

(2016) 07 SHI CK 0019

High Court of Himachal Pradesh

Case No: Criminal Revision No. 92 of 2010

Ashwani Sood

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision: July 1, 2016

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16(1)(a)(II)
- Prevention of Food Adulteration Rules, 1955 - Rule 50

Citation: (2016) 3 SimLC 1220

Hon'ble Judges: Mr. Sandeep Sharma, J.

Bench: Single Bench

Advocate: Mr. Pankaj Negi, Deputy Advocate General, for the Respondent; Mr. Anoop Chitkara, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

Sandeep Sharma, J. - The instant criminal revision petition filed under Section 397 and 401 Cr.PC is directed against the judgment dated 12.3.2010 passed by learned Additional Sessions Judge, Shimla, in Criminal Appeal No. 41-S/10 of 2006 affirming the judgment of conviction dated 17.6.2006 passed by the learned Judicial Magistrate, Court No.2, Shimla in Criminal Case No. 572/3 of 2004 titled "State v. Ashwani Sood."

2. Briefly stated facts as emerge from the record are that on 4th June, 2004 at about 2:00 PM, the Food Inspector (the Inspector for the sake of brevity) namely Shri LD Thakur, visited M/s Hotel Varuna, Bawa Market, Shimla and found owner of the aforesaid Hotel, namely Ashwani Sood (in short the accused) to be conducting the business. Since he had kept cold drinks, tea, coffee and mineral water etc., in the shop for sale to the general public, the Inspector asked him to produce the licence for selling food articles but the accused failed to produce the same. Since the accused on demand made by the Inspector failed to provide the valid licence as

required under Rule 50 of the Food and Prevention of Adulteration Rules, 1956 (in short the Rules), the Inspector prepared the spot map and carried out necessary codal formalities to challan the accused. Record further reveals that the Inspector on the basis of material collected by him sought written consent/sanction from the CMO, Shimla to prosecute the accused, which was accordingly sanctioned. After procuring sanction from the competent authority, complaint was presented in the court of learned Judicial Magistrate, Ist Class, Court No.2, Shimla, HP and after close scrutiny of the documents annexed with the compliant, the accused was summoned.

3. Learned trial Court after satisfying itself that prima-facie case exists against the accused, put a notice of accusation to him under Section 16 (1) (a) (ii) of the Prevention of Food Adulteration Act, 1954, (in short the Act) to which he pleaded not guilty and claimed trial.

4. Learned trial Court, on the basis of material made available on record by the prosecution, concluded the trial and vide judgment dated 17th June, 2006, held the accused guilty for having committed offence under the Act.

5. Subsequently, vide order dated 20.6.2006, learned trial Court sentenced the accused to suffer simple imprisonment till the rising of the Court and to pay fine of Rs. 500/- and in default, further to undergo simple imprisonment of ten days. However, as per aforesaid order, both the sentences were to run concurrently.

6. Being dissatisfied with the judgment passed by the learned trial Court, accused filed an appeal under Section 374 Cr.PC in the court of learned Additional Sessions Judge, which was dismissed vide judgment dated 12.3.2010. Hence, the instant criminal revision petition before this Court.

7. Mr. Anoop Chitkara, Advocate, appearing on behalf of the accused vehemently argued that the judgment passed by both the courts below are not sustainable as the same are not based upon the correct appreciation of evidence available on record. He contended on behalf of the petitioner that both the courts below while holding the accused guilty, failed to acknowledge that licence for the year, 2004-05 was renewed by the Municipal Corporation from retrospective date by levying the compounding fee and as such finding of the court below that accused had no valid licence for the year, 2004-05, deserves to be quashed and set-aside being foreign to the records. He forcefully contended that both the courts below failed to appreciate that CW-2 the Inspector, in his cross-examination categorically submitted that vide document Mark-X, licence fee for the year, 2004-05, was paid for the business of catering in the premises. He also invited attention of this Court to the documents Mark-X and Y to demonstrate that condition No.9 specifically provides that "licencee shall apply for renewal of licence before the end of period of validity of licence and his previous licence shall remain valid until a fresh licence is issued and specific orders are issued to him on his application." He forcefully contended that the

accused had already renewed the licence of the said period after paying the compounding fee and there was no mens-rea on his part to indulge in such business without there being any valid licence and, as such, the judgments passed by both the Courts below are not correct and same deserve to be quashed and setaside. He also submitted that there was no valid and proper sanction to prosecute the accused because Dr. Suman Gupta, CMO was never examined and accused had no opportunity to dis-prove her credibility and to verify whether she had actually issued sanction as claimed by the prosecution or not? He also challenged the authority of the Inspector (CW2) to check the premises of the accused because as per him, Municipal Corporation Shimla was not declared a local area under clause (vii) of Section 2 of the Act. During arguments, he also invited attention of this Court to the statements given by the witnesses as well as statement of the accused recorded under Section 313 Cr.PC to suggest that some of the most material prosecution evidence appearing against the accused were put to the accused under Section 313 Cr.PC and as per Mr. Chitkara, such material could not be used against the accused. At last, he submitted that the conviction and sentence passed against the accused is harsh and, as such, same deserves to be quashed and set-aside.

8. Per contra, Mr. Pankaj Negi, learned Deputy Advocate General, assisted by Mr. Rajat Chauhan, Law Officer, appearing for the respondent-State supported the judgments passed by both the Courts below. Mr. Negi vehemently argued that no interference, whatsoever, of this Court is warranted in the present facts and circumstances, especially, where it stands duly proved that the accused was not having a valid licence as required under Rule 50 of the Rules, to sell the food articles. He also invited attention of this Court to the statement given by the DW under Section 33 Cr.PC, himself to demonstrate that he himself admitted that at the time of inspection, he had no valid licence to sell the food articles. He forcefully contended that bare perusal of the judgments passed by the courts below suggests that same are based upon the correct appreciation of evidence available on record and as such, the present petition deserves to be dismissed. Eventually, he contended that this Court while exercising powers under Section 397, Cr.PC has very limited power to re-appreciate the evidence, especially, when it stands established on record that both the courts below have very meticulously dealt with each and every aspect of the matter. Mr. Negi prayed for dismissal of the revision petition.

9. I have heard the counsel for the parties and carefully gone through the record.

10. True, it is that this Court has very limited powers under Section 397 Cr.PC while exercising its revisionary jurisdiction but in the instant case, where accused has been convicted and sentenced, it would be apt and in the interest of justice to critically examine the statements of the witnesses that too solely with a view to ascertain that the judgments passed by learned courts below are not perverse and same are based on correct appreciation of the evidence on record.

11. As far as scope of power of this Court while exercising revisionary jurisdiction under Section 397 is concerned, the Hon'ble Apex Court in **Krishnan and another v. Krishnaveni and another, (1997) 4 Supreme Court Case 241**; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality or sentence or order. The relevant para of the judgment is reproduced as under:-

8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order."

12. It is undisputed that CW2, the complainant, L.D. Thakur, was duly authorised by State Govt. to inspect the premises to take the samples and to initiate the prosecution under the Act, he visited M/s Hotel Varuna, Bawa Market Shimla on 4.6.2004, wherein he found the accused conducting business of hotel. It is also not in dispute that at the time of inspection, accused was found selling the food articles and as such CW2 asked the accused to produce the licence as required under Rule 50 of the Rules for selling the food articles. It is also not in dispute that at the time of the inspection, the accused failed to produce any licence for the year, 2004-05 rather, the complainant informed that same has been given for renewal.

13. Prosecution with a view to prove its case, examined two witnesses and learned court below also recorded the statement of the accused under Section 313 Cr.PC, wherein he claimed that he has been falsely implicated, however, in defence, he led one witness.

14. CW1 Naresh Kumar Stated that he is posted as Dealing Assistant in office of CMO, Shimla since December, 2001. He also stated that CMO concerned had seen the documents of this case and gave him the dictation. He also stated that he typed Ext.CW1/A, i.e. sanction obtained by the Inspector to prosecute the accused. He also proved that signature on the Ext.CW1/A is of Dr. Suman Gupta, being CMO. He categorically stated that he recognises the signatures of the aforementioned CMO.

However, in his cross-examination, he admitted that he is not authorised to give sanction nor he had given any sanction.

15. CW2 L.D. Thakur, the complainant (the Inspector) stated that he was posted as Food Inspector in Municipal Corporation since 1999 and he on 4.6.2004, inspected the shop of the accused. It has come in his statement that at the time of inspection the accused was conducting business as an owner. He also stated that the accused had kept food articles for selling to general public. He stated that when he asked the accused to produce the licence as required under the Rules, for the year, 2004-05, the accused failed to produce the licence. He also stated that he prepared the spot map Ext.CW2/A, whereon he, Gian Chand and accused put their signatures. He also proved on record the spot memo, menu card, copy of notification issued by CMO vide letter Ext.CW2/B wherein CMO stated that it is a fit case for prosecution. He also proved the complaint Ext.CW2/C was filed by him and copy of notification is Ext.CW2/D. In his cross-examination, he reiterated that he inspected the hotel of the accused and at that time, two or three persons were sitting inside the hotel but he did not associate them in the proceedings nor he associated any person from the market. However, he admitted that witness Gian Chand belongs to his department since he is posted as Sanitary Inspector but in his cross-examination, he also admitted that previous licence is valid, if it is renewed well in time.

16. Careful perusal of the depositions made by the aforesaid witnesses produced by the complainant suggests that on 4.6.2004, CW2 had inspected the shop of the accused, wherein he was found selling food articles without there being any valid licence as required under Rule 50 of the Rules for the year, 2004-05. There is nothing in the cross-examination of this complainant witness from where it can be inferred that any suggestion worth the name was put to this witness to suggest that at that relevant time, the accused was not found selling food articles without any valid licence. Moreover, there is nothing in the cross examination to suggest that these complainant witnesses had any motive to falsely implicate the accused or they had any prior animosity or enmity, which compelled them to depose against the accused. In view of the above, one thing stands clearly established that accused at that point of time was selling food articles without there being any valid licence and on demand, he failed to produce the same to the Inspector, who had visited the site. From the perusal of the aforesaid statement given by the witnesses, it can be safely concluded that stand taken by the complainant at the time of recording his statement under Section 313 Cr.PC, is not correct as observed above, no suggestion worth the name qua any prior animosity /enmity was put to the accused with a view to extract something that complainant witnesses had some motive to falsely depose against the accused and implicate him in a false case.

17. DW1 Ramkali was produced by the accused in his defence. She is clerk in this licensing Branch of MC Shimla and stated that Ext.DW1/A is a compounding fee receipt of the accused for the period i.e. 2001 to 2006, however, she also stated that

it is valid from 26.9.2005 to 31.3.2006. She also brought the copy of licence Ext.DW1/B, which is correct as per the original and licence is valid from 1.4.2005 to 31.3.2006. In her cross-examination, she specifically admitted that compounding fee is for the period of 2001 to 2006 and same is for the purpose of catering in M.C. area. She also admitted that fee prescribed under the Act is Rs. 10 p.a. It also emerges from the record that she had not brought the record for the year, 2004-05.

18. Bare perusal of the deposition made by defence (DW1) suggests that vide Ext.DW1/A, Municipal Corporation Shimla received compounding licensing fee Mark-X from the accused. This Court had an occasion to see this Ext.DW1/B, which is available at Page-26 of the record, perusal whereof suggests that licensing authority issued licence to the accused under the provisions of the Act and Rules made thereunder for selling/storage/distribution/manufacturing of the certain eatables and beverages. Ext.DW/B also reveals that licencing authority issued the same to the hotel of the accused for lodging and catering. Though it finds mention in this document that license was valid up to 31.3.2006 but this Court was unable to find anything in this document to suggest, from which date it was issued. This document has been issued on 28.9.2005 by the licensing authority of the MC Shimla, but it doesn't disclose the date from which date, it became effective. Similarly, this Court perused the Mark-Y i.e. document available at page 27 of the record, which suggests that accused paid amount of Rs. 12,510/- against the receipt No. 428776 dated 26.9.2005 to the MC for permission to use the premises for lodging and catering. This document clearly suggests that accused was issued licence from 1.4.2005 to 31.3.2006, meaning thereby, the accused had licence under the Rules to sell the food articles as provided under Ext.DW1/B in his hotel, w.e.f. 1.4.2005 to 31.3.2006. There is also a mention of licencing authority @ Rs. 10 against the aforementioned receipt. Same receipt number stands mentioned in document Mark-Y, wherein while renewing the permit/licence w.e.f. 1.4.2005 to 31.3.2006, MC has received an amount of Rs. 12,510/- against that receipt, which finds mention in Ext.DW1/B. It appears that the accused had not paid licence fee for a period prior to 1.4.2005 also and his licence was not renewed till further, which he again by depositing an amount of Rs. 12,510/- on 26.9.2005 got renewed but fact remains that MC while charging fee for previous years renewed his permit from 1.4.2005 to 31.3.2006 only, meaning thereby, the accused was not having any valid licence to sell the food articles on 4.6.2004. Though, accused has placed receipt Ext.DW1/B Mark X and Y to suggest that he was having valid licence w.e.f. 2001 to 2006 but after perusing the aforesaid documents, this Court is convinced that licence of the accused was only renewed from 1.4.2005 to 31.3.2006 by the MC Shimla.

19. In this regard, it would be apt to reproduce Rule 50 of the Rules, which reads as under:-

"50. Conditions for licence:-

(1) No person shall manufacture, sell, stock, distribute or exhibit for sale any article of food, including prepared food or ready to serve food 2 (or irradiated food) except under a licence:

Provided that the fruit products covered under the Fruit Products Order, 1955, solvent extracted oil, deoiled meal and edible flour covered under the Solvent Extracted Oil, De-oiled Meal and Edible Flour (Control) Order, 1967, 3 (Vanaspati covered under the Vegetable Oil Products (Regulation) Order, 1998), and meat and poultry products covered under the Meat Food Products Order, 1973, shall be exempted from the above rule) ;

(Provided further that a producer of milk, who sells milk only to a milk co-operative society which is a member of milk co-operative Union engaged in reconstitution of milk or manufacture of milk products, shall be exempted from this rule.)

(Provided also that no person shall manufacture, sell, stock, distribute or exhibit for sale any article of food which has been subjected to the treatment of irradiation, except under a licence from Deptt., of Atomic Energy (Control of Irradiation of Food), under the Atomic Energy Act, 1962 (Act 33 of 1962))

((1-A) One licence may be issued by the licensing authority for one or more articles of food and also for different establishments or premises in the same local area.)

((1-B) The name and address of the Director or Manager, as the case may be, nominated by the company, under rule 12B shall be mentioned in the licence.)

(2) The State Government or the local authority shall appoint licensing authorities.

(3) A licensing authority may with the approval of the State Government or the local authority by an order in writing delegate the power to sign licenses and such other powers as may be specified in the order to any other person under his control.

((4) If the articles of food are manufactured, stored or exhibited for sale at different premises situated in more than one local area, separate applications shall be made and a separate licence shall be issued in respect of such premises not falling within the same local area: Provided that the itinerant vendors who have no specified place of business, shall be licensed to conduct business in a particular area within the jurisdiction of the licensing authority.)

(5) Before granting a licence for manufacture, stock or exhibition of any of the articles of food in respect of which a licence is required, the licensing authority shall inspect the premises and satisfy itself that it is free from sanitary defects. The applicant for the licence shall have to make such alteration in the premises as may be required by the licensing authority for the grant of a licence:

(Provided that the licensing authority may for reasons to be recorded in writing, refuse to grant a licence, if it is satisfied that it is necessary to do so in the interest of public health.)

(6)***)

(7) Proprietors of hotels, restaurants and other food stalls (including mobile and itinerant food stalls) who sell or expose for sale savouries, sweets or other articles of food shall put up a notice board containing separate lists of the articles which have been cooked in ghee, edible oil vanaspati and other fats for the information of the intending purchasers.

(8)***)

(9) No licensee shall employ in his work any person who is suffering from infectious, contagious or loathsome disease.

(10) No person shall manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, urinal, sullage, drain or place of storage of foul and waste matter.

(11) All vessels used for the storage or manufacture of the articles intended for sale shall have proper cover to avoid contamination.

(12) Every manufacturer (including ghani operator) or wholesale dealer in butter, ghee, vanaspati, edible oils, and other fats shall maintain a register showing the quantity manufactured, received or sold and the destination of each consignment of the substances sent out from his manufactory or place of business, and shall present such register for inspection whenever required to do so by the licensing authority.

(13) An itinerant vendor granted a licence under these rules shall carry a metallic badge on his arm showing clearly the licence number, the nature of articles for the sale of which the licence has been granted, his name and address and the name, address of the owner, if any, for whom he is working. His containers of food and the vehicle shall also be similarly marked. In addition to the metallic badge the vendor shall, if so required by the State Government or the local authority, carry an identity card with his photograph and the number of the licence. The identity card shall be renewed every year:)

(Provided that the whole-time employees of the companies shall not be treated as itinerant vendors for the purpose of carrying a metallic badge on their arms or obtaining separate licences if an identity card containing particulars of the valid municipal licence is carried by them.)

(14) The nature of articles of food for the sale of which a licence is required under these rules shall be mentioned in the application for licence. Any objectionable, ambiguous or misleading trade name shall not be approved by the licensing authority.

(15) Every licensee who sells any food, shall display a notice board containing the nature of the articles which he is exposing or offering for sale."

Bare perusal of the rules suggests that no person is authorised to manufacture, sell, stock, distribute or exhibit for sale any article of food, including prepared food or ready to serve food or irradiated food except under a licence.

20. In the present case, as has been discussed above, it stands proved on record that on 4.6.2004, the accused was found selling in his hotel food articles to general public without having valid licence. Accused has nowhere disputed the aforesaid facts as set up by the complainant in their case. Only defence taken by the accused was that he was unable to produce the licence since it was under renewal but fact remains that even during trial, he failed to place on record any valid licence, if he had, qua the period when this inspection was carried out by the complainant. As has been noticed above Ext. DW1/A and documents Mark X and Y nowhere suggests that on 4.6.2004 accused was having valid licence to sell the food articles. Ext.DW1/B clearly suggests that an amount of Rs. 12,510/- was received by MC for the use of the premises for lodging and catering for the period 1.4.2005 to 31 3.2006. Close scrutiny of this document nowhere suggests that any kind of compounding fee for non-renewal of the licence was charged by the MC. Though, there is mention that it was valid up to 2006 but there is no mention with regard to date from which licence became effective. Hence, this court is unable to accept the contention put forth on behalf of the petitioner that he was having valid licence from 2001 to 2006. Rather, after perusing document Mark-Y at Page-27 of the record, this Court is convinced that accused was having a valid licence to use the premise for lodging and catering w.e.f. 4.6.2005 to 31.3.2006. Since accused on 4.6.2004 failed to produce any valid licence authorising him to sell the food articles, he was rightly challaned by the authority empowered under the Act in this regard. Rule 50 as reproduced above, clearly provides that the sale of articles mentioned therein without having valid licence and, as such for violation of Rule-50, petitioner rendered himself liable for the prosecution.

21. Section 16 of the Act provides for penalties for non compliance of the provisions contained in the act as follows:-

"16. Penalties-

(1) Subject to the provisions of sub-section (1-A) if any person-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of food-

(i) which is adulterated within the meaning of sub-clause (m) of clause (i-a) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or ~~◆◆◆◆?~~.

~~◆◆◆~~.. he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees: Provided that-

(i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of section 2; or

(ii) if the offence is under sub-clause (ii) of clause (a), but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1A) of section 23 or under clause (b) of sub-section (2) of section 24, ~~◆◆~~."

Section 16 (1) (a) of the Act clearly provides that if any person sells, stores article of food refers to in sub section (i) in contravention of any provisions of this Act or any rule made thereunder, shall be liable to be punished for imprisonment for a term which shall be less than six months and may further extend to three years.

22. In the present case, where it clearly stands proved on record that accused was selling food articles without having any valid licence as required under Rule 50 of the Act, courts below have taken very lenient view and despite holding accused guilty of having committed offence under Section 16 (1) (a) (ii) of the Act has convicted and sentenced him to suffer simple imprisonment till rising of the court and to pay fine of Rs. 500.

23. This Court, in view of the detailed discussion made herein above, does not see any reason to interfere, whatsoever, in the judgment passed by the courts below as same are correctly based upon the proper appreciation of evidence available on record. Accordingly, revision petition is dismissed.