(2006) FAJ 178 : (2006) 1 RCR(Criminal) 723

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Rev. No. 185 of 1992

Balbir		APPELLANT
	Vs	
State of Haryana and Another		RESPONDENT

Date of Decision: Aug. 24, 2005

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16(1)
- Prevention of Food Adulteration Rules, 1955 - Rule 16, 18
- Probation of Offenders Act, 1958 - Section 4

Citation: (2006) FAJ 178 : (2006) 1 RCR(Criminal) 723

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Advocate: Rupak Bansal, for the Appellant; Yashwinder Singh, A.A.G., for the Respondent

Judgement

Surya Kant, J.
An affidavit dated August 22, 2005 has been filed by the petitioner which is taken on record.

2. This Criminal Revision has been filed by the petitioner against the judgment and order dated 27.11.1990 passed by the Chief Judicial Magistrate, Sonepat whereby, the petitioner was held guilty u/s 16(1) of the Food Adulteration Act, 1954 (in short the Act) and was sentenced to undergo RI for a period of nine months and to pay a fine of Rs. 1000/-, in default of payment of fine to undergo further RI for three months, as well as against the judgment dated 7.3.1992 passed by the Additional Sessions Judge, Sonepat whereby the petitioner''s appeal against his aforementioned conviction and sentence, was also dismissed.

3. Briefly, the facts are that on 9.7.1983, the petitioner was intercepted on Old DC Road, Sonepat when he was carrying 50 kgs of cow milk in three drums meant for public sale.

Shri S.K. Sharma, Govt. Food Inspector alongwith Dr. Baldev Dutt, Deputy Chief Medical Officer and one Nand Lal had intercepted the petitioner. A sample of the milk was taken for analysis for which notice Ex. PA was issued to him. The sample was properly sealed and sent to Public Analyst, Haryana at Chandigarh for analysis. On receipt of the report of the Public Analyst, it was found that the milk fat was 20% deficient from the minimum prescribed standard. Based upon the said report, the Govt. Food Inspector filed a complaint in which the petitioner was found guilty of an offence u/s 16(1) of the Act and was accordingly sentenced, a reference to which has already been made.

4. It may be mentioned here that this revision petition came up for hearing 13.3.1992 and while admitting the same, the petitioner was enlarged on bail to the satisfaction of Chief Judicial Magistrate, Sonepat.

5. I have heard Shri Rupak Bansal, learned Counsel for the petitioner and Shri Yashwinder Singh, learned Assistant Advocate General, Haryana and have perused the record with their assistance.

6. learned Counsel for the petitioner has raised two-fold submissions. Firstly, he contends that due to non-compliance of the statutory provisions of the Act read with Rule 16(b)(d) and Rule 18 of the Rules framed there under, the conviction of the petitioner cannot sustain. It is contended that the notice served upon the petitioner before taking the sample did not conform to the statutory requirements and despite an objection taken by the petitioner that the Food Inspector had failed to comply with Rule 16(b)(d) as well as 18 of the Rules, no evidence was led by the complainant to prove the compliance thereof. Secondly, and in order to implore compassion for the petitioner, it is contended that the occurrence had taken place in the year 1983; the petitioner has already suffered unbearable agony of protracted trial which came to be concluded on 27.11,1990; apart from the period spent in appeal, the revisirn petition has also remained pending for the last more than 13 years and that the democle''s sword kept on hanging on the petitioner''s head for all these years. It is further contended that the petitioner has never misused the concession of bail granted to him by this Court on 13.3.1992 and no case either under the Act or under any other penal law has ever been registered against him, who is working as a labourer on daily wages. Reliance has also been placed upon the affidavit dated 22.8.2005 filed by the petitioner in which it has also been averred that the business of selling milk used to be carried out by the father of the deponent but the same has been discontinued since the year 1987-88. With this factual backdrop, learned Counsel for the petitioner submits that it is a fit case to invoke powers u/s 4 of the Probation of Offenders Act, 1958 and to release the petitioner on probation, especially when he has also undergone the actual sentence of 15 days out of the total sentence of nine months awarded to him.

7. On the other hand, Learned State Counsel contends that the delay itself is not a sufficient ground to release the petitioner on probation and undue sympathy with an accused is likely to have its own adverse impact.

8. So far as the first contention raised by learned Counsel for the petitioner in relation to the non-compliance of mandatory provisions of the Act and/or the rules framed thereunder is concerned, no case for interference in the revisional jurisdiction of this Court is made out. Firstly, there is nothing to suggest that any prejudice has been caused to the petitioner due to alleged non-compliance of certain provisions of the rules. Secondly, the fact that the petitioner was intercepted; the sample was taken and/or the report of the Public Analyst (Ex. PF) found the said sample deficient of milk fat by 20%, are hardly disputed. Thus, no interference, in so far as the concurrent findings of fact in relation to the guilt of the petitioner u/s 16(1) of the Act is concerned, is called for.

9. Coming to the second contention, it is an undisputed fact that the occurrence had taken place on 9.7.1983. The petitioner faced the trial for a long period of more than seven years before he was convicted and sentenced to undergo RI for a period of nine months on 27.11.1990. After the dismissal of his appeal, this Court released the petitioner on bail on 13.3.1992. i.e. more than 13 years ago. As per the affidavit of the petitioner filed today, his family had discontinued the business of selling milk in the year 1987 and he is working as a daily wager to earn his livelihood and except the case in hand, he holds a clean slated record as no case either under the Act or under any other penal law has been registered against him. Having regard to the aforesaid mitigating circumstances, 1 am of the view that it will be totally in the teeth of the reformatory principles if the petitioner is subjected to undergo the actual sentence of nine months at this belated stage. The interest of administration of criminal Justice will be fully protected if instead of undergoing the remainder of the sentence of imprisonment, the petitioner is released on probation for a period of one year but the fine, as imposed by the Courts below, is enhanced from Rs. 1,000/- to Rs. 5,000/-.

10. Consequently, this revision petition is partly allowed and the impugned Judgments dated 27.11.1990 and 7.3.1992 of the trial Court and of learned Additional Sessions Judge respectively, are modified to the extent that instead of undergoing the reminder of the sentence of imprisonment, the petitioner is directed to be released on probation on furnishing fresh surety bonds in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of Chief Judicial Magistrate, Sonepat and subject to further condition that fine imposed upon him is enhanced from Rs. 1,000/- to Rs. 5,000/-, which he is required to pay within a period of one month, and in default thereof, the order releasing the petitioner on probation, shall automatically stand vacated and he shall be required to undergo the actual sentence of nine months apart from RI for a period of three months for non-payment of fine. He is also directed to give an undertaking to keep peace and to be of good behaviour for one year and to appear and undergo sentence and as when called for.