

Naresh Chandra Dutta @ Naresh Dutta Vs State**C.R.R. No. 2863 of 1998**

Court: Calcutta High Court**Date of Decision:** April 1, 2004**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 360, 401, 482#Prevention of Food Adulteration Act, 1954 â€” Section 10(7), 16(1), 2, 2(1), 20#Prevention of Food Adulteration Rules, 1955 â€” Rule 17, 18

Citation: (2005) 2 CHN 324**Hon'ble Judges:** Sadhan Kumar Gupta, J**Bench:** Single Bench

Advocate: Biplab Mitra, Subimal Nag and Debabrata Acharya, for the Appellant; R.N. Chakraborty and Swapan Kumar Mallick, for the Respondent

Final Decision: Dismissed

Judgement

Sadhan Kumar Gupta, J.

This revisional application has been preferred under Sections 401 and 482 of the Cr. PC. The case of the

petitioner is that Case No. 561C of 1995 was started against the petitioner on the basis of a complaint filed by the local Health Authority, Sadar

Sub-Division Nadia alleging therein that on 17.5.1995 one Debashish Ray, Food Inspector along with one Mohan Ghosh went to the godown of

the petitioner situated at Lichu Bazar, Bethuwadahari and found that the petitioner was selling food articles like musuri dal etc. Being suspicious that

the said musuri dal was adulterated, the Food Inspector after serving a notice upon the petitioner purchased 7.50 gms of asto musuri dal and paid

price of Rs. 7.50. The accused/petitioner issued a voucher for that. Thereafter the Food Inspector in presence of the accused and the witness

sealed the said musuri dal after observing the legal formalities. The sealed packet was sent to the local Health Authority. The Public Analyst on

examination of the sample expressed his opinion that the sample of asto musuri dal was adulterated. The Food Inspector thereafter sent a copy of

the analysis report to the accused/petitioner giving him an option to get it re-examined and the said notice was duly served upon the

accused/petitioner. On the basis of the complaint, cognizance was taken and process was issued against the accused/petitioner. During trial, charge

u/s 16(1)(A)(i) read with Section 7(i) of the Food Adulteration Act was framed against the accused. Charge was read over and explained to the

accused who pleaded not guilty and claimed to be tried. Prosecution has examined, during trial, the P.W. 1 the Food Inspector, Debasish Ray and

P.W. 2 Mohan Ghosh. After conclusion of the trial the learned Magistrate found the accused/petitioner guilty for the said charge and convicted and

sentenced him to suffer Rigorous Imprisonment for one year and to pay a fine of Rs. 2000/- i.d. to suffer further R.I. for 100 days. The petitioner

preferred an appeal being Criminal Appeal No. 12 of 1996 before the learned Sessions Judge, Nadia against the said order of conviction. The

learned Additional Sessions Judge, 3rd Court, Nadia to whom the appeal was transferred, by his order dated 17.11.1998 dismissed the appeal

and confirmed the order of conviction as passed by the learned Magistrate. Being aggrieved and dissatisfied with the said judgment of the learned

Additional Sessions Judge, the petitioner has preferred the present appeal on the ground that the petition of complaint was not filed after obtaining

proper sanction of the appropriate authority and the local authority simply gave his approval for filing the complaint without applying his mind. In

fact, it has been alleged that the said authority did not independently consider the materials placed before him and he mechanically appended his

signature in the prescribed form which is clear violation of Section 20 of the Food Adulteration Act and as such the petitioner has claimed that the

cognizance, as taken by the learned Magistrate, is bad in law.

2. It has further been alleged by the petitioner that there has been non-compliance of the provisions of Section 10(7) of the Food Adulteration Act

as it appears from the record that none was called by the Food Inspector to be present at the time of the taking of sample. The petitioner has

further claimed that there is non-compliance of Rules 17 and 18 and as such the learned Courts below were not justified in passing the order of

conviction. The petitioner has further claimed that the learned Court below was not at all justified in not considering the case of the petitioner as per

provisions of Section 360 Cr. PC while imposing the sentence.

3. As such, due to all these reasons the petitioner has prayed that the order of conviction as passed by the Courts below against the petitioner

should be set aside.

4. It is the admitted position that the petitioner was convicted by the learned Magistrate and the said order of conviction was also confirmed by the

judgment passed by the learned Additional Sessions Judge, Nadia. The petitioner has challenged the said order of conviction by filing the present

revisional application u/s 482 of the Cr. PC. The scope of the revisional application in respect of the present petition is certainly very limited. There

is practically little scope for the Revisional Court to look into the entire evidence that has been adduced before the Court below. Unless and until

the judgment, as passed by the learned Court below, appears to be perverse or that there is material illegality apparent on the face of the record, it

is difficult for a Revisional Court to interfere into the findings as given by the learned Court below. Be that as it may, let us now see how far the

petitioner has been able to show that the order of conviction as passed against him by the learned Magistrate as well as by the learned Additional

Sessions Judge, is perverse in nature and there is material illegality in it. In order to substantiate this claim, the petitioner in the revisional application

has challenged the order of conviction on several grounds.

5. First of all the petitioner has claimed that there is violation of the provisions of Section 20 of the Prevention of Food Adulteration Act as the

written consent of the appropriate authority was not obtained before the institution of the case and as such, according to the petitioner the

cognizance as taken by the Court on the basis of such a written complaint is certainly bad in the eye of law and so the prosecution is liable to be

dismissed. But the learned Courts below rejected this contention after assigning reasons thereof. I have also perused the petition of complaint. It

appears that there is sufficient indication in it that the appropriate authority gave consent in launching the prosecution against the accused petitioner.

There is nothing illegal in it. So I fully agree with the finding of the learned Court below in this respect.

6. Secondly, the petitioner has claimed that the order of conviction is bad as Section 10(7) was not followed by the Food Inspector as the seizure

and the taking of sample was not made in presence of the independent witnesses. If we look into the evidence of the Food Inspector then it will

appear that he has claimed that although there were some independent persons present at the time of the seizure, but those persons were not

willing to sign as witnesses in the seizure memo or in the other relevant documents. He has claimed that due to this he had to take the signature of

the P.W. 2 who at that time accompanied him. If we look into the provisions of Section 10(7) of the Act then it will appear that the Food

Inspector is obliged only to call one or some independent persons to be present when he takes the action in question. If independent persons

available, did not care to oblige him in spite of his call, he cannot be said to have violated Section 10(7). The duty is only to make an earnest

attempt in getting independent witnesses. If that earnest attempt did not succeed on account of refusal of independent persons, it cannot be said

that Section 10(7) is violated. As such, I find no merit in respect of this contention and the same is rejected.

7. Thirdly, it has been contended in the revisional application that there is non-compliance of Rules 17 and 18 by the Food Inspector at the time of

despatching the contents of samples. But if we look into the evidence of the P.W. 1, then it will appear that he has claimed that those provisions

were complied and the learned Courts below were of the opinion that there was no justification for disbelieving the said statement of the P.W. 1 in

this respect. In absence of any material to the contrary, I am inclined to agree with the decision of the learned Courts below in this respect.

8. Fourthly, it has been contended in the revisional application that the learned Court below instead of sentencing the petitioner should have dealt

him as per provisions of Section 360 of the Cr. PC. Admittedly it is an economic offence of serious nature involving the health of the public at

large. The learned Court below took into consideration of those aspects and thereafter refused to deal the petitioner as per Section 360 of the Cr.

PC. I find nothing illegal in the order as passed in this respect. So this contention is rejected.

9. Lastly, although this point was not taken in the revisional application, still the learned Advocate for the petitioner at the time of argument

contended that in the report of the public analysts there is no mention that the sample, as examined by him, was unfit for human consumption and as

such, the learned Advocate for the petitioner argued that on the basis of such report it was not proper for the Courts below to convict the accused

petitioner. It is the admitted position that it is the case of the prosecution that the accused/petitioner was selling asto musuri dal and it was

adulterated in nature. The definition "adultery" has been provided u/s 2(ia)(f). It has been stated therein:

Adulterated -- an article of food shall be deemed to be adulterated--

(f) If the article consists whole or in part of any filthy, putrid, rotten, decomposed diseased animal or vegetable substance or is insect - infested or

is otherwise unfit for human consumption.

On the basis of this definition we are to consider the report of the Public Analyst. Said report has been marked as Exhibit-7. It appears from the

said report that the Public Analyst clearly observed that there were plenty of living and dead insects in the sample and the said sample is

adulterated with damaged grain with living and dead insects. The opinion of the Public Analyst has not been challenged, in any way. As such, it

appears that the Public Analyst has clearly opined after scientifically examining the sample that the sample as sent to him for analysis was

adulterated in nature. To my mind, said opinion of the Public Analyst is sufficient to prove that the sample in question which was taken from the

shop of the accused was adulterated within the meaning of Section 2(ia)(f) of the Prevention of Food Adulteration Act. Learned Advocate for the

petitioner cited two decisions reported in Municipal Corporation of Delhi Vs. Kacheroo Mal, and State (Delhi Administration) Vs. Puran Mal, In

the latter decision, the decision as cited in Municipal Corporation of Delhi Vs. Kacheroo Mal, was considered. As such, for our purpose it will be

sufficient if we look into the decision as reported in State (Delhi Administration) Vs. Puran Mal, In this decision the Hon"ble Supreme Court

considered the entire aspect regarding the factors which should be taken into consideration for holding whether the sample in question was

adulterated or not. If we look into the fact of the case which were there in the decision quoted above, then it will appear that on analysis by the

Public Analyst it was found that the sample contained living meal worms. There was no other evidence in support of the case of the prosecution

that the Lal mirchi powder was adulterated. In para 13 of the said decision it has been decided by the Hon"ble Supreme Court like this:

Even if the nine worms found by the Public Analyst in the sample are considered to be insects, the certificate of the Public Analyst does not

support the case of the prosecution that the lal mirchi powder was adulterated, for the Public Analyst has not expressed his opinion that the lal

mirchi powder was either worm-infested or insect-infested or that on account of the presence of the meal-worms the sample was unfit for human

consumption. Therefore, I am of opinion that the prosecution has not established by any satisfactory evidence requirement of Section 2(1)(f) of the

Act. Consequently, no interference is called for with the judgment of the High Court which, as stated above, has dismissed the criminal revision in

limine. The appeal is accordingly dismissed.

So it appears that the case which was before the Hon"ble Supreme Court was that the report of the Public Analyst simply showed that there were

nine living meal-worms in the sample. As there was no other evidence in support of the prosecution that the sample was an adulterated one, so the

Hon"ble Supreme Court was of the opinion that on the basis of the said report it could not be held that the sample was adulterated within the

meaning of the section. It has been held in the said decision by Ranganath Misra J., at para 14 like this:

In my opinion, the true meaning of Section 2(ia)(f) has been brought out in Municipal Corporation of Delhi Vs. Tek Chand Bhatia, and the

conclusion that "it would not be necessary in such a case to prove further that the article of food was unfit for human consumption is a correct

statement of the law.

10. So, it appears that it is the view of the Hon"ble Supreme Court that when there is clear opinion of the Public Analyst that the article was

adulterated then it is not necessary to prove further that [the article of food was unfit for human consumption, as claimed by the learned Advocate

for the petitioner. Section 2(ia)(f) has given clear description of the articles which are to be declared as adulterated, One of them is the finding that

it was otherwise unfit for human consumption. It does not mean that the Public Analyst is duty-bound to mention in his report that the sample which

he analysed was unfit for human consumption. In the report in question, I have already pointed out that the said sample contained huge number of

living and dead insects and the Public Analyst was of clear opinion that the sample was adulterated. The main question that is to be decided on the

basis of the Public Analyst's report is whether the article seized was "adulterated" or not. Public Analyst in his report has clearly opined that on

examination he found the article in question to be "adulterated". As such, question of giving further opinion as to whether the said article was fit for

human consumption or not does not arise at all.

11. As such, I am of opinion that it has been clearly established by the prosecution that the accused/petitioner was guilty of selling adulterated food

stuff and as such the learned Courts below was perfectly justified in convicting the accused/petitioner for the violation of the said provision.

Considering all these things, I am of opinion, that there is no scope for this Court to interfere with the findings of the learned Courts below and to

my mind present revisional application has got no merit at all. In the result, the revisional application is dismissed. The judgment of the learned

Additional Sessions Judge, which has confirmed the judgment of the learned Magistrate, is hereby affirmed. Accused/ petitioner is directed to

surrender before the learned Court below immediately to serve out the sentence.

12. Send a copy of the judgment along with the Lower Court Record to the learned Court below immediately for taking necessary further action.

13. Xerox certified copy, if applied for, may be handed over to the party on, urgent basis.