated 05.07.1999 passed by the learned Chief Judicial Magistrate, North Tripura, Kailashahar in case No. C.R.2(PFA) of 1998 which was confirmed vide judgment dated 31.03.2003 passed by the learned Addl. District & Sessions Judge, North Tripura, Kailashahar in Criminal Appeal No. 5(3) of 1999. The learned trial Court sentenced the Petitioner to undergo R.I. for 1(one) year with fine of Rs. 1000/-, whereas the appellate Court has reduced the sentence to 6(six) months R.I. with fine of Rs. 500/-. Being aggrieved by the order of conviction and sentence, the convict Petitioner has preferred this petition.

2. Heard Mr. P. R. Barman, learned Counsel appearing for the Petitioner. Also heard Mr. R. C. Debnath, learned Special Public Prosecutor appearing for the state-Respondent. I have perused the order and judgment of the learned Courts below as well as the prosecution evidence.

3. Although the Petitioner has challenged the conviction basically on three grounds, viz, the sample of milk was not taken after stirring the same in the

container; there was delay in launching the prosecution case, which prevented the accused to challenge the public analyst report before any other laboratory as per Section 13(2) of the PFA Act and also on the ground that the evidence of collecting sample was also not proved by any independent witness. However, in my opinion, answer to the first question would be sufficient to decide this revision petition.

4. The prosecution case, as could be gathered from the records, is that on 24.11.1997 when the accused/Petitioner was carrying approximately 17 ltrs. of cow milk in two numbers of plastic containers, he was intercepted by the Food Inspector and after serving notice 750 ml. milk was purchased for the purpose of chemical analysis. After purchasing 750 ml. cow milk, one sample was sent to public analyst, which reported that the said milk did not conform to the standard laid down under the Act for cow milk. In other words, the sample contained less fat than what has been prescribed in the Appendix-B under Clause 11.01.11. On receipt of the public analyst report sanction was obtained and the Petitioner was prosecuted and ultimately proved guilty for selling adulterated cow milk.

5. Learned Counsel for the Petitioner submitted that it was mandatory for the Food Inspector to stir the milk before taking representative sample so as to make it representative of the total quantity and having not done so, the entire prosecution story is vitiated. In support of this submission, the learned Counsel has relied upon the judgment of Hon''ble Supreme Court rendered in the case of Food Inspector, Municipal Corporation, Baroda Vs. Madanlal Ramlal Sharma and Another, and another judgment rendered in the State of Haryana Vs. Daya Nand,

6. In the case of Madanlal Ramlal Sharma (supra) the Hon''ble Supreme Court has observed thus:

8. Our attention was not drawn to any provision in the Act or the Rules making it obligatory that churning should be done with some machine so as to make a sample homogeneous and representative sample. We are conscious of the fact that in milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparation such as curd has prescribed content, the sample must be homogeneous and representative so that the analysis can furnish reliable proof of nature and content of the article of food under analysis. For this purpose churning is one of the methods of making the sample homogeneous and representative. But having said this, there is nothing in the Act or the Rules which prescribes that churning must be done by some instrument, and that churning done by hand would not provide a homogeneous and representative sample....

7. In the case of Dayanand(supra) also the Hon''ble Supreme Court reiterated that stirring of milk before taking sample is mandatory.

8. In the case before me it is an admitted fact that the milk was not stirred/churned before purchasing it from the accused by the food inspector. Despite that the Courts below have held that since the accused was carrying milk in his

bi-cycle it has to be presumed that the milk was already stirred and there was no necessity for fresh churning. However, both the Courts below have purchase of 750 ml. of milk, the Food Inspector had taken considerable time in preparing the notice and completing other formalities. During this period the fat of the milk must have settled down. Consequently, the sample drawn by the Food Inspector cannot be said to be representative sample of the milk that was carried by the accused. Hence, the conviction of the Petitioner is vitiated under the law.

9. In the result, the revision petition stands allowed. The impugned judgments are set aside. The Petitioner is set at liberty forthwith. His bail bond stands discharged.

10. The Registry is directed return the lower court records with a copy of this judgment to the learned court below immediately.