
Kola Ram Vs State of Rajasthan

Criminal Revision Petition No. 219 of 1996

Court: Rajasthan High Court

Date of Decision: April 30, 2015

Acts Referred:

Constitution of India, 1950 - Article 21#Criminal Procedure Code, 1973 (CrPC) - Section 313#Evidence Act, 1872 - Section 133#Prevention of Food Adulteration Act, 1954 - Section 10, 11, 13, 13(1), 13(2)

Citation: (2015) 3 WLN 569

Hon'ble Judges: Anupinder Singh Grewal, J

Bench: Single Bench

Advocate: M.C. Bishnoi, for the Appellant; J.P. Bhardwaj, Public Prosecutor, Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

Anupinder Singh Grewal, J.

This revision petition is directed against the judgment of learned Additional Sessions Judge, Jodhpur dated

18th June 1996 passed in Cr. Appeal No. 4/1996 upholding the judgment of learned Chief Judicial Magistrate dated 06th April 1996 passed in

Cr. Case No. 192/1993 whereby the petitioner has been convicted under section 7 read with section 16 of the Prevention of Food Adulteration

Act {hereinafter referred to as "the Act"} and rule 50(1) of the Prevention of Food Adulteration Rules and sentenced to undergo simple

imprisonment for a period of two years along with fine of Rs. 10,000/-and 10 days" simple imprisonment with fine of Rs. 300/- respectively.

2. The facts of the case, briefly stated, are that Food Inspector Mr. Girish Narayan Mathur while on inspection found that petitioner was selling

cow's milk at High Court colony, Jodhpur. He also learnt that the petitioner was selling milk without license to sell food items. He purchased 750

ml milk for sample testing for which he paid Rs. 3/- to the accused-petitioner. The purchased milk was filled in three dry and clean bottles in equal

quantities and after adding 20 drops of formalin in each bottle, the bottles were capped, sealed and labelled. The bottles were sealed in the

presence of independent witnesses at the site.

3. The samples were sent for analysis to the Public Analyst, Jodhpur. The Public Analyst vide report Ex. P12 dated 24th July 1993 found the

sampled milk to be adulterated as it did not conform to standards of purity prescribed for cow's milk and the sample contained about 14% added

water and 43% less fat.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner submitted that while issuing sanction for prosecution, the competent authority did not apply its mind. This

submission can not be accepted as it is clearly mentioned while according sanction that the sanction has been given after taking into account all the

documents and understanding those documents. Reference may be made to judgment of Hon"ble Supreme Court in the case of State of Bihar and

Another Vs. P.P. Sharma, IAS and Another, AIR 1991 SC 1260 : (1991) 2 CompLJ 197 : (1991) CriLJ 1438 : (1991) 2 Crimes 113 : (1991) 2

JT 147 : (1992) 1 SCC 222 Supp : (1991) 2 SCR 1 wherein it has been held that if the sanctioning authority has written that it has considered the

case diary then it cannot be said that it has not applied his mind. Hon"ble Supreme Court in the case of State of Madhya Pradesh Vs. Jiyalal, AIR

2010 SC 1451 : (2009) 12 JT 425 : (2009) 11 SCALE 406 : (2009) 15 SCC 72 : (2009) 13 SCR 214 has observed:

4. In the present case, the learned single judge of the High Court had opined that the District Magistrate (the appropriate authority in this case)

who had granted the sanction order in question had not applied his mind. It was held that since the sanction order did not enumerate reasons, it had

been given mechanically and was hence illegal. It was further stated that the said sanction order (Exhibit - P/6 in the proceedings before the Special

Judge) had not been proved because the District Magistrate who passed the order had not been subsequently examined as a witness by the

prosecution in order to prove the same.

5. In our opinion, both of the above-mentioned findings of the learned single judge of the High Court are not correct. Therefore, the High Court

was not justified in interfering with the "finding, sentence or order passed by a Special Judge" under the Act. As per Section 19(3)(a) of the Act

"no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground

of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure

of justice has in fact been occasioned."

6. The relevant portion of the Act reads as follows :-

Section 19. Previous sanction necessary for prosecution - (1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13

and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the

sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the

sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by

the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would

have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the

ground of the absence of, or any error, omission or irregularity in, the sanction required under subsection (1), unless in the opinion of that court, a

failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority,

unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any

interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted

in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the

proceedings.

Explanation. -For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or

with the sanction of a specified person or any requirement of a similar nature.

{emphasis supplied}

7. In the case before us, even if it were to be accepted that there has been an "error, omission or irregularity" in the passing of the sanction order,

the learned single judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the Respondent.

In the absence of such a finding it was not correct for the High Court to set aside the conviction and sentence given by the Special Judge.

8. It was also not justified for the learned single judge to hold that the District Magistrate who had passed the sanction order should have been

subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine

official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the Respondent to

question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be

examined as a witness by the prosecution.

6. Learned counsel for the petitioner further submitted that in the sample sent for analysis, number mentioned was M/1782 while in the evidence

put to petitioner under section 313 CrPC it was stated that sample number was M/1780 and hence, the trial is vitiated. This submission also can

not be accepted as this difference in number could be attributed to typographical error and is insignificant. It has not made any material difference

and no prejudice can be said to have been caused to the accused-petitioner. Substantial evidence of the sample being sent for analysis was put

before the accused and it can not be said that this aspect has in any manner hampered the defence of the accused. Reference may be made to

judgment of the Hon"ble Supreme Court in the case of State (Delhi Administration) Vs. Dharampal, AIR 2001 SC 2924 : (2001) CriLJ 4748 :

(2001) 9 JT 136 : (2001) 7 SCALE 414 : (2001) 10 SCC 372 : (2001) AIRSCW 4385 : (2001) 8 Supreme 181 wherein it was held:

13. Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material, has occurred that does not ipso

facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an

inculpatory material not having been put to the accused, the appellate court can always make good that lapse by calling upon the counsel for the

accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him.

14. This being the law, in our view, both the Sessions Judge and the High Court were wrong in concluding that the omission to put the contents of

the certificate of the Director, Central Food Laboratory, could only result in the accused being acquitted. The accused had to show that some

prejudice was caused to him by the report not being put to him. Even otherwise, it was the duty of the Sessions Judge and/or the High Court, if

they found that some vital circumstance had not been put to the accused, to put those questions to the counsel for the accused and get the answers

of the accused. If the accused could not give any plausible or reasonable explanation it would have to be assumed that there was no explanation.

Both the Sessions Judge and the High Court have overlooked this position of law and failed to perform their duties and thereby wrongly acquitted

the accused.

7. The learned counsel for the petitioner further argued that the charges were framed in the absence of the accused and hence, whole trial is

vitiated. A perusal of the record indicates that the charges were read over to the counsel for the accused-petitioner as the accused was absent on

that day and an application for exemption from attendance had been filed on his behalf. It was open to the accused-petitioner to have raised this

objection during the trial. However, no such objection was raised before the trial court in this regard at any stage by the petitioner. Therefore, the

trial of the case can not be held to be vitiated on this account.

8. The learned counsel for the petitioner then argued that no independent witness was examined although samples were taken in their presence and

that the samples were not sealed properly. This submission can not merit acceptance as it has come in the evidence of PW1 that the samples were

duly sealed and proper procedure had been adopted while seizing and sending the samples for analysis. It has been held by the Hon"ble Supreme

Court in the case of Food Inspector Vs. G. Satyanarayana, (2003) CriLJ 3551 : (2002) 1 JT 547 Supp : (2004) 13 SCC 72 that there is no

necessity for examining independent witness in case the evidence of the Food Inspector is trustworthy and supported by seizure memo and analysis

report. The Hon"ble Supreme Court observed as under:

4. There is no denial of the fact that the appellant in this case had followed the procedure prescribed under the aforesaid section. The section does

not provide for associating any other person as a witness for taking a sample of food for analysis. The courts below committed a mistake of law by

acquitting the respondent on the ground that statement of PW-1 had not been corroborated by other independent witnesses. Corroboration of the

statement of main witness is not the requirement of law but is only a rule of prudence.

5. It need not be direct and may be ascertained from the circumstances of a particular case. Under law, uncorroborated testimony of a witness is

admissible under Section 133 of the Evidence Act. While looking for corroboration, the court has to keep in mind the broad spectrum of

prosecution case and then to see whether there is evidence to lend assurance to that version. The nature and extent of corroboration depends upon

the facts of each case.

6. In the instant case, there was sufficient corroboration of the testimony of PW-1 as is evident from the seizure memo and the receipt obtained for

sale besides the report of the public analyst. The mere fact that the other witnesses cited by the prosecution had not supported the case of the

prosecution was no ground to reject the testimony of PW-1.

The evidence of PW1, who was the Food Inspector, is trustworthy and hence, can be the basis for maintaining conviction of the accused-

petitioner.

9. Learned counsel for the petitioner further argued that the milk was not properly stirred before sample was taken and hence, the accused was

seriously prejudiced in as much as this made material difference to the composition of the milk which was drawn for sampling. A perusal of the

memo Ex. P7 which was prepared at the site while samples were seized reveals that the sample of the milk was taken after stirring the milk.

Therefore, this argument also does not commend acceptance.

10. The learned counsel for the petitioner finally argued that the report of the Public Analyst was not furnished to the accused so as to enable him

to ask for a second analysis. This argument of the learned counsel for the petitioner also can not be accepted as it has come in evidence that copy

of the report was sent to the accused-petitioner on 26.10.1993 vide Ex. P.15 and postal receipt Ex. P16. It is apposite to refer to section 13(1)

and (2) of the Act which is reproduced hereinunder:

13. Report of Public analyst- (1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of

the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health)

Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any,

whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the

report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or

both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample

of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or

parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the

sample to the court within a period of five days from the date of receipt of such requisition.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under subsection (2A), the court shall first ascertain that the

mark and seal or fastening as provided in clause(b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case

may be, is not tampered with and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the

Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the

part of the sample specifying the result of the analysis.

(2C) Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the

Central Food Laboratory under sub-section(2B), the court shall, as soon as practicable, return the remaining part to Local (Health) Authority and

that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court:

Provided that where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall

require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall

proceed in the manner provided in sub-section (2B).

(2D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue

with the proceedings pending before it in relation to the prosecution.

(2E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report

delivered by the public analyst under sub-section(1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any

other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect

that the article of food is adulterated, the provisions of sub-sections(2) to (2D) shall, so far as may be, apply.

This section, thus, provides a right to the accused to seek analysis from central laboratory in case he is not satisfied with the first report. However,

in the instant case, the accused-petitioner did not submit any application under section 13(2) of the Act for getting the same tested through a central

food laboratory. Hence, he cannot derive any benefit from this aspect.

11. It is noteworthy that the evidence led by PW1, who is the Food Inspector, along with the documents on record fully established the

prosecution case. A perusal of the report of Public Analyst Ex. P12 clearly indicates that the milk was adulterated. It is also mentioned in the

report that the seal was duly affixed and intact when the sample was received from the Food Inspector. The relevant extract of the report Ex. P12

is reproduced hereinunder:

FORM-III

PUBLIC HEALTH LABORATORY, JODHPUR

Report No. L.S./208/PHL/In/93/173 dated 24.7.1993

I hereby certify that I, M.S. Nair, Public Analyst for Jodhpur Division duly appointed under provisions of the Prevention of Food Adulteration Act,

1954, received on the 17th day of July 1993 from the Food Inspector Shri G.N. Mathur, Jodhpur Distt a sample of cow milk bearing Code No.

M and Serial No. 1782 of the Local Health Authority, Jodhpur for analysis, properly sealed and fastened, and that I found that seal intact and

unbroken.

The seal fixed on the container and the outer cover of the sample tallied with the specimen impression of the seal separately sent by the Food

Inspector and the sample was in a condition fit for analysis.

I further certify that I have analysed the aforementioned sample and declare the result of the analysis to be as follows:

Milk fat..... 1.7%

Milk Solids not fat..... 7.3%

Starch and cane sugar..... Absent

and am of the opinion that the sample does not conform to the prescribed standards under Appendix "B" of P.F.A. Rules 1955 and is, therefore,

adulterated. The sample contains about 14% of added water and about 43% of milk fat is abstracted from the sample.

Therefore, in the exercise of revisional jurisdiction there is no case for interference in the concurrent findings recorded by the learned courts below.

12. The learned counsel for the petitioner has argued in the alternative that in case conviction is upheld then leniency should be shown in sentence

as the incident occurred over two decades ago and the petitioner is now over 60 years of age. He also stated that wife of the accused-petitioner is

suffering from neurological problem. The allegation against the petitioner is of adding water in the milk and no one is said to have suffered direct

consequence of ill health. The petitioner is stated to have remained in custody for 19 days. Learned counsel for the petitioner also submitted that

sentence for the period already undergone by the accused-petitioner would meet the ends of justice. He has relied upon judgment of Hon"ble

Supreme Court of India in the case of Nand Lal Vs. State of Uttarakhand and Another, AIR 2010 SC 1875 : (2010) CriLJ 2426 : (2010) 5 JT

405 : (2010) 4 SCC 562 wherein sentence of the accused was reduced to the period already undergone. However, this judgment is

distinguishable on facts from the instant case as the accused therein was over 70 years of age and had furnished medical record for his ailment.

13. The learned counsel for the petitioner also relied on judgment of Hon"ble Supreme Court in the case of Umrao Singh Vs. State of Haryana,

AIR 1981 SC 1723 : (1981) CriLJ 1704 : (1981) 3 SCC 91 : (1981) SCC(Cri) 649 , which is distinguishable as the appellant therein was about

70 years of age, suffering from ailment and only 0.4% deficiency in milk fat was found. In the instant case, the deficiency in milk fat is 43% and

14% added water has also been found. The judgment of Hon"ble Supreme Court in the case of Gurmukh Singh and Others Vs. The State of

Punjab, AIR 1972 SC 824 : (1972) CriLJ 654 : (1972) 4 SCC 805 : (1972) 4 UJ 406 relied upon by the learned counsel for the petitioner is also

distinguishable as matter therein only pertained to sale of food articles without license and not of adulteration in food.

14. Nonetheless, it has to be borne in mind that adulteration of food has serious and deleterious effect on public health. The object and purpose of

the Act is to eliminate danger to human life from sale of unwholesome articles of food. It has been enacted to curb the widespread menace of food

adulteration. The right against hazardous and injurious food articles is also a fundamental right under the right to life guaranteed by Article 21 of the

Constitution of India. The evil, thus, has to be dealt with a stern hand. The sentence of the period of 19 days already undergone would be too

lenient and below the minimum punishment prescribed by the legislature for the offence. There are no specific circumstances which may warrant

punishment below the minimum prescribed.

15. However, keeping in view the fact that the petitioner is facing prosecution ever since the incident took place 21 years ago and he is now over

60 years of age it would be in the interest of justice to reduce the sentence from 2 years to a period of 6 months.

16. Consequently, the revision petition is partly allowed. The conviction of the petitioner is maintained. The sentence of the petitioner is reduced to

a period of 6 months. The bail bonds of the petitioner are cancelled and he is directed to surrender to serve the remaining sentence. He shall also

be liable to pay fine of Rs. 300/-.