
(1991) 09 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 81-DBA-1987

Union Territory, Chandigarh

APPELLANT

Vs

Jamuna Parshad

RESPONDENT

Date of Decision : 05-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Food Adulteration Act, 1954 — Section 13(3), 16(1), 7

Citation : (1992) CriLJ 679 : (1992) 3 RCR(Criminal) 23

Hon'ble Judges : S.S. Grewal, J;A.S. Nehra, J

Bench : Division Bench

Advocate : R.S. Rai, for the Appellant; H.S. Gill, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Grewal, J.—This appeal is directed against the order of Additional Sessions Judge, Chandigarh, dated 9th July, 1986, whereby the order of conviction dated 17th December, 1985, passed by the Chief Judicial Magistrate, Chandigarh, against Jamna Parshad (present respondent) convicting him u/s 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) and sentencing him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- and in default of payment of fine further undergo rigorous imprisonment for four months was set aside and Jamna Parshad was acquitted.

2. In brief, facts relevant for the disposal of this appeal are that on 23rd February, 1984, Balbir Singh, Food Inspector went to the shop of Jamna Parshad accused in Sector 7, Chandigarh. The Food Inspector after disclosing his identity and after giving due notice purchased 660 mls. of cow milk for the purpose of analysis on payment of Rs. 2.40 p. as its price. The sample so taken was put in three dry and clean bottles and after adding preservative, these bottles were separately sealed in accordance with the rules. One such bottle was sent to the Public Analyst, who vide his report opined that the milk solids not fat were 7.3%

as against the prescribed standard of 8.3% and the same were thus found to be 14% deficient of the minimum prescribed standard. On this ground the Food Inspector filed complaint against Jamna Parshad.

3. Besides Balbir Singh, Food Inspector, a Clerk from the Local Health Authority was also examined. Ashok Kumar was cited as a witness by the prosecution but given up and was examined by the accused in his defence.

4. The accused in his statement u/s 313 of the Code of Criminal Procedure denied the prosecution allegations appearing in evidence and pleaded false implication. According to him, the sample was taken without stirring milk.

5. Learned counsel for the parties were heard.

6. It was mainly contended on behalf of the appellant that the order of acquittal passed by the first appellate Court is not a legal and valid order and the accused was responsible for interfering with the sample bottles sent for analysis to the Central Food Laboratory and that the right of the accused to get the sample analysed from the Central Food Laboratory cannot be said to have been materially affected.

7. This argument is devoid of any merit. There is no legal, cogent or reliable evidence on the record that accused was in any manner instrumental in tampering with the two sample bottles which remained throughout in the custody of the Local Health Authority till these were sent to the Central Food Laboratory for analysis on the request of the accused. As per report received in respect of the first bottle, the seal of the sample bottle was found broken, slip of the Local Health Authority as well as cover over the bottle was found torn at the mouth and it was further reported that the sample bottle was empty. Thereafter the other sample was sent for analysis on the request of the accused. As per report received in respect thereof, the sample bottle showed heavy leakage. It is thus quite obvious that none of the two sample bottles which throughout remained in custody of the Local Health Authority before the same were sent to the Central Food Laboratory for analysis was found to be tampered with and the contents thereof could not be analysed. Obviously the accused has been deprived of a valuable right for no fault of his to get the sample analysed from the Central Food Laboratory. In case it was possible to obtain report of the Central Food Laboratory, the same would have superseded the report of the Public Analyst. We find support in our view from the authority of the apex Court in Chetumal Vs. State of Madhya Pradesh and Anr, wherein it was held (at p. 1009 of Cri LJ) :--

that u/s 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so superseded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seals, there was really no evidence before the Court on the basis of which the appellant could be convicted. The Court could not

fall back on the report of the Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of Central Food Laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the Court to fall back upon the report of the Public Analyst to convict the appellant.

8. For the foregoing reasons, we find no merit in this appeal and the same is dismissed.