

(2008) 05 P&H CK 0153

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision 760 of 2007

Jagdish

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 22, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Food Adulteration Act, 1954 - Section 16(1)(A)(i), 7

Citation: (2008) 4 RCR(Criminal) 218

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Rajesh Arora, for the Appellant; Tarun Aggarwal, D.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.

This criminal revision petition is directed against the order dated 23.3.2007 passed by the learned Additional Sessions Judge, Fast Track Court, Gurgaon, vide which the appeal filed by the petitioner against the judgment dated 9.3.2006 and the order dated 13.3.2006 were set aside and the case was sent back to the Court of Learned Chief Judicial Magistrate, Gurgaon, for fresh disposal according to law after recording the statement of the accused u/s 313 Cr. P.C. afresh by putting the contents of the report of the Public Analyst to the accused and then he shall be afforded an opportunity to lead defence, if any.

2. Complaint u/s 7 of the Prevention of Food Adulteration Act, 1954(for short the "PFA Act") punishable u/s 16(1)(A)(i) of the PFA Act was filed against the petitioner in the Court of Chief Judicial Magistrate, Gurgaon. The petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/- u/s 16(1)(a)(i) of the PFA Act and in default of making payment of

fine, he was further directed to undergo simple imprisonment for one month.

3. In appeal, the learned Appellate Court came to the conclusion that the contents of the report of the Public Analyst were not put to the accused, therefore, the conviction and sentence were set aside and the case trial.

4. Mr. Rajesh Arora, learned counsel appearing on behalf of the petitioner contends that once the report of Public Analyst was not put to the accused while examining u/s 313 Cr. PC., a material prejudice was caused to the accused and, therefore, he deserves to be acquitted of the charge. In support of this contention, reliance was placed on the judgment of this Court in the case of Kuldip Singh v. State of Punjab and another in Criminal Writ Petition No. 1400 of 1988 decided on 13.1.1989 (1990 Prevention of Food Adulteration Cases 22).

5. Learned counsel for the petitioner also placed reliance on the judgment of this Court in the case of Krishan Lal v. U.T. Chandigarh, 1989 (1) RCR (Cri) 627 (P&H) in Criminal Revision No. 1299 of 1985 decided on 20.3.1989, wherein this Court has been pleased to hold that if the contents of the report of a Public Analyst are not put to the accused as to adulteration and the punishment has been hanging over the head of the petitioner for seven years, it is not a fit case for remand for retrial.

6. Learned counsel for the petitioner thereafter placed reliance on the judgment of this court in the case of Naresh Kumar v. State of Punjab, 1989 (2) RCR (Cri) 160 (P&H) : (1990 (1) PFAC 160), in Criminal Revision Nos. 236-237 of 1986 decided on 23.5.1989 wherein this Court was pleased to lay down as under:

"6. Prit Pal Singh, J. in Chaturbhuj v. State of Haryana reported as, 1985 (II) FAC 205 had set aside the order of remand in a similar situation. Prit Pal Singh, J. had relied upon [Machander Vs. State of Hyderabad](#), and some other judgments. Agreeing with it, Pal Singh, J. the order of remand passed by Additional Sessions Judge, on 12-12-1985 is set aside and the petitioners are acquitted of the charge. Consequently, Criminal Revision Nos. 236 of 1986 and 237 of 1986, filed by Naresh Kumar and Hardit Singh, respectively, are allowed."

7. Learned counsel for the petitioner also placed reliance on the judgment of this Court in Criminal Revision No. 100 of 2000 titled as Mahesh Kumar v. The State of Haryana, decided on 9.1.2002.

8. The contention of the learned counsel for the petitioner is that the petitioner is facing trial since 18th October, 1994 and, therefore, in view of the law laid down by this Court referred to above, the order of the learned Additional Sessions Judge remanding the case to the learned trial Court for fresh trial cannot be sustained.

9. The contention raised by the learned counsel for the petitioner has merit. In view of the law laid down by this Court referred to above, the order passed by the learned Additional Sessions Judge, Gurgaon, cannot be sustained.

Consequently this revision petition is allowed, the impugned order is set aside and the petitioner is ordered to be acquitted of the charge.