(2012) 03 GAU CK 0012

Gauhati High Court

Case No: Criminal Rev. P. No. 235 of 2004

Debnarayan Shah		APPELLANT
	Vs	
State of Assam		RESPONDENT

Date of Decision: March 21, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Food Adulteration Act, 1954 - Section 11, 13(2), 14A, 16, 7

Citation: (2012) 3 GLD 235 : (2012) 2 GLT 933

Hon'ble Judges: Utpalendu Bikas Saha, J

Bench: Single Bench

Advocate: T.J. Mahanta, for the Appellant; B.S. Sinha, Advocate Addl. PP., for the Respondent

Final Decision: Dismissed

Judgement

U.B. Saha, J.

The instant revision petition is filed by the petitioner for setting aside the judgment dated 17.06.2003 passed by the learned Addl. Sessions Judge, Jorhat in Criminal Appeal No. 19 of 2002 wherein the learned Addl. Sessions Judge, Jorhat upheld the judgment dated 14.03.2002 passed by the learned Chief Judicial Magistrate, Jorhat in CR Case No. 160/ 1999 convicting the petitioner u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for shot, "PFA Act") and sentenced him to suffer RI for a period of six months with a fine of Rs. 1,000/- i.d. to undergo further RI for two months. Heard Mr. TJ Mahanta, learned counsel for the accused-petitioner as well as Mr. BS Sinha, learned Addl. PP for the State.

2. Brief facts of the prosecution case are as follows:-

That on 01.04.1999 at about 11.00 a.m. Sri M Bhuyan, Food Inspector, PW 1, visited the grocery shop owned by the accused petitioner for the purpose of inspection of food items kept there for sale for human consumption. The said Food Inspector, PW

1 was accompanied by Sri Joyanta Bora, Peon, PW 2. Accused petitioner, owner of M/S Raju Stores, Jorhat was present at his shop at the time of visit of PW 1. P W 1, Food Inspector as per the requirement of law disclosed his identity to the petitioner and also informed him the purpose of his visit. On inspection, he suspected the quality of turmeric powder being stored in the shop of the petitioner for sale for human consumption and as such observing all the necessary formalities he purchased 450 gms of turmeric powder and paid the price thereof to the petitioner. After doing all the needful,, he sent a part of the sample so taken from the shop of the petitioner vendor to the Public Analyst, Govt. of Assam for chemical analysis and for the opinion regarding the quality of such sample.

3. The Chemical Analyst, Govt. of Assam performed chemical examination on such sample and opined that the sample of turmeric powder sent to him by the Food Inspector was adulterated. He further submitted a report in required number to the Joint Director of Local Health Authority, Jorhat. On receipt of such report, PW 1, Food Inspector observing all the formalities as required under the provisions of PFA Act and the Rules made there under filed a case against the petitioner and also got a notice u/s 13(2) of the PFA Act along with a report of the Public Analyst served upon the petitioner. On receipt of the said notice, the accused-petitioner herein, appeared before the Court and applied for getting a part of sample of turmeric powder kept in the custody of the local health authority examined by the Central Food Laboratory, Gaziabad. The Court on accepting such prayer and after observing the rules and procedures prescribed in that regard sent a part of the sample to the Director, Central Food Laboratory for chemical analysis.

4. On such analysis, the Director, Central Food Laboratory reported that:

the sample does not conform to the standard of turmeric powder laid down in Item No. A.05.20.01 of Appendix ''B'' of the PFA Rules (1955). In that (a) as insoluble in Oil.Hcl. is more that maximum prescribed limit, (b) the sample shows presence of oil soluble coaltar dye and rice starch is present along with turmeric structure. The sample thus adulterated."

5. After appearance of the accused before the learned trial, the Court explained the allegations made against him which constituted an offence u/s 16 read with Section 7 of the PFA Act and the petitioner while pleaded not guilty, claimed to be tried. The Court ultimately framed charge u/s 16 read with section 7 of the aforesaid Act.

6. To prove the case, prosecution examined two witnesses namely, the complainant Sri M. Bhuyan, Food Inspector, Jorhat as PW 1 and Joyanta Bora, Peon of the Joint Director, Health Services as PW 2.

7. Prosecution also produced certain documents which were exhibited and marked as MAT exhibit 1 to MAT exhibit 17. On completion of the recording of evidence the petitioner was examined u/s 313 CrPC and after hearing the arguments of the learned counsel for the parties, the learned trial court held the accused guilty of

offence u/s 16 read with Section 7 of the PFA Act and convicted him under the aforesaid sections and sentenced him to suffer RI for six months with a fine of Rs. 1,000/- i.d. to suffer further RI for two months.

8. Being aggrieved by the aforesaid order of conviction and sentence passed by the learned trial court, the petitioner preferred an appeal before the learned Addl. Sessions Judge, Jorhat wherein the learned Addl. Sessions Judge after hearing the parties upheld the order of conviction and sentence passed by the learned trial court.

9. As the petitioner is not satisfied with the judgment and order of the learned trial court as well as the appellate court, he has preferred the instant revision petition.

10. Mr. Mahanta, learned counsel for the petitioner submits that while the alleged adulterated turmeric powder was purchased by PW 1, he had followed the procedure prescribed in the statute u/s 11 of the PFA Act but he did not ask any question to the petitioner as to from whom he had purchased the turmeric powder, which was purchased by the Food Inspector. Thus, the Food Inspector violated the provisions of Sections 14A of the PFA Act and for which itself the entire prosecution case has to be disbelieved and consequent thereto the impugned judgment has to be set aside. He further submits that though the suspected turmeric powder was sent to the Director of Central Food Laboratory for examination but the report of the said laboratory was not provided to the petitioner and on that count also the prosecution failed to prove its case.

11. Mr. Sinha while supporting the impugned judgment passed by the learned trial court as well as the appellate court would contend that the court below have not committed any wrong while convicting the petitioner, who was the accused before them. He further submits that provisions of Section 14A do not cast any duty on the Food Inspector, rather the said provision casts a duty on the vendor of an article of food, who shall, if felt necessary, disclose to the Food Inspector the name and address of the person concerned from whom he purchased the article of food. In the instant case, the petitioner did not do so and not only that, the petitioner also did not examine any of the witnesses to dispute the case of the prosecution including the Director of Central Food Laboratory, from where the suspected turmeric powder was analyzed which does not conform to the standard as laid down in Item No. A. 05.20.01 of the Appendix ''B'' of the PFA Rules (1955). Thus it would be proper for this Court not to interfere with the judgment passed by the court below.

12. He further contended that even while the trial court was examining the petitioner u/s 313 CrPC a specific question was put to him, inter alia, that whether after purchasing the turmeric, he crushed the same in his own mill for selling the same to the consumer but the petitioner simply denied the said question without providing any specific answer as to from whom he had purchased the suspected turmeric. Thus, it cannot be said that the petitioner was not provided with any

opportunity to explain from where he had purchased the suspected turmeric.

13. This Court has gone through the deposition of PW 1, Food Inspector who has specifically stated that on 01.04.1999 he along with Joyanta Bora, PW 2 visited a grocery shop situated at Duccapatty, Kabarsthan Road, Jorhat and met accused Sri Debnarayan Shah in that shop, who ultimately identified himself as the proprietor of that shop. PW 1 also disclosed his identity and informed the purpose of his visit to the accused and expressed his desire to take sample from the food stuff which the accused had kept there for sale for human consumption and on such inspection, PW 1 on suspicion purchased 450 gms to turmeric powder at the cost of Rs. 13/- which was paid to the vendor and obtained a receipt in that regard vide exhibit 2. Not only that, after doing all this things, he also divided the sample of turmeric powder purchased from the shop of the accused vendor into three equal parts as required under law and put each part in clean, transparent and new polythene bag and all the polythene bags were then closed tightly with a thread and each polythene bag was deposited in three different dry cleaned and new plastic container and he closed the mouth thereof by lids. Thereafter, he packed it as per procedure prescribed and also obtained signature of the accused vendor thereon and returned to his office taking all those samples with him and ultimately on 03.04.1999 prepared 5 memoranda and sent one part of sample along with the copy of the memorandum to public analyst with a forwarding letter to get the sample examined and report, which was marked as exhibit 3 and 4 respectively.

14. It appears from the evidence of PW 1 that he tried his level best to get some witnesses from the shop of the petitioner itself, but as none of them were interest to be an witness he had no other option except to try to get some other person from the nearby place but he failed and ultimately PW 2 was considered to be an witness of seizure of the suspected turmeric powder.

15. It further appears that the PW 1, Food Inspector has followed the provisions of the PFA Act as well as the Rules made there under, while purchasing the suspected turmeric powder from the shop of the petitioner in his presence.

16. This Court is unable to accept the submission of Mr. Mahanta that Section 14A of the PFA Act casts duty on the Food Inspector, PW 1 to know from the accused petitioner from whom he has purchased the suspected turmeric powder. Rather, according to this Court, the submission of Mr. Sinha has some force, as by this time it is settled, that duty is cast on the vendor who is selling the food articles, to disclose his source of supply to the Food Inspector.

17. It is also settled that when a vendor is faced with some difficulty he can establish his innocence by producing the necessary papers before the Food Inspector to prove his innocence, which is totally absent in the instant case.

18. In view of the above, it would not be proper for this Court to set aside the impugned judgment passed by the learned appellate court upholding the judgment

of the learned trial court. In the result, the appeal is dismissed and the order passed by the court below is affirmed.