
(1993) 03 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Cr.M.P. (M) No. 1153 of 1992

State of Himachal Pradesh	Vs	APPELLANT
Subhash Chand and Others		RESPONDENT

Date of Decision : 05-03-1993

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 20(A)

Citation : (1993) CriLJ 3706 : (1994) 2 RCR(Criminal) 61

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : H.L. Karva, Asstt. Advocate General, for the Appellant;

Judgement

D.P. Sood, J.—The State of Himachal Pradesh has assailed the judgment dated 31-3-1992 passed by the learned Sub Divisional Judicial Magistrate, Kangra, whereby the accused three in number, now respondents before this court, have been acquitted for the commission of the offence u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, (hereinafter called as the Act).

2. Shortly stated, the facts of the case are that Subhash Chand, respondent No. 1 carries on his business in a shop located at Nagrota-Bagwan. Food Inspector, Jagat Ram, visited the same on 3-12-1986. He after disclosing his identity purchased 600 grams "Orange candy HBC-Chinar Coloured" from him on payment of Rs. 13.00. After observing the codal formalities as to the pouring, packing and wrapping of the above said commodities, he kept the samples into three clean and dry hottles. One sample was sent to the Public Analyst for the purpose of analysis. Vide report Ex.P.F., the aforesaid commodity was found to be mis-branded as such adulterated. Food Inspector, Jagat Ram PW, sought the sanction from the Chief Medical Officer and filed a complaint against the accused Subhash Chand.

3. During the pendency of the complaint before the trial Court, respondent No. 3 was impleaded at the behest of respondent No. 1 and respondent No. 2 was

further impleaded as an accused at the behest of respondent No. 3, on respective applications moved u/s 20(A) of the aforesaid Act.

4. Notice of accusations was served upon all the accused but each one of them pleaded not guilty and claimed to be tried. The trial Court after considering the evidence as also the averments of the respective parties directed the acquittal of the accused persons on the following grounds:

(i) that the facts of the instant case were identical to the facts of the case reported as Gopi Nath and Sons Vs. State of Himachal Pradesh and Another, and that of The Ravalgaon Sugar Farm Ltd. v. State of H.P. 1990 (II) FAC 409: 1990 Cri LJ 83 (HP).

It was held that the sample was taken out of a sealed packet of the commodity sold to PW-1 which bore printed specification as: Net weight 1 kg. including wrapper; variety : Orange Candy, Date of packing : 13 August 1986 and that label of specification was not sent to the Public Analyst and as such the report of the latter without consideration of the label of specification containing name and business of the manufacturer, date of packing its price is of no value to hold the commodity to be mis-branded/adulterated one;"

(ii)that sanctioning authority has not applied its mind before according sanction for the prosecution of the accused persons.

5. In this appeal Shri H. L. Karva, learned Assistant Advocate General appearing on behalf of the State has vehemently urged that mere non sending of the label of the specification to the Public Analyst has not in any way prejudiced the defence of the accused and in any case it has no bearing upon the legitimate report of the Public Analyst with respect to his opinion that the commodity in question purchased by the Food Inspector was adulterated.

6. As regards this point, suffice it to say that as per the prosecution 600 grams of Orange Candy were purchased from a packet which had a label of specifications and its maximum retail price was Rs. 21.25 + Local Tax etc. This label also specified that the contents permitted flavour antioxidants colours and Emulsifiers and the name of the manufacturer as "Chinar Confectionary Works Gangyal Jammu, respondent No. 2 in this case. The Food Inspector in his statement admitted that the sample purchased by him was taken out of the sealed packet which contained a label bearing printed specifications as reproduced above. There was thus a clear indication on the label of the container as to what was the nature of the commodity so purchased. The fact that the label of specification had not been sent to the Public Analyst shows that it does not in any way link the commodity so purchased by the Food Inspector, Jagat Ram. Had it been so sent, it would have definitely divulged the same, trade-name or description of the food, the name and business address of the manufacturer and extraneous addition of colour matter. These factors would have definitely further helped the Public Analyst to conclude whether the commodity so purchased tallied with the standard of specifications required to be present therein in

accordance with the Prevention of Food Adulteration Rules. This report would have pin-pointed the offender in particular. In that view of the matter the submission made by the learned Asstt. Advocate General that it has not prejudiced the defence in any way is not tenable. The Court below has rightly discarded this part of the evidence of the prosecution.

7. The second point urged by the learned Asstt. Advocate General is that sanction has been accorded by the then Chief Medical Officer after applying his mind to the entire record placed before him.

8. A close perusal of the record shows that PW Jagat Ram, Food Inspector, has deposed before the trial Court thrice during he proceedings pending before it on 2-5-1987 (CW-1), 27-11-1987 (PW-2) and 30-7-1991 (PW-4). In the earlier statement on oath made before the Court below he did not reveal his presence before the then Chief Medical Officer Shri K. L. Chadda and also the placing of the entire record pertaining to the case of the accused persons. However, on 30-7-1991 when his statement as again recorded he has stated that he placed the record before the C.M.O. and the latter went through the contents of the entire record so placed and thereafter having satisfied himself, accorded sanction for the prosecution of accused Subhash Chand. The statement so made appears to be an improvement to the extent of his presence and placing all the record before the then Chief Medical Officer. My this conclusion is corroborated by another circumstance and, that is, the statement of Shri Bhagwan Dass (PW-6). In his statement on oath before the trial Court, he claims to have made entries in the sanction order at the behest of the then Chief Medical Officer though he states that record pertaining to the case of Subhash Chand was read by the Chief Medical Officer but he does not clarify as to what was the record placed before him and which were the documents which have been examined by the Chief Medical Officer. At the same time, he does not talk of the placing of the record by the Food Inspector, Jagat Ram. Even the Food Inspector does not talk of the presence of PW-6 at the material time. The Chief Medical Officer has not been examined as a witness.

9. It is well established that sanction to prosecute is not an idle formality. It has to be done seriously and carefully after due consideration by the authority. This aspect of the case has been considered by this court in various authorities, some of which are Jaswant Singh Vs. The State of Punjab, The Corporation of Calcutta Vs. Md. Omer Ali and Another, Sewal Ram v. State 1980 (1) FAC 448, Yogendra Nath v. State of U.P., 1983 (1) FAC 229, Bhagwan Dass v. State of U.P. 1979 (1) FAC 48, State of Maharashtra v. Prabhudas Atalmal 1983 (3) FAC 221 (sic) A.K. Roy and Another Vs. State of Punjab and Others, Delhi Administration v. Sham Lal, 1987 (3) Crimes 638, Criminal Appeal No. 47 of 1985, State of Himachal Pradesh v. Mussa, decided on January 6, 1989, Cr.A. No. 178 of 87, State of Himachal Pradesh v. Om Prakash, Criminal Revision No. 20 of 85, Ratan Lal v. State of Himachal Pradesh, decided on August 16, 1989, Miss. Shakun and another Vs. Delhi Administration, Delhi, Public Health Department v. Jiwan Lal

1989 (2) FAC 149, State of Himachal Pradesh v. Noor Din 1989 (2) Sim LC 7, Sukhchain Singh v. State of Himachal Pradesh 1989 (2) Sim LC 211, State of Himachal Pradesh v. Rup Chand, 1991 (1) Sim LC 76 and Cr.A. No. 68 of 88, State of Himachal Pradesh v. Om Kant, decided on Octobers, 1991.

10. Considering the entire evidence on record in the light of the discussions made above, it does not inspire confidence with respect to the fact as to whether the sanctioning authority has or has not applied, its mind to the record pertaining to the case of the accused before according sanction to prosecute them. In that view of the matter, the order of the trial Court regarding the acquittal of the accused is also legal and valid.

In view of the above, the application for leave to appeal is dismissed.