
(2008) 02 P&H CK 0354

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revisions No. 330 to 334 of 2008

State of Punjab

APPELLANT

Vs

Paramjit Singh and others

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10, 10(1)(a), 10(1)(b), 10(4), 10(4A)

Citation : (2008) 2 RCR(Criminal) 342

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Manjri Nehru, Deputy A.G., Punjab, for the Appellant; Kanwaljit Singh, for the Respondent

Judgement

Harbans Lal, J.—Criminal Revision Nos. 330 to 334 of 2008 titled as State of Punjab versus Parmajit Singh and others, are being disposed of by this judgment as common question of law and fact is involved in these petitions. The facts are gathered from Criminal Revision No. 330 of 2008. These are: That on 09.01.2008, Dr. Avtar Singh, Civil Surgeon, Patiala-Local Health Authority constituted a team of doctors for food sampling raids. On the aforesaid date and on the next day, this team raided the premises of Information Collection Centre, Shambhu Barrier, where 5 trucks carrying Gur/Jaggery were intercepted. This team found approximately 21 ton (210 Qts.) Gur/Jaggery loaded in Truck No. PB-02-AC-9693, 20 tons Gur/Jaggery in Truck No. RJ-13-G-6115, 15 tons in Truck No. HR-59-B-1787, 21 tons Gur/Jaggery in Truck No. HR-38-J-2072 and 13 tons Gur/Jaggery in Truck No. HR-37-A-2990. Food Sampling team after following the provisions of The Prevention of Food Adulteration Act, 1954 (for brevity, 'the Act') took samples from the trucks i.e. one sample of Gur/Jaggery from each truck and same was sent to Public Analyst Punjab, Chandigarh. Reports were received and samples were found to be adulterated. The recovered Gur/Jaggery being perishable and adulterated, the Local Health Authority, Patiala, as well as Food Inspectors instead of disposing of the recovered food

items by themselves, moved a joint application before the learned Judicial Magistrate Ist Class, Rajpura for disposing of the same in accordance with law. The accused/applicants moved an application seeking release of the above mentioned trucks along with Gur/Jaggery by claiming that the same was not meant for human consumption and it was raw material of the cattle feed. On 22.01.2008, the Court of Judicial Magistrate Ist Class, Rajpura, accepted the application in all 5 cases by single order directing destruction of Gur/Jaggery instead of releasing the same to the accused/applicants, who feeling aggrieved therewith, preferred revision which was accepted by the Court of learned Additional Session Judge (Ad hoc) Patiala, directing the release of above mentioned commodity. The proceedings u/s 10(4) and 10(4-A) ibid are clearly distinguishable from the procedure provided by Section 11(4), 11(5) of the Act as the same apply when Section 10(4) and 10(4-A) of the Act do not apply and in case of perishable adulterated items, the provisions of Section 10(4) and 10(4-A) are applicable. The learned Revisional Court was wrong in observing that in the report of Public Analyst it has not been mentioned that Gur/Jaggery was not fit for human consumption for the reason that firstly, there is no requirement of law which cast statutory obligation on the part of the Public Analyst to specify the fitness or unfitness for human consumption, and secondly, the Court failed to take note of exhaustive definition "adulterated" as defined in Section 2 of the Act. Section 2(m) of the Act clearly prescribes that if the quality or purity of the article falls below prescribed standard or its constituents are present in quantity not within the prescribed limits of variability, the said food article will still be considered to be adulterated even if it may not be injurious to health. If the Gur/Jaggery in question is released, it will play havoc to the health of the public. The Revisional Court practically gave a license to the accused/applicants to recycle and to re-circulate by way of selling the adulterated food to the public, thus jeopardising the health and hygiene of the public. A sample taken by the Food Inspector was representative one as invoices clearly depicted that the whole of Gur/Jaggery was to be of the same kind and quality. These invoices further carry warranty in view of Section 14 of the Act. In these circumstances, the order dated 06.02.2008 passed by learned Additional Sessions Judge (Ad hoc), Patiala, be set aside and the order dated 22.01.2008 passed by the learned Judicial Magistrate, Rajpura, be restored.

I have heard the learned counsel for the parties besides going through the documents placed on record with due care and circumspection.

2. Ms Manjri Nehru, Deputy Advocate General, Punjab, on behalf of State of Punjab-petitioner has urged with great eloquence that vide respective reports, the Public Analyst has opined that the Gur/Jaggery was found adulterated and this being a perishable commodity, the Food Inspector in exercise of his powers u/s 10(4) as well as 10(4-A) of the Act had sought permission to destroy the same and this prayer was rightly allowed by the learned Judicial Magistrate Ist Class, Rajpura. She further pressed into service that the learned Additional Sessions Judge (Ad hoc), Patiala, has gravely erred in observing that in his

report, the Public Analyst has not mentioned that the whole Gur was found to be unfit for human consumption. As observed in re: Jatin Acharjee and another v. The State of Assam, 1985(II) Prevention of Food Adulteration Cases 164, the Public Analyst is not obligated to give such opinion. It has been further sought to be argued that the learned Additional Session Judge (Ad hoc), Patiala, has fallen in legal error by observing that "as the Gur has not been seized u/s 10(4) of the Act, so Section 11(4) of the Act does not apply to Gur/Jaggery belonging to the petitioner seized by the Food Inspector/Raiding Team as there is nothing on record to conclude that whole Gur was adulterated and was unfit for human consumption." To fortify her contentions, she has also invited attention towards the observations made by Full Bench of this Court Budh Ram Vs. State of Haryana, Smt. Manibai and Another Vs. The State of Maharashtra, and The State of Tamil Nadu Vs. R. Krishnamurthy,

3. To tide over these submissions, Mr. Kanwaljit Singh, Senior Advocate, appearing on behalf of the respondents, maintained with great eloquence that the sample shows that no infirmities with respect to any extraneous matters, no ash insoluble and no sulphur dioxide permissible under the Act were found. The emphasis in the revision petitions has been given to the representative sample of the whole Gur which is not in conformity with the Prevention of Food Adulteration Act and the Rules framed thereunder as it was in sealed container and, therefore, cannot satisfy the definition of the representative sample. He further submitted that the action has been initiated by the petitioner u/s 10(1)(a&b) of the Act and not u/s 10(4) or Section 10(4-A) of the Act and that being so, as per the provisions of Section 11(1) of the Act, the Food Inspector after taking the sample, has to give notice in writing then and there of his intention for it and the sample so taken has to be divided in three parts with signatures and seals and, as such, the material cannot be permitted to be destroyed which is permissible only in case the food is seized u/s 10(4) or 10(4-A) *ibid*. He further canvassed at the bar that the Public Analyst Report does not say that it is unfit for human consumption. The Gur/Jaggery was not purchased for human consumption nor was to be used for such purpose. The action of the Authority is not u/s 10(4) and 10(4-A) of the Act and that being so, they have no right to destroy the Gur/Jaggery. It is further argued that as would be apparent from Annexures A-1 to A-3, the Gur/Jaggery in question has been purchased for being used in the cattle feed and the same is not for human consumption and in these premises, no fault can be found with the impugned order rendered by the Court of learned Additional Sessions Judge (Ad hoc), Patiala. He has sought to place reliance upon the observations made in re: State of Himachal Pradesh v. Surinder Kumar, 1992 (2) PFAC 122 and State v. Chinnappayyan, 1989 (II) PFAC 346.

I have given a deep and thoughtful consideration to the rival contentions.

4. Primarily, it is to be noticed as to whether Gur/Jaggery in question falls within the definition of food. In case, State of Himachal Pradesh v. Surinder Kumar (*supra*), it is held that "Shakkar" falls within the definition of food as contained in

Section 2(v) of the Act.

5. In *The State of Tamil Nadu v. R. Krishnamurthy* (supra), the Apex Court observed as under:

"According to the definition of 'food' which we have extracted above, for the purpose of the Act, any article used as food or drink for human consumption and any article which ordinarily enters into or is used in the composition or preparation of human food is 'food'. It is not necessary that it is intended for human consumption or for preparation of human food. It is irrelevant that it is described or exhibited as intended for some other use. It is enough if the article is generally or commonly used for human consumption or in the preparation of human food. It is notorious that there are, unfortunately, in our vast country, large segments of population, who, living as they do, far beneath ordinary subsistence level, are ready to consume that which may otherwise be thought as not fit for human consumption. In order to keep body and soul together, they are often tempted to buy and use as food, articles which are adulterated and even unfit for human consumption but which are sold at inviting prices, under the pretence or without pretence that they are intended to be used for purposes other than human consumption. It is to prevent the exploitation and self-destruction of these poor, ignorant and illiterate persons that the definition of 'food' is couched in such terms as not to take into account whether an article is intended for human consumption or not. In order to be 'food' for the purposes of the Act, an article need not be 'fit' for human consumption; it need not be described or exhibited as intended for human consumption, it may even be otherwise described or exhibited; it need not even be necessarily intended for human consumption; it is enough if it is generally or commonly used for human consumption or in the preparation of food. Where an article is generally or commonly not used for human consumption or in the preparation of human food but for some other purpose, notwithstanding that it may be capable of being used, on rare occasions, for human consumption or in the preparation of human food, it may be said, depending on the facts and circumstance of the case, that it is not 'food'. In such a case the question whether it is intended for human consumption or in the preparation of human food may become material. But where the article is one which is generally or commonly used for human consumption or in the preparation of human food, there can be no question but the article is 'food.' Gingelly oil, mixed, or not with groundnut oil or some other oil, whether described or exhibited as an article of food for human consumption or as an article for external use only is 'food' within the meaning of the definition contained in Section 2(v) of the Act."

6. In case, *Smt. Manibai and another*, the Hon"ble Supreme Court laid down as under:-

"In a prosecution for sale of adulterated article of food it is not for the prosecution to show that the article was deleterious to health and if so, how much harmful effect it would have upon the health of the person consuming it.

All that is required to be shown is that the article of food shall be deemed to be adulterated if inter alia the quality or purity of the article falls below the prescribed limits of variability.

It is not for the prosecution in a case under the Act to show that the adulterated article of food in question was deleterious to health and if so, how much harmful effect it would have upon the health of the person consuming it. All that is required to be shown is that the article of food in question was adulterated. So far as that aspect of the matter is concerned in the present case we find that the coconut oil which was purchased from Pranjivan was adulterated as it did not conform to the prescribed standard. According to Section 2 of the Act, an article of food shall be deemed to be adulterated if inter alia the quality or purity of the article falls below the prescribed limits of variability."

7. It is a matter of common knowledge that Gur/Jaggery is generally or commonly used for human consumption. Some people too often consume it shortly after taking meals. The labourers working in dust conditions also take Gur. It is also used in preparation of human food.

In view of the rule laid down in the afore-quoted authorities, Gur/Jaggery falls within the definition of food.

8. In re: Jatin Acharjee and another (supra), it has been observed that it is common knowledge that Arhar Dal is used for human consumption also.

Section 2(v) of the Act is in the following terms:-

"2(v) `food" means any article used as food or drink for human consumption other than drugs and water and includes

- (a) any article which ordinarily enters into, or is used in the composition or preparation of, human food,
- (b) any flavouring matter or condiments, and
- (c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Office Gazette, as food for the purposes of this Act."

9. Mr. Kanwaljit Singh, Senior Advocate has been emphatic in the course of arguments that the Public Analyst Report is absolutely cryptic about the fact that the sample was also found unfit for human consumption and only the word, `adulterated" has been mentioned in it. In re: Municipal Corporation of Delhi v. Tek Chand Bhatia, 1979 (II) PFAC 218, the Apex Court observed as under:

"In the definition clause, the collocation of words `filthy, putrid, rotten, decomposed and insect-infested" which are adjectives qualifying the term `an article of food", show that it is not of the nature, substance and quality fit for human consumption. It will be noticed that there is a comma after each of the first three words. It should be noted that these qualifying adjectives cannot be

read into the last portion of the definition i.e. the words "or is otherwise unfit for human consumption," which is quite and distinct from others. The word "otherwise" signify unfitness for human consumption due to other causes. If the last portion is meant to mean something different, it becomes difficult to understand how the word "or" as used in the definition of "adulterated" in Section 2(i)(f) between "filthy, putrid, rotten etc," and otherwise unfit for human consumption" could have been intended to be used conjunctively. It would be more appropriate in the context to read it disjunctively."

10. It is crystal clear from the above observations that the Public Analyst is not required to give opinion that the item analysed was also unfit for human consumption.

11. Mr. Kanwaljit Singh, stressing his every nerve, then agitated at the bar that the Food Inspector could take action only u/s 11(1) and not 11(4) of the Act and that being so, the material cannot be permitted to be destroyed, which is permissible only in the event the food is seized u/s 10(4) or 10(4-A) of the Act.

12. I am unable to subscribe myself to this submission for the reason that in the spot memo, it has been mentioned with specificity by the Food Inspector that in the presence of Shri Surinder Pal, I have served a notice in Form VI under Rule 12 of the Prevention of Food Adulteration Rules, 1955 and has obtained a receipt thereof and 750 grams of Gur has been purchased for analysis u/s 10 of the Act against cash payment of Rs. 15/- and that the said sample of Gur has been equally divided into 3 parts, then bottled/packed in 3 dry cleaned plastic jars and that the sample of Gur was purchased after making Gur homogeneous. This language leave no scope for doubt that the provisions of Section 10 ibid are to apply in this case.

Section 10(4) and 10(4-A) of the Act read in the following terms:-

"10(4) If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst:

Provided that where the Food Inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Inspector deems fit and the vendor shall execute the bond accordingly.

10(4-A) Where any article of food seized under sub-section (4) is of a perishable nature and the Local (Health) Authority is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the said Authority may, after giving notice in writing to the vendor, cause the same to be destroyed."

13. From the combined reading of the above language of Section 10(4) and 10(4-A) ibid, it transpires that a perishable adulterated food article can be caused to

be destroyed, if the Local Health Authority satisfies that the same was deteriorated and it is unfit for human consumption. Here, in this case the Public Analyst has opined that the contents of the sample are adulterated. Annexure A-1 is photostat copy of the Gate Pass. Annexure A-2 purport to be photostat copy of the bill. Annexure A bears a stamp "Pashu Ahaar" which means meant for cattle consumption. On Annexure A-2, a stamp has been affixed that this Gur is only for cattle and not for human consumption. Be that as it may, the fact remains that there is no vouch for the fact that this Gur/Jaggery was to be used for cattle consumption. The respondents have also put on record photostat copy of the bill, marked 9-D. The words printed on it are that this material will become fit for consumption after its having been refined. On this bill also the stamp of "Pashu Ahaar" has been affixed. If this item was to be used for cattle consumption, where was the need to imprint the above words on the bill that it will become consumable on being refined. It gives an inkling that this Gur/Jaggery in question was to be sold in the open market for human consumption. The apprehension of the State seems to be genuine that if the Gur/Jaggery in question is released, it may play havoc with the health of public as the accused-respondents, after getting it released on Superdari, will re-circulate it by way of selling this adulterated food to the public which will put the public health in jeopardy.

14. The upshot of the above discussion is that the impugned order suffers from impropriety and illegality. Sequelly, the same is hereby set aside and the order dated 22.01.2008 passed by the learned Judicial Magistrate Ist Class, Rajpura, is restored.

15. However, before parting with this judgment, it is made clear that the above observations in no manner shall be construed to mean an expression on merits of the case.