

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Criminal Revision No.45 of 2001.

Date of Decision: 31st October, 2006.

Hari Lal.	Petitioner
Versus	
State of H.P.	Respondent

Coram
The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting¹?

For the Petitioner: Mr. Ramakant Sharma,
Advocate.

For the respondent: Mr. P.M. Negi, Deputy
Advocate General.

V.K. Gupta, C.J. (Oral).

In this petition filed under Sections 397 and 401 of the Code of Criminal Procedure, the petitioner has challenged the judgment dated 15th March, 2001 passed by the learned Sessions Judge, Solan in Criminal Appeal No.25-S/10 of 1999 whereby, while exercising his Appellate jurisdiction, the learned Sessions Judge has dismissed the appeal filed by the petitioner against the judgment dated 23rd September, 1999 passed by the learned Chief Judicial Magistrate, Solan in Criminal case No.41/3 of 1994. By the

¹ Whether reporters of the Local Papers are allowed to see the Judgment?

aforesaid judgment dated 23rd September, 1999, the learned Chief Judicial Magistrate, Solan after convicting the petitioner for committing the offences punishable under Section 16(1)(a)(i) and Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2000/- in so far as the offence under Section 16(1)(a)(i) is concerned and to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/- for committing the offence under Section 16(1)(a)(ii) of the Act. In default of payment of fine, the petitioner was to undergo imprisonment for five months. Both the sentences were ordered to run concurrently.

Mr. Ramakant Sharma, learned counsel appearing for the petitioner while taking me through the judgment of the learned trial Magistrate as well as the judgment of the learned Appeal Court has assailed the conviction of the petitioner by arguing that the learned Courts below have wrongly placed reliance upon the prosecution evidence in so far as the issue relating to the stirring of the milk is concerned as also in so far as the issue of the milk not

meant for sale to public is concerned. PW-1, Food Inspector T.S. Verma as well as PW-2 Naresh Kumar had appeared as prosecution witnesses to prove the factum of the petitioner carrying two Cans of milk which were meant for sale and PW-1 purchasing 7.50 ml of milk at Rs.6/- and dividing this sample into three parts and pouring it into bottles as well as sending one part of the sample to the Public Analyst for his opinion about the adulteration of the milk. PW-2 Naresh Kumar, an independent witness has corroborated the testimony of PW-1 in all material particulars. Both these witnesses have reliably deposed that the milk was being carried by the petitioner in two Cans which were meant for sale to public and that 7.50 ml of milk was purchased by PW-1 for a price of Rs.6/-. Both these witnesses have clearly deposed and quite convincingly as well as satisfactorily that before the sample of milk was taken from the Can of the milk carrying 5 Kg. of milk, the milk was stirred properly, first clockwise and then anti-clockwise to make it homogeneous.

The plea set up by the petitioner that the milk was not meant for sale and was meant for use in a "Sharad" ceremony did not inspire confidence

either by the learned trial Magistrate or by the learned Appeal Court and meets the same fate as far as this Court is concerned. The sole witness who appeared for the petitioner in so far as this aspect is concerned has himself not given a proper or inspiring version about this fact. On a totality of circumstances I do not agree with the contention of Mr. Ramakant Sharma that the milk was not meant for sale and that it was meant for being used for a private purpose viz. "Sharad" ceremony of someone. This clearly seemed to be an after thought by the petitioner, especially also looking to the fact that the trend of cross-examination of the witnesses did not reflect this defence of the petitioner during the course of the trial.

No other point was urged in so far as the challenge to the conviction is concerned.

In so far as the quantum of the sentence is concerned, Mr. Sharma drew my attention to the contents of the report of the Public Analyst and submitted that the adulteration of the milk was not very high if the percentage of the milk fat as well as the percentage of the milk solids not fat is taken into account. I have looked into the contents of the report of the Public Analyst

being Ex.PH and indeed find that against the minimum prescribed standard of 4.5% as far as milk fat content is concerned, the sample in question contained 4.16% and against the prescribed minimum standard of 8.5% in so far as the milk solids not fat is concerned, the sample in question had 6.92% of milk solids not fat.

Looking to the aforesaid less grave nature of adulteration, invoking the first proviso to sub-Section (1) of Section 16 of 1954 Act, I hereby reduce the sentence in so far as the offence under Section 16(1)(a)(i) is concerned, from six months to three months. Rest of the sentence as awarded by the learned trial Magistrate is upheld.

With the aforesaid modification in the sentence, the petition is dismissed.

31st October, 2006.
(tr)

(V.K. Gupta), C.J.