(2010) 05 P&H CK 0315

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 175-SBA of 2002

State of Haryana	APPELLANT
Vs	
Balkar Singh	RESPONDENT

Date of Decision: May 4, 2010

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 10(7), 16(1), 7

Citation: (2010) 05 P&H CK 0315

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.
State of Haryana has preferred present appeal against order of acquittal dated 9th May, 2001 passed by Chief Judicial Magistrate, Sirsa acquitting Balkar Singh, who was tried in a complaint instituted by Government Food Inspector, Sirsa for offence u/s 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as, "the Act").

2. The case as set out in the complaint was that on 6th September, 1997 at about 8.30 a.m. in the area of village Bhamboor, accused Respondent was intercepted and at that time, he was found in possession of 60 kilograms of cow milk for public sale. The milk was contained in two iron drums. The Food Inspector, after disclosing his identity, purchased 750 ml of cow milk. Three samples were drawn in separate empty bottles in accordance with the procedure prescribed and one of them was sent for analysis to the Public Analyst Haryana, Chandigarh, who submitted its report finding that the milk was adulterated, as the milk-solid-not-fat was deficient by 7 percent than the minimum standard prescribed. The accused-Respondent was summoned, tried and ultimately acquitted and discharged by the order under appeal. The trial Court recorded acquittal of the accused-Respondent, after noticing the contention of the defence counsel as under:

11. On the other hand, Mr. S.K. Puri, Learned Counsel for the accused argued that the present case is a ground less one. Counsel submitted that in the present case, the milk fat was found to be 6.2% and milk solids not fat was found to be 7.9%. In case both of them are added, the same comes to 14.1%. Counsel submitted that as per the norms fixed under the Act, the total of the milk fat and milk solids not fat should come to 12.5%. Mr. Puri argued that in the present case, there was not adulteration as the sum total of milk fat and milk solids not fat was 14.1%. Some other minor issues were also raised by Shri S.K. Puri, learned Counsel for the accused.

3. After having noticed the contention of the defence counsel, the trial Court acquitted the accused Respondent by observing as under:

13. Hon''ble Supreme Court in case Administrator of the City of Nagpur v. Laxman and Anr. 1995 SCC 354, in similar circumstances has laid down that if the total solids are more than the minimum prescribed standard, then it cannot be said that there was an adulteration. The present case stands on the same footing. In the present case, the sum total of milk fat and milk solids not fat is more than the minimum prescribed standard. In view of the judgment in Laxman''s case (supra), I hereby acquit the accused. His bail bonds also stand discharged. File be consigned to the record room.

4. This Court, in Criminal Appeal No. 557-SBA of 1999 titled as ''State of Haryana v. Rajinder'' decided on 5th August, 2009, had examined the ground, on which the acquittal has been recorded in the present case, and had observed as under:

The reasoning, and the approach adopted by the trial Court, cannot be sustained. In M.V. Joshi Vs. M.U. Shimpi and Another, , Hon''ble Apex Court held as under:

7. At the outset it would be convenient to consider the ingredients of the offence alleged to have been committed by the Appellant. Section 2(i) of the Act defines the word "adulterate" and it says that an article of food shall be deemed to be adulterated if it satisfies one or other of the conditions prescribed in sub-clauses. (a) to (1). We are concerned in this appeal with Sub-clause (1) where under an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability. Section 2(xii) defines "prescribed" to mean "prescribed by rules made under this Act". In exercise of the powers conferred by Sub-section (2) of Section 4 and Sub-section (1) of Section 23 of the Act, the Central Government made rules prescribing, inter alia, the standards of quality of different articles of food. Rules 5 says that standards of quality of the various articles of food specified in Appendix B to the Rues are as defined in that appendix. Rule A. 11.05 of Appendix B to the Rules defines "butter" to mean "the product prepared exclusively from the milk or cream of cow or buffalo, or both, or without the addition of salt and annatto and shall contain not less than 80 per cent. of milk fat and not more than 16 per cent, of moisture" and no preservative is permissible in butter. Therefore, if the quality or purity of butter falls below the standard prescribed by

the said rule or its constituents are in excess of the prescribed limits of variability, it shall be deemed to be adulterated within the meaning of Section 2 of the Act. If the prescribed standard is not attained, the statute treats such butter, by fiction, as an adulterated food, though in fact it is not adulterated. To, put it in other words, by reason of the fiction, it is not permissible for an accused to prove that, though the standard prescribed is not attained, the article of food is in fact not adulterated. The non-conformity with the standard prescribed makes such butter an adulterated food. Section 7 of the Act prohibits the manufacture, sale, storage or distribution of such food. Section 16 provides a penalty for the contravention of the provisions of Section 7. The first question, therefore, that falls for consideration is whether the butter seized from the Appellant was butter as defined by rule A. 11.05 of Appendix B to the Rules." Having observed so, Their Lordships of Hon"ble Apex Court noticed the contention of the counsel for the Appellant as under:

11. Learned Counsel for the Appellant contends that the rule being a part of a penal statute, it should be construed in favour of the accused. When it is said that all penal statutes are to be construed strictly it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. To put it in other words, the rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute. It has also been held that in construing a penal statute it is a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred. But these rules do not in any way affect the fundamental principles of interpretation, namely, that the primary test is the language employed in the Act and when the words are clear and plain the court is bound to accept the expressed intention of the legislature." In Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, Supreme Court observed:

...standards having been fixed as aforesaid any person who deals in articles of food which do not conform to them contravenes the provisions of the Act and is liable to punishment thereunder." A full bench of this Court, in "State of Punjab v. Teja Singh" 1976 CompLJ 1648, held that it is not permissible to add the percentage of the various constituents of milk disclosed by the Public Analyst and thereafter to deduce a conclusion therefrom about the overall deficiency is not allowed and there can be no deviation from the standard prescribed. Courts also cannot presume a slight or marginal error in the conclusion drawn by the Public Analyst. Argument that there is marginal deficiency, therefore accused is entitled to acquittal, is not available.

5. Mr. Vivek Verma, Advocate appearing for the Respondent, has stated that the complaint Ex.PF was in a typed proforma, which contained the words "After mixing/stirring/churning". It is stated that the Food Inspector had scored off "churning" but it had not been specified as to whether the milk was mixed or was stirred. The counsel has also referred to the testimony of the Government Food Inspector Mahavir Singh PW-1 complainant and has stated that it has surfaced that the Government Food Inspector had joined one Subhash as an independent witness, but Subhash was not

examined by the prosecution as he was given up by the complainant on the false ground that he had been won-over by the accused. Learned Counsel has referred to Section 10(7) of the Act to say that the Food Inspector ought to have joined an independent witness. It is stated that once the independent witness was joined, that witness ought to have been put in the witness box. It is further submitted that a period of 13 years is going to elapse and in case the acquittal of accused Respondent is set aside, he shall be again put to trial and his right of speedy trial enshrined under Article 21 of the Constitution of India, shall be infringed.

6. I have given my thoughtful consideration to the submissions made by counsel for the accused-Respondent.

7. Once an independent witness was associated, it cannot be said that non-examination of that witness is fatal to the prosecution. It depends upon the facts of each case. Accordingly, since the ground of acquittal is not tenable in view of the law propounded in Teja Singh''s case (supra), the matter is hereby remanded back to the trial Court to decide it afresh. The accused Respondent shall appear before the trial Court on 28th May, 2010.

8. With the observations made above, present appeal is disposed of.