

(1996) 04 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 162 of 1990

State of H.P.

APPELLANT

Vs

Arun Kumar and Another

RESPONDENT

Date of Decision : 25-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Food Adulteration Act, 1954 — Section 13(2), 14A, 16(1), 20

Citation : (1997) 1 ShimLC 29

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : M.L. Chauhan, Assistant Advocate General, for the Appellant;
Sanjeev Kuthiala and K.D. Sood for Respondent No. 1 and Archana Vaidya and J. Vats, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—This is an appeal filed by the State against the judgment dated 30-9-1989 passed by Sub-Divisional Judicial Magistrate, Nalagarh in Criminal Case No. 56/3 of 1986, whereby the Respondents have been acquitted of the charge u/s 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act).

2. Brief facts of the case are that on 26-6-1986 H.L. Pathak, PW 4 had gone to the shop of Respondent No. 1 and after disclosing his identity, he purchased 1.500 grams of hard boiled sugar confectionery for the purpose of getting it analysed. The case of the prosecution further is that the sample on receipt of report from Public Analyst, Himachal Pradesh Kandaghat, was found to be misbranded as the name and business address of the manufacturer was mentioned as Thakkar Confectionery Works (India) which fictitious besides this batch number, month and year of manufacture was not mentioned on the label of 500 grams packet. The report of the Public Analyst Ex.PW 4/H was received by the Local Health Authority, Solan whereafter the said authority asked PW 4 vide

Ex.PW 4/J to obtain necessary sanction from the Chief Medical Officer for launching prosecution for offences under the provisions of the Act in a Court of law.

3. It appears that after the PW 4 had approached the Chief Medical Officer for according sanction authorising him to launch prosecution sanction u/s 20 of the Act was accorded vide sanction Ex.PW 4/K. After Respondent No. 1 had appeared in Court, he filed an application u/s 20 of the Act for impleading Respondent No. 2 because according to him he had purchased the hard boiled sugar confectionery from the said Respondent vide their cash memo No. 5354 dated 12-5-1986 he had brought the same in the same condition and cash memo Ex.AW 1/A was produced by Respondent No. 1 before the trial Court, as a consequence thereof the application was allowed and Respondent No. 2 after having been impleaded as a co-accused was ordered to be summoned.

4. Prosecution examined as many as four witnesses. PW 1 is K.C. Verma, dealing Assistant in the office of Local Health Authority, Solan, who states that prosecution in this case was launched on 10-9-1986 and on 18-9-1986 Local Health Authority sent notice u/s 13(2) of the Act and the copy of the said notice is Ex.PA. PW 2 is Dr. Parveen Jain who had accompanied PW 4 H.L. Pathak, Food Inspector and was present when the sample was taken. PW 3 is Kishan Chand an independent witness who has not supported the case of the prosecution and was allowed to be cross-examined and PW 4 is Food Inspector who has stated that on 26-6-1986 when he was posted as Food Inspector, Solan at about 6.15 p.m. accompanied by his peon Sant Ram and Dr. Parveen Jain, Medical Officer, Rural Hospital, Nalagarh, they went to the karyana shop of Respondent No. 1 which is situated at Kishanpura for inspection and Respondent No. 1 told that he is the sole proprietor of Sharma BrOrs. and was selling hard boiled sugar confectionery. Thereafter he took sample after observing codal formalities and on receipt of the sanction vide Ex.PW 4/K, the prosecution was launched by him before the trial Court. PW 5 is Sant Ram in whose presence sample was taken and thereafter he had taken one sealed packed alongwith sealed envelope separately which both were delivered in the office of Public Analyst, Kandaghat.

5. Trial Court after recording evidence of the prosecution and examining the Respondents u/s 313, Code of Criminal Procedure has acquitted the Respondents, hence this appeal. The acquittal was primarily recorded on two grounds, firstly, there being no valid sanction as envisaged in section and secondly for non-compliance of Section 13(2) of the Act.

6. So far the applicability of Section 13(2) in the facts of the present case is concerned, the findings of the trial Court are not sustainable for the reasons being given hereinafter. At this stage it is necessary to extract section 13(2) of the Act:

13(2) On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority

shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed u/s 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

7. A bare perusal of this provision would show that the solitary purpose that is sought to be achieved by giving a notice thereunder is that in case the accused wants to get the other part of the sample analysed from Central Food Laboratory, he may approach the Court because he has a right to get the same analysed from the Central Food Laboratory. In the instant case admittedly, it is not a case of adulteration as is evident from Ex.PW 4/H. A bare perusal of the report of the Public Analyst reveals that this is a case of misbranding as batch number, month and year of the manufacture were not mentioned on the label of 500 grams packet of hard boiled sugar confectionery. Besides this the name of the manufacturer as given on the said packet was found to be fictitious. In these circumstances, there was no question of any of the Respondents having applied to the Court for sending the second part of the sample for analysis to the Central Food Laboratory. Besides this, the Respondents have not shown as to how in the peculiar facts of the present case, they have been prejudiced for non-receipt of report of Public Analyst as the same is required to be sent as per provisions of Section 13(2) of the Act *ibid*. In this view of the matter, this ground taken by the trial Court for acquitting the Respondents is not sustainable. Since on the other point the finding of the trial Court is being upheld, as such this finding will not in any manner improve the case of the Appellant.

8. So far the finding recorded by the trial Court on the question of acquittal of the Respondents for want of proper proceedings u/s 20 of the Act, the said finding is based on proper consideration of law as applicable to the facts of the present case. In this behalf it may significantly be mentioned that bare perusal of Ex.PW 4/K shows that it is a cyclostyle form which has been filed in by someone and the same has only been signed by the Chief Medical Officer so-much-so that the entire form and date put under the signatures of the Chief Medical Officer appears to be in one ink whereas the signatures which are in different ink. It may further be pointed out that grant/refusal of the sanction is not a mere formality, but the authority competent to do so is expected to take into account all the relevant material as well as facts and after applying its mind to all those has to pass proper orders. It seems that Chief Medical Officer while signing Ex.PW 4/K has violated this requirement of law more in its breach than compliance. I am further constrained to hold that for inaction as well as from improper exercise of the authority vested in the Chief Medical Officer, the Respondents have to be let loose. Shri M.L. Chauhan, learned Assistant Advocate General, appearing for the Appellant persisted that Ex.PW 4/K has been passed

after due application of mind as well as after due consideration of relevant material as well as documents placed before the Chief Medical Officer, and as such the findings recorded discarding the same by the trial Court deserves to be set aside. When he was confronted with Ex.PW 4/K and after he had perused the same from the file of the trial Court, he could not further stretch his this submission.

9. No other point has been urged in support of the appeal.

10. As a result of the above discussion, the present appeal fails being devoid as any merit and is dismissed accordingly.