

(2011) 05 GAU CK 0034

Gauhati High Court

Case No: Criminal Revision No. 378 of 2003

Shri Biman Ghosh and Shri
Haripada Ghosh

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision: May 10, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Food Adulteration Act, 1954 - Section 10(7), 16, 7
- Prevention of Food Adulteration Rules, 1955 - Rule 9

Citation: (2011) 4 GLT 129

Hon'ble Judges: B.D. Agarwal, J

Bench: Single Bench

Advocate: J.M. Choudhury and D. Talukdar, for the Appellant; B.S. Sinha, Addl. P.P. Assam, for the Respondent

Final Decision: Allowed

Judgement

B.D. Agarwal, J.

The Petitioners herein have been convicted u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to in short as, "the PFA Act.") and they have been sentenced to undergo simple imprisonment for 6 (six) months and pay fine of Rs. 1,000/- (Rupees one thousand), in default further simple imprisonment for 2 (two) months vide impugned judgment and order dated 8.1.2003, passed by the learned Chief Judicial Magistrate, Darrang, Mangaldoi in C.R. Case No. 265 of 1998. The said judgment has been affirmed by the learned Sessions Judge, Darrang, Mangaldoi, vide judgment and order dated 7.4.2003 passed in Criminal Appeal No. 8(D-1) of 2003. Being aggrieved with the conviction, the convicts preferred this revision application.

2. Heard Mr. J.M. Choudhury, learned senior counsel assisted by Mr. D. Talukdar, learned Counsel for the Petitioners as well as Mr. B.S. Sinha learned Addl. P.P. for the State Respondent/ opposite Party. I have also perused the impugned judgment and the trial court's records.

3. The prosecution case is that the Petitioner No. 1, Shri Biman Ghosh is the Manager of a grocery shop namely, M/s. Gosh Brothers, Karimchowk, Mangaldoi and Petitioner No. 2, Shri Debesh Ghosh is the owner of the firm. It is also the prosecution case that on 6.2.1998, one Food Inspector took sample of "BESAN" from the shop of the Petitioners and after chemical analysis, it was found that the sample of the article, stored in the grocery shop for sale, was found mixed with khesali flour. The Food Laboratories opined that the stored article in the shop was adulterated. After adopting necessary formalities, the Petitioners were prosecuted and after trial, they have been convicted.

4. The impugned judgments have been challenged basically on the ground that the prosecution failed to prove that the Petitioner No. 2, Shri Debesh Ghosh was the owner of M/s. Ghosh Brothers by giving any legally admissible evidence and as such his conviction is unsustainable on facts. In support of this submission, the learned Counsel for the Petitioners relied upon the judgment of Gauhati High Court in the case of *Jitmal Maheswari and Ors. v. State of Assam*, reported in (1993) 1 GLR 397.

5. The impugned judgments have also been challenged on the ground that the Food Inspector failed to call any independent witness as required u/s 10(7) of the PFA Act. In support of this submission, the learned Counsel for the Petitioners also relied upon the judgment of Hon'ble Supreme Court, rendered in the case of [Shri Ram Labhaya Vs. Municipal Corporation of Delhi and Another](#),

6. With regard to proof of the identity of the accused and his relation with the firm, carrying on business in food articles, has to be established as a pre-condition. This is the minimum requirement before any criminal prosecution is initiated under the aforesaid law.

7. In the case before me, the Food Inspector (PW 1) has admitted the fact that Shri Debesh Ghosh was not present in the shop at the time of collecting sample. According to PW 1, the name of Shri Debesh Ghosh as the proprietor of the firm was disclosed by the Manager and on the basis of this disclosure, the Petitioner No. 2 was prosecuted. In my considered opinion, the oral information of the Manager was not enough to prosecute Petitioner No. 2. In other words, the prosecuting Food Inspector did not bother to ascertain the name of the proprietor of the shop from any statutory authority nor any documentary evidence was seized from the shop to establish the relation of the Petitioner No. 2 in the business. It may be mentioned here that the said accused had denied being the owner of the shop, while giving statement u/s 313 Code of Criminal Procedure. Consequently, the Petitioner No. 2 is entitled to be acquitted on this ground alone.

8. Coming to the next question of compliance of Section 10(7) of the PFA Act, observations of the Hon"ble Supreme Court given in the case of Shri Ram Labhaya (supra) is necessary to be looked into and for ready reference, the said observations are extracted herein below:

5. We are of the opinion, particularly in view of the legislative history of Section 10(7), that while taking action under any of the provisions mentioned in the Sub-section, the Food Inspector must call one or more independent person to be present at the time when such action is taken. We are, however, unable to agree that regardless of all circumstances, the non-presence of one or more independent persons at the relevant time would vitiate the trial or conviction. The obligation which Section 10(7) casts on the Food Inspector is to "call" one or more persons to be present when he takes action. The facts in the instant case show that the Food Inspector did call the neighboring shopkeepers to witness the taking of the sample but none was willing to cooperate. He could not certainly compel their presence. In such circumstances, the prosecution was relieved of its obligation to cite independent witness. In Babu Lal Harvogindas v. State of Gujarat it was held by this Court after noticing that Section 10(7) was amended in 1964, that non-compliance with it would not vitiate the trial and since the Food Inspector was not in the position of an accomplice his evidence alone, if believed, can sustain the conviction. The Court observed that this ought not to be understood as minimizing the need to comply with the salutary provision in Section 10(7) which was enacted as a safeguard against possible allegations of excesses or unfair practices by the Food Inspector.

9. It would also be proper to reproduce Section 10(7) of the PFA Act, 1954 as well as Rule 9(e) of the PFA Rules, 1954 for effective disposal of this revision application. The aforesaid provisions of law are reproduced herein below:

10. Powers of the Food Inspectors

(7) Where the food inspector takes any action under Clause (a) of Sub-section (1), Sub-section (2), Sub-section (4) or Sub-section (6), he shall [call one or more persons to be present at the time when such action is taken and take his or their signatures.]

9. Duties of Food Inspector....

(e) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the health officer or the Food (Health) Authority as directed in his behalf;

10. In the case before me, the Food Inspector (PW-1) has admitted in the cross examination that in the Inspection Report (Ext. 15), he has not mentioned about the calling of independent witnesses. The Apex Court has observed that the salutary provision of Section 10(7) is a safeguard against the possible excesses or unfair

practices by the Food Inspector. Hence, non-observance of the same in full spirit casts a doubt on the fair prosecution of the accused Petitioners.

11. With the foregoing reasons, the impugned judgments are hereby set aside.

12. In the result, the revision petition is allowed.