
(2014) 06 CHH CK 0018

Chhattisgarh High Court

Case No: Criminal Revision No. 13 of 2004

Roopchand Patel

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision: June 26, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401, 437A
- Prevention of Food Adulteration Act, 1954 - Section 10, 11, 13, 13(2), 14A

Citation: (2014) 4 CGLJ 163 : (2014) CriLJ 4840 : (2015) 1 Crimes 744 : (2015) 1 MPJR 5

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: A.N. Bhakta and Vivek Bhakta, Advocate for the Appellant; Vivek Singhal and R.R. Sinha, Panel Lawyers, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sanjay K. Agrawal, J.

1. Invoking the revisional jurisdiction of this Court under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (henceforth "CrPC"), the instant revision has been filed by applicant Roopchand Patel calling in question the impugned judgment affirming his conviction for offence under Section 7(i) of the Prevention of Food Adulteration Act, 1954 (henceforth "the Act, 1954") which is punishable under Section 16(1)(a) of the Act, 1954. The core facts required for judging the correctness of the impugned judgment are as under:

"(2.1) On 28-5-1997, at 9 A.M., Food Inspector P.D. Pandey (PW-3), after giving notice in writing to the applicant, who was a milk vendor, purchased 750 milliliters of cow-milk by making payment of Rs. 6 and thereafter dividing the sample then and there in three parts and sealing them after mixing formalin 20 drops of each of the three bottles after leveling

them and obtained the signature of the milk vendor/applicant and prepared a Panchnama also and thereafter sent to the public analyst, Bhopal for chemical examination on 29-5-1997 by registered parcel and kept two other samples in the office of Local Health Authority, Raigarh. The Public Analyst, Bhopal sent his report to the Local Health Authority, Raigarh vide letter dated 17-7-1997 received to him on 22-7-1997. The public analyst in his report found the milk adulterated as the milk was having only 3.5% fat and was having 8.04% solid not fat (Ex.P-13), as it was not confirming the standard laid down under the Act, 1954 and the rules made thereunder. The sanction for prosecution was obtained from the competent authority under Section 20(1) of the Act, 1954 on 22-9-1997 and the charge-sheet was filed before the jurisdictional criminal Court on 29-11-1997 and report of the Public Analyst was sent to the applicant in accordance with Section 13(2) of the Act, 1954 by registered post to the applicant on 2-12-1997.

(2.2) The applicant abjured the guilt and pleaded that the prosecution case is out and out false and he has been falsely implicated in the case.

(2.3) During the course of trial, in order to bring home the offence, the prosecution examined three witnesses and exhibited seventeen documents. Whereas, the defence neither examined any witness nor brought any document on record."

2. The trial Magistrate, after appreciating the oral and documentary evidence on record, placing reliance on the report of the Public Analyst finding the cow-milk sold by the applicant adulterated, which is violation of Section 7(i) of the Act, 1954 punishable under Section 16(1)(a) of the Act, 1954 convicted the applicant for the aforesaid offence and sentenced him to undergo rigorous imprisonment for 6 months and to pay fine of Rs. 1,000.

3. On appeal filed by the applicant, the Court of Session/appellate Court maintained not only the conviction but also the sentence finding the conviction and sentence in order against which this revision has been preferred as mentioned in opening paragraph.

4. Shri A.N. Bhakta, learned counsel appearing for the applicant would submit that both the Courts below are absolutely unjustified in convicting the applicant for the aforesaid offence holding that the applicant is guilty for the offence under Section 7(i) of the Act, 1954. Relying upon Section 11 of the Act, 1954, he would submit that the prosecution has failed to bring home the offence by demonstrating that before taking the sample of cow-milk from the bulk milk the said milk was thoroughly mixed the milk either by stirring it with a long handle dipper or by pouring it with one vessel or other or by shaking it gently and the prosecution has further failed to show so that the milk has no globules or bubbles when the sample was taken. Thus, the entire prosecution case has vitiated on account of non-compliance of Section 11 of the Act, 1954. Therefore, the judgment of conviction recorded and sentence awarded deserves to be set aside.

5. Shri Vivek Singhal, learned Panel Lawyer appearing for the State/non-applicant, opposing the submission made on behalf of the applicant, would submit that the concurrent finding recorded by the two Courts below holding that the prosecution has sufficiently proved the offence under the above-noted offence is a finding of fact and the concurrent finding is not so perverse or arbitrary requiring interference by this Court in its revisional jurisdiction.

6. I have heard learned counsel appearing for the parties and considered the rival submissions made therein and have also perused the record with utmost circumspection.

7. In order to appreciate the point raised, it will be proper and profitable to notice Section 11 of the Act, 1954 which provides the procedure to be followed by a Food Inspector while taking sample which reads as under:

"11. Procedure to be followed by food inspectors.--(1) When a food inspector takes a sample of food for analysis, he shall--

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed under section 14A;

(b) except in special cases provided by rules under this Act, divide the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed :

Provided that where such person refuses to sign or put his thumb impression the food inspector shall call upon one or more witnesses and take his or their signatures or thumb impressions, as the case may be, in lieu of the signature or thumb impression of such person;

(c) (i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority; and

(ii) Send the remaining two parts to the Local (Health) Authority for the purposes of sub-section (2) of this section and subsections (2A) and (2E) of section 13.

(2) Where the part of the sample sent to the public analyst under sub-clause (i) of clause (c) of sub-section (1) is lost or damaged, the Local (Health) Authority shall, on a requisition made to it by the public analyst or the food inspector despatch one of the parts of the sample sent to it under sub-clause (ii) of the said clause (c) to the public analyst for analysis.

(3) When a sample of any article of food or adulterant is taken under sub-section (1) or sub-section (2) of section 10, the food inspector shall, by the immediately succeeding

working day, send a sample of the article of food or adulterant or both, as the case may be, in accordance with the rules prescribed for sampling to the public analyst for the local area concerned.

(4) An article of food seized under sub-section (4) of section 10, unless destroyed under sub-section (4A) of that section, and any adulterant seized under sub-section (6) of that section shall be produced before a magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst:

Provided that if an application is made to the magistrate in this behalf by the person from whom any article of food has been seized, the magistrate shall by order in writing direct the food inspector to produce such article before him within such time as may be specified in the order.

(5) If it appears to the magistrate on taking such evidence as he may deem necessary--

(a) that the article of food produced before him under sub-section (4) is adulterated or misbranded, he may order it-

(i) to be forfeited to the Central Government, the State Government or the local authority, as the case may be; or

(ii) to be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food; or

(iii) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name; or

(iv) to be returned to the owner, on his executing a bond with or without sureties, for being sold under its appropriate name or, where the magistrate is satisfied that the article of food is capable of being made to conform to prescribed standards for human consumption after reprocessing, for being sold after reprocessing under the supervision or such officer as may be specified in the order;

(b) that the adulterant seized under sub-section (6) of section 10 and produced before him is apparently of a kind which may be employed for purposes of adulteration and for the possession of which the manufacturer, distributor or dealer, as the case may be, is unable to account satisfactorily, he may order it to be forfeited to the Central Government, the State Government or the local authority, as the case may be.

(6) If it appears to the magistrate that any such--

(a) article of food is not adulterated; or

(b) adulterant which is purported to be an adulterant is not an adulterant,

the person from whose possession the article of food or adulterant was taken shall be entitled to have it restored to him and it shall be in the discretion of the magistrate to award such person from such fund as the State Government may direct in this behalf, such compensation not exceeding the actual loss which he has sustained as the magistrate may think proper."

8. It is apt to notice Rule 14 of the Prevention of Food Adulteration Rules, 1955, which provides as under:

"14. Manner of sending sample for analysis.--Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and shall be carefully sealed."

9. After noticing the aforesaid legal provisions coming back to the manner in which sample was taken by the Food Inspector, it would appear that vide Ex.P-1 notice was given and for taking the cow-milk from the applicant i.e. 750 millilitres and thereafter vide Ex.P-2 Rs. 6 was paid to him and thereafter Panchnama vide Ex.P-3 was prepared. A perusal of the Panchnama would show that the applicant, who was a cow-milk vendor, was carrying 15 litres of cow-milk in a container out of which on notice and payment of Rs. 6, 750 millilitres was purchased by the Food Inspector and thereafter it was sealed, leveled, formalin was mixed. The Panchnama nowhere states that the Food Inspector, before taking the sample of cow-milk was thoroughly mixed it either by one vessel to other or by shaking it gently or it nowhere records that on milk had no globules or bubbles before the sample was taken. Not only this, the said Food Inspector P.D. Pandey who was examined as PW-3 nowhere states that the Food Inspector while taking the sample of milk, the milk was thoroughly mixed either by stirring or any other means so as to it can be said to be the representative sample. It was the imperative duty of the Food Inspector while taking the sample and to bring evidence on record to show that the cow-milk was thoroughly stirred before taking the sample and sent to the Public Analyst for examination in order to make it homogeneous as the Food Inspector had obtained the sample of milk from the container in which the applicant had 15 litres of milk. Thus, the Food Inspector obtained the sample of milk from the bulk milk kept in the container of 15 litres without stirring it and without making homogeneous so that the sample in order to make the sample truly represent the milk to be tested. Reference in this connection may be made to a book "A Laboratory Manual of Milk Inspection" by A.C. Aggarwala and B.M. Sharma, Fourth Edition, 1961, wherein guidelines have been laid down for careful and accurate sampling of milk. The learned authors observed as follows at page 115 of the said book:--

"General Sampling :

The careful and accurate sampling of milk is of utmost importance in all analyses of milk. Probably more errors are caused through careless preparation of samples than in the actual performance of the tests. The most important thing to bear in mind in this

connection is that the whole. body of milk from which a sample is to be drawn should be uniform throughout in its composition, and any sample of milk drawn out of it for analysis must necessarily be a true representative of the whole body of milk. The factors disturbing the uniformity of composition of milk are mainly the separation and partial churning of fat. Thorough mixing of milk must first be ensured either by stirring with a long handled dipper if the container is big, or by pouring from one vessel to another or by shaking gently."

10. In *K. Harikumar, S/o. Karunakaran Nair v. Food Inspector, Punaloor Municipality* 1995 Supp (3) SCC 405, their Lordships of the Supreme Court while emphasizing the legal requirement of stirring to be performed before taking representative sample held as under:

"In order to attain homogeneity in curds stirring and churning, as the case may be, becomes necessary for the ingredients of milk solid non fat and milk solid fat getting a uniform consistency in order to determine the percentage in their completeness."

11. In light of Section 11 of the Act, 1954 and the law laid down by the Supreme Court in the aforesaid case (supra) and in view of the guidelines laid down for careful and accurate sampling of milk by learned authors A.C. Aggarwala and B.M. Sharma in the aforesaid book, the sample taken by the Food Inspector of cow-milk without thoroughly mixing the milk either by stirring or by pouring with one vessel or by shaking it gently it cannot be said that the sample taken was the representative sample and it is possible that the sample of milk might not have a true representative of a whole body of the milk contained in the container on account of presence of fat globules or bubbles in it. The Public Analyst in his report (Ex.P-13) has found the milk fat as 3.5% and solid non-fat as 8.04% and on account of that it has been held by the Public Analyst that it does not confirm to the standard laid down by the Act, 1954 and the rules made thereunder. Therefore, in a case like present where sampling has not been carefully done by the Food Inspector, it cannot be safely held that the sample of milk sent to the Public Analyst truly represented the milk to be tested. Consequently, I am of the considered opinion that the sampling is done not in accordance with Section 11 of the Act, 1954 and, therefore, the prosecution has failed to bring home the offence of Section 7(i) of the Act, 1954 beyond reasonable doubt. As a fall out and consequence of the aforesaid discussion, the instant revision is allowed. The conviction recorded for the offence under Section 7(i) of the Act, 1954 and sentence awarded to undergo rigorous imprisonment for 6 months and to pay fine of Rs. 1,000 are held to be bad in law and they are accordingly set aside. Applicant Roopchand Patel is acquitted of the charge framed against him. The bail bonds executed by him shall remain operative for a period of six months from today in view of Section 437-A of the Code of Criminal Procedure.