

(2014) 02 P&H CK 0207

High Court Of Punjab And Haryana At Chandigarh**Case No:** Cr. R. No. 186 of 2014

Sukhdev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 19, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401
- Prevention of Food Adulteration Act, 1954 - Section 16

Citation: (2014) FAJ 440**Hon'ble Judges:** Mahavir Singh Chauhan, J**Bench:** Single Bench**Advocate:** R.S. Ghuman, Advocate for the Appellant; D.S. Virk, Assistant Advocate General, Advocate for the Respondent

Judgement

Mahavir Singh Chauhan, J.

On 7.7.2010 at about 9.40 a.m., the petitioner was found to carry 30 Litres of mixed milk in aluminium drums meant for sale for human consumption. After necessary formalities, including petitioners consent, 1500 milliliters of mixed milk was purchased by the complainant (a Food Inspector) after making the contents of the drums homogeneous by stirring the milk clockwise and anti-clockwise, up and down: As per Public Analyst report, contents of the sample were found "to contain 4.1% milk fat and 8.0% milk solids not fat against the minimum prescribed standard of 4.5% and 8.5%, respectively. The contents were thus stated to have been adulterated" and the petitioner, thus, was found to have committed an offence punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (for short "the Act"). Accordingly, a complaint was filed before the Court of learned Chief Judicial Magistrate, Fatehgarh Sahib (hereinafter referred to as "the trial Court"). Having found a prima facie case triable under Section 16 of the Act to be made out, the trial Court served upon the petitioner a notice of accusation to which the petitioner pleaded not guilty and claimed trial.

2. During the course of trial, prosecution examined Dr. Jagpal Singh as P.W. 1, Shiv Kumar as PW2, Dr. Jaswant Singh (Complainant) as PW3 and Gurnam Singh as PW4.
3. On close of evidence of the prosecution, the trial Court questioned the petitioner generally on the evidence available on record so as to enable him to explain the incriminating circumstances appearing in the evidence of the prosecution. Petitioner denied all the circumstances as false and incorrect and reiterated his plea of innocence and false implication but did not lead any evidence in his defence.
4. On hearing the prosecutor and the defence and on appraisal of evidence available on record, the trial Court came to a definite conclusion that the prosecution was able to prove to the hilt, commission of an offence punishable under Section 16 of the Act by the petitioner and, accordingly, vide judgment of conviction and order of sentence dated 27.9.2013, convicted and sentenced the petitioner to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 1,000 and in default of payment of fine to undergo further imprisonment for a period of 15 days.
5. Judgment of conviction and order of sentence dated 27.9.2013 were challenged by the petitioner by way of Criminal Appeal No. 75 of 21.10.2013/CRA No. 242 of 2013, Sukhdev Singh v. State of Punjab, which, after contest, was dismissed by the learned Additional Sessions Judge, Fatehgarh Sahib (hereinafter referred to as "the appellate Court") vide judgment dated 13.1.2014.
6. To challenge the judgment of conviction and order of sentence dated 27.9.2013 passed by the trial Court, as affirmed vide judgment dated 13.1.2014 of the learned Additional Sessions Judge, Fatehgarh Sahib, the petitioner has invoked the provisions of Sections 397/ 401 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") by way of this revision petition.
7. State is contesting the petition.
8. I have heard learned counsel representing the petitioner and the respondent-State.
9. Learned counsel for the petitioner, with reference to [Reet Singh Vs. State of Haryana](#), contends that the milk was not properly stirred as it is not possible to stir 30 litres of milk with the help of measures of 500 milliliters capacity and that being so, the petitioner is entitled to acquittal giving him the benefit of doubt.
10. The contention, however, is found to be unacceptable as the cited judgment inapplicable to the case, in hand, in view of the fact that the petitioner did not object to the manner of drawing sample from the milk before the trial Court. Even otherwise, it has come on record that the contents of the drums were stirred clockwise, anti-clockwise, up and down. The contention, therefore, fails and is rejected.

11. It is next contended on behalf of the petitioner that as per report of Chemical Examiner, the contents of the sample were found to contain 4.1% milk fat and 8.0% milk solids not fat against the minimum prescribed standard of 4.5% and 8.5%, respectively. Thus, the adulteration was negligible and on the basis thereof, a finding of conviction could not be recorded, more so, in view of the admission of Dr. Jaswant Singh, the complainant, in his cross-examination, that the fat contents and solids not fat in mixed milk could vary and the variation found in the sample was not harmful for human consumption as only fat contents and milk solids were less to the extent of 4.1% milk fat and 8.0% milk solids not fat. To support this contention, learned counsel for the petitioner relies upon *Roop Chand v. State of Haryana* 1997 (3) R.C.R. (Criminal) 515; [Nortan Mal Vs. State of Rajasthan](#), and [Isham Singh Vs. State of Haryana](#), .

12. The learned State Counsel, on the other hand, contends that the petitioner cannot be allowed any benefit of the cited judgments, in view of the fact that he took a stand before the trial Court that he was falsely implicated in the case in hand and a plea akin to the ones involved in the cited judgment was never resorted to by him.

13. Nothing more has been urged on either side.

14. It is not in dispute that according to Public Analyst's report (Exhibit P6), contents of the sample were found to contain 4.1% milk fat and 8.0% milk solids not fat as against the minimum prescribed standard of 4.5% and 8.5% respectively. This indicates that the milk fat was less by 0.4% and milk solids not fat were less by 0.5%. The variation is, thus, very much on the lower side. Further, as noticed by the appellate Court, the complainant admitted before the trial Court that the fat contents and solids not fat in the mixed milk could vary and that the variation in the fat contents and solids not fat found in the sample was not harmful for human consumption.

15. In *Roop Chand v. State of Haryana* (supra), in the sample of chilli powder ash was found in excess by 1%. It was held to be negligible and while relying upon a judgment of the Hon"ble Supreme Court reported 1976 (2) FAC 75, this Court quashed the proceedings initiated against the petitioner therein.

16. In *Nortan Mal v. State of Rajasthan* (supra), again sample of chilli powder was obtained from the appellant therein and it was found to have ash in excess to the extent of 0.38%. The Hon"ble Apex Court observed that the adulteration found in the chilli powder being marginal possibility of there being an error of judgment in analysis could not be ruled out and that being so, found conviction of the appellant to be unsustainable.

17. In *Isham Singh v. State of Haryana* (supra), sample of milk drawn from the petitioner therein was found to contain milk fat 7.3% as against 3.5% or 4% and solids not fat 8.2% against the required standard of 8.5%. This Court in view of the

negligibility of the adulteration, observed that this created a doubt about the accuracy of the procedure in taking sample and accordingly, set aside the conviction of the petitioner therein.

18. It comes out that the facts and circumstances are somewhat similar to the facts and circumstances of the cited cases.

19. The contention put up on behalf of the respondent-State that such plea having not been taken by the petitioner before the courts below cannot be countenanced, in view of what has been said and discussed hereinabove.

20. As a natural consequence of what has been said and discussed above, the petitioner deserves a lenient treatment as regards punishment.

21. The learned counsel for the petitioner informs that the petitioner is in custody since 13.1.2014.

22. In the result, while upholding judgment of conviction and order of sentence dated 27.9.2013 passed by the trial Court as affirmed by the appellate Court vide judgment dated 13.1.2014, the order of sentence is modified and substantive sentence awarded to the petitioner is restricted to the period already spent by him in custody. Sentence of fine and default clause, however, are maintained.

23. With above modification in the order of sentence, the petition fails and is dismissed. Petitioner shall be set at liberty forthwith, provided always that he is not required in any other case. Petition dismissed.