
(1988) 12 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 314 of 1983

Sukh Chain and Co.

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-12-1988

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 11, 13, 13(2), 16(1), 7

Citation : (1988) 17 ILR HP 679

Hon'ble Judges : R.S. Thakur, J

Bench : Single Bench

Advocate : D.S. Sahni, for the Appellant; M.S. Chandel, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

R.S. Thakur, J.—This revision petition is directed against the complaint filed against the revisionist and Purshotam in the court of the Chief Judicial Magistrate, at Bilaspur, u/s 16(1)(a) read with Section 7 of the Prevention of Food Adulteration Act, 1954, (hereinafter referred to as the Act).

2. The facts are that the Food Inspector, Shr. Subhash Chand Sharma, District Bilaspur, on September 18, 1980 visited the shop of Purshotam Lal accused at Ghumarwin where he was carrying on a wholesale Kariyana business in the name and style of M/s Salig Ram, Jagdish Kumar and took a sample of "maida" therefrom in accordance with the provisions of the Act and the Rules framed thereunder, divided it into three parts and put them in the sealed packets. Then out of the three sealed packets, one was sent to the Public Analyst and the two to the Local Health Authority as prescribed by law. The report of the Public Analyst dated October 16, 1980 revealed that the said "maida" was unfit for human consumption as the sample in question contained seven living insects. Be it stated that at the time of taking of the sample the accused Purshotam Lal disclosed that he had purchased the said "maida" consisting of 25 bags against a cash-memo vide bill No. 367, dated 3-9-1980 from M/s Sukh Chain and Co. 28

Industrial Area, Chandigarh and consequently the aforesaid firm was also made a co-accused in the complaint itself.

3. After filing of the complaint, notice in accordance with Section 13(2) of the Act was issued to the two accused and when they attended the Court in response thereto, the revisionist applied in Court to send one of the samples in the custody of the Local Health Authority in connection with this case to the Director, Central Food Laboratory, Gaziabad, for analysis. This was accordingly done by the trial court and the Director, Central Food Laboratory Gaziabad vide his report dated April 23, 1981 opined that "the sample showed presence of three dead insects and one dead insect larvae" and thereafter during the course of the trial the instant revision petition was filed.

4. I have heard the learned Counsel for the parties and also perused the record of the trial court and for reasons to be recorded presently, I feel that the revision petition deserves to be allowed and the complaint in the case has to be dismissed and the proceedings I held subsequent thereto in the case have to be quashed. In the first place the complaint itself in this case does not conform to the complaint as defined in the Code of Criminal Procedure since all of it is in the printed proforma. It also does not disclose the facts which make out an offence against the revisionist co-accused and also as to how they are inter-connected. Then the report of the Director, Central Food Laboratory dated April 23, 1981, which under law holds the field so far as the case in hand is concerned, does not in my opinion disclose that the sample of the "maida" in question was adulterated since according to this report, there were only three dead insects and one dead insect larvae, which in my opinion, does not amount to infestation or to render the "maida" as unfit for human consumption. It may also be noted that under the Act, the Director, Central Food Laboratory, Gaziabad is enjoined to send this type of report within a period of one month from the date of its receipt. This prescription of law has, however, been flouted in this case inasmuch as although the sample was received on December 18, 1980 but it was actually signed on April 23, 1981, that is, after a period of four months. No doubt even according to the Hon'ble Supreme Court since this requirement of law is only directory and not mandatory its strict non-compliance would not be fatal to the case unless prejudice is caused to the accused in his defence but still it is expected that even directory provisions of law are meant to be complied within a reasonable manner and within a reasonable time and if the authority concerned takes this type of inordinately long time for compliance of direction of law which may even be of directory-- nature, the courts are not debarred from holding in such an extreme case that the proceedings are vitiated by illegality.

5. Then the most fatal defect that has been allowed to creep into these proceedings is the non-compliance on the part of the trial court of the provisions of sub-sec. 2(b) of Section 13 of the Act. Apparently, in the instant case the revisionist in response to the notice under sub-section (2) of Section 13 of the Act had applied to the trial court to send one of the samples in the possession of

the Local Health Authority for analysis to the Director, Central Food Laboratory. Now in such a contingency the law enjoins upon the Court to observe certain formalities. For instance, on receipt of such application the Court is required under Sub-section 2(a) to call upon the Local Health Authority to forward one of the two samples in its custody to the said Court within a period of five days from the date of receipt of such requisition. Then under Sub-section 2(b) of Section 13 of the Act when the sample is delivered in the Court by the Local Health Authority, the Court is imperatively required to; (a) first ascertain that the mark and seal or fastening as provided in Clause (b) of sub-sec. 1 of Section 11, are intact (b) also to ascertain whether the signature or thumb-impression as the case may be is not tampered with and (c) to despatch the sample under its own seal to the Director of Central Food Laboratory Apparent the record of the court must disclose that these formalities have been observed by the Presiding Officer himself.

6. In the instant case, I find that this mandatory provision has been given a complete go-bye. The order-sheet of December 12, 1980 of the file of the trial court discloses that the said court had allowed this application of the revisionist for sending one of the samples in the possession of the Local Health Authority to the Director, Central Food Laboratory vide its order dated November 14, 1980 on his depositing a sum of Rs. 40/-, which was deposited as per direction, and the case was adjourned" to December 15, 1980. The order of December 15, 1980 being relevant for the" issue in hand is reproduced as follows:

F.I. For the State Both the accused in person. Necessary fee has been deposited under proper head today by Varish, partner of the firm. Second; part of sample has been sent today to the Director, Central Health Laboratory, Gaziabad vide No. 86/80 (8/80). Put on on 4-2- 1981 for report.

The order as reproduced above clearly discloses the complete non-compliance of the aforesaid direction enjoined by the Act and this has, in my opinion, vitiated the entire proceedings.

7. In view of the above discussion, the revision petition is accepted and the complaint dated November 1, 1980 and the proceedings held by the trial court consequent thereupon are hereby quashed and the bail bonds furnished by the accused stand discharged.