

**(2009) 05 P&H CK 0234**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 189 of 2003

Bhajan Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** May 14, 2009

**Acts Referred:**

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

**Hon'ble Judges:** Jora Singh, J.

**Bench:** Single Bench

**Advocate:** Ajay Jain, Advocate, for the Petitioner; Ms. K.S. Godara, Deputy Advocate General, Haryana, for the Respondent

**Final Decision:** Disposed Off

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**Judgement**

**Jora Singh, J.** - Bhajan Lal son of Karam Chand , through the instant revision has challenged the impugned judgment dated 21.1.2003, rendered by the Additional Sessions Judge, Fatehabad.

2. Vide the impugned judgment, appeal against the judgment dated 8.3.1999, passed by Sub Divisional Judicial Magistrate, Fatehabad, was dismissed, whereby the revisionist/accused was convicted under Section 16 (1)(a)(i) read with Section 7 of the Prevention of Food Adulteration, Act 1954 (hereinafter referred to as the Act) and was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/-. In default of payment of fine, to further undergo rigorous imprisonment for one and a half month.

3. Prosecution story, in brief, is that on 18th October, 1994, Food Inspector Chand Ram had intercepted Bhajan Lal while carrying 10 Kilo grams of cow milk for public sale. After disclosing his identity as Government Food Inspector to the appellant-accused expressed his intention to purchase 750 MLS of cow milk against payment. 750 MLS of cow milk was purchased after issuing notice Ex.PA, which was thumb marked by the accused. Dr. N.K.Chakarwari Medical Officer, Civil Hospital,

Fatehabad, was also with the Food Inspector. Thereafter, the milk was thoroughly stirred and made homogenous with the help of milk measure. 750 ML of cow milk was purchased against payment of Rs. 6/- vide receipt Ex.PD. Notice Ex.PA and receipt Ex.PD were thumb marked by the revisionist. Sample purchased was divided into three equal parts and bottled into three dry, clean and empty bottles. Twenty drops of 40% formalin per 25 mls were added in each of the bottles as preservative. The bottles were stoppered tightly and sealed on the neck with the seal of the Medical Officer and the same were labelled and wrapped in a strong thick paper and the ends of the paper were pasted with gum, a paper strips bearing Code Number. The bottles were sealed as per rules. One sealed sample bottle along with a memorandum in form VII was sent to the Public Analyst, Haryana, Chandigarh, for analysis and the other two sealed bottles along with two copies of memo in form No.VII were deposited with the Local Health Authority, in a sealed packet. A copy of the memo in form VII and the specimen impression of the seals used to seal the sample and the packet were sent to the Public Analyst, Haryana, Chandigarh, separately by registered post. Spot memo Ex.PC was also prepared by the Food Inspector attested by Dr. N.K.Chakarwari. The certificate of the Public Analyst, Haryana, Chandigarh found vide its report Ex.PE that the milk solid not fat was 7% deficient of the minimum prescribed standard under the rules.

4. After the receipt of the report of the Public Analyst, the complaint was presented in Court by the Food Inspector. Revisionist was summoned vide order dated 30.11.1994.

5. On appearance, the accused had exercised his right under Section 13(2) of the Act and requested for re-analysis of the sample from the Central Food Laboratory. Second sample was accordingly sent to the Central Food Laboratory, but the same could not be analysed as the bottle was found broken. The third sample was sent to the Director, Central Food Laboratory and the certificate of the Director, Central Food Laboratory Ex.PG was received vide which the milk fat contents was below the minimum requirement of 4.0% and the Director, Central Food Laboratory was of the opinion that the sample did not conform to the standard laid down for the cow milk under the Act and Rules made therein.

6. Vide order dated 9.2.1996, the trial Court ordered the trial of the case as a warrant case.

7. The revisionist was charged under Section 7 read with Section 16(1)(a)(i) of the Act, to which he pleaded not guilty and claimed trial.

8. After charge, prosecution examined number of witness.

9. After the close of prosecution evidence, the revisionist was examined under Section 313 Cr.P.C. to explain the allegations. Revisionist denied all the allegations and claimed to be innocent. Defence version of the revisionist is that he was falsely implicated.

10. Opportunity was given to lead defence, but no defence was led.

11. Ultimately, the revisionist was convicted and sentenced by the learned Sub Divisional Judicial Magistrate, Fatehabad, as stated above.

12. Feeling dissatisfied with the judgment of the trial Court, appeal was preferred, but the same was also dismissed vide the impugned judgment.

13. I have heard Mr. Ajay Jain, Advocate, learned counsel for the revisionist, Mr K.S.Godara, Deputy Advocate General, Haryana, for the respondent and have gone through the file very carefully and thoroughly.

14. Learned counsel for the revisionist argued that judgment of the First Appellate Court is not challenged on the point of conviction. Occurrence is dated 18th October, 1994. Revisionist is the first offender and has already undergone one month and seven days out of the actual sentence. Learned counsel for the revisionist further argued that revisionist belongs to a poor family and he is to become hard criminal if sent to jail again to undergo imprisonment, as ordered by the trial Court. So, a lenient view be taken and he be released on probation.

15. Mr. K.S.Godara, Deputy Advocate General, Haryana, for the State argued that as per request of the learned counsel for the revisionist, when judgment of the First Appellate Court is not challenged on the point of conviction, then conviction of the revisionist should be upheld and be directed to pay fine.

16. Admittedly, revisionist is the first offender and belongs to a poor family. Occurrence was on 18th October, 1994. Revisionist has undergone one month and seven days out of the actual sentence. Revisionist being a poor man is to become hard criminal if sent to jail to undergo imprisonment as ordered by the trial Court. Ends of justice would be fully met if a lenient view is taken. Instead of sending the revisionist to undergo imprisonment, as ordered by the trial Court, he is directed to undergo imprisonment, already undergone by him and to deposit Rs. 10,000/-more as fine within two months before the trial Court, failing which, this revision would stand dismissed and to undergo imprisonment as already by the trial Court.

17. Accordingly, this revision stands disposed of.