IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.222 Of 2000.
Judgment reserved on 25.7.2007.
Date of decision: July 31st, 2007.

State of Himachal Pradesh. ..... Appellant.

Vs.

Jagat Ram and Another. ..... Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr. V.K.Verma, Addl. Advocate General.

For the respondents: Mr. Raman Sethi, Advocate, for respondent No.1.

Mr. R.L. Sood, Sr. Advocate with Mr. Sanjeev Kumar, Advocate, for respondent No.2.

Surinder Singh, J :

The respondents were tried and acquitted, for the offence punishable under Section 16(1)(a)(i) read with Section 7 (1) of the Prevention of Food Adulteration Act, 1954 (in short the Act), for the failure of sample of salt, in Criminal case No.134-I of 1994 (66-III of 1994), decided on 27.8.1999 by the Chief Judicial Magistrate.

The instant appeal has been filed by the State having felt aggrieved that though, the independent witness has not supported the case of the prosecution, yet the testimony of the Food Inspector was self explicit and comprehensive to sustain the conviction. The trial court had wrongly held that

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Whether reporters of local Papers may be allowed to see the judgment? Yes .

the sanction was not proper which has caused the miscarriage of justice.

The leave to appeal was granted on 28.4.2000. Now the matter has been finally heard.

Mr. V.K. Verma, Learned Additional Advocate General has forcefully argued that the respondent No.1 has admitted having taken the sample of iodized salt (RLP mark) by the Food Inspector. An application under Section 20-A of the Act, whereby respondent No.2 was impleaded, which shows that the respondent No.1 had admitted that the sample of salt fell short of requisite standards. Further that the sanctioning authority had applied its mind to the facts of the case while according the sanction and no fault could have been found with that. The learned trial court had wrongly given the benefit to the respondents on account of the hostility of the independent witness towards the prosecution, therefore, the impugned judgment can be converted into conviction.

In response, the learned counsel for the respondents S/Shri Raman Sethi and Sanjeev Kumar have vehemently argued that sanction letter exhibits the total non-application of mind by the sanctioning authority while according the sanction under Section 20 of the Act and further that sampling was not done in accordance with law. Thus, both the learned counsel have supported the impugned judgment of acquittal and prayed for the dismissal of the appeal.

I have given my thoughtful consideration to the rival contentions of the parties and reappraised the evidence on record, in the light of the relevant Law as applicable to the case.

Precisely, the facts of the case as alleged are that on 27.12.1993 the Food Inspector Shri P.L. Sharma visited the Karyana shop of Jagat Ram at about 3 P.M. in village PastliKuhl alongwith Sher Singh (PW1) an independent witness. On having inspected the shop, the Food Inspector found a sealed polythene bag of iodized salt marked R.L.P. weighing 70 Kgs, lying for sale to the general public. He expressed his intention to take the sample of salt and a notice Ext.P1 was given to respondent No.1. Thereafter he purchased 600 gms of iodized salt (RLP mark) and had paid 90.00 paise vide receipt No.Ex.P2 to the respondent aforesaid. The purchased salt was divided into three equal parts and put into three neat, clean and dry bottles. Thereafter, each of the bottles were labeled, wrapped into thick strong khakhi papers and the ends of the papers were neatly folded and affixed with gum. Paper slip bearing Code Number of Local Health Authority, Kullu (KHD-110/93-110) was also affixed on the bottles. Signatures of respondent No.1 and the witness Sher Singh were taken in accordance with law. Seals were also affixed with the sealing wax on each of the parts of the sample, so that the knots are covered with the seals. Regarding the entire proceedings, a Panchnama Ext.P3 was prepared on the spot, over which the signatures of respondent No.1 and Sher Singh, independent witness were obtained.

One part of the sample, in sealed condition with Form VII, was sent to the Public Analyst, Chandigarh, vide registered sealed parcel. A copy of the memo on Form No.VII with seal impression used for sealing the sample was also sent separately under the registered cover. The remaining two

parts of the sample alongwith two copies of memo onForm VII were deposited with LHA, Kullu. As per the report Ex.P8, of the Public Analyst, the sample was found to be adulterated, as it was containing 1.90% matter insoluble in water against the maximum prescribed standard of 1.00% and not 1.10% as mentioned by the trial court. On receipt of the report aforesaid, the matter was placed before the Chief Medical Officer, Kullu, for granting the prosecution sanction. On the perusal of the record, he had issued prosecution sanction Ext.P9 to prosecute respondent No.1. A notice under Section 13(2) of the Act was also sent.

The complaint was presented before the trial court. On the appearance of respondent Jagat Ram in the court, he moved an application under Section 20-A of the for impleading respondent No.2, on the basis of cash memo Ext.AW1/A. Vide order dated 2.11.1995, his request was allowed. Respondent No.2 was arrayed as an accused. The notice of accusation was put to the respondents under the aforesaid sections on 26.5.1997, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined PW1 Sher Singh, who did not support the case of the prosecution, PW2 Food Inspector P.L. Sharma and PW3 Parveen Kumar, Dealing Assistant in the office of Chief Medical Officer, Kullu.

The respondents were also examined under Section 313 of the Code of Criminal Procedure. The respondent No.1 had explained that he had purchased said salt from respondent No.2 vide cash memo aforesaid, however, denied that the sample was taken from him in accordance with rules, whereas,

respondent No.2 has denied having purchased the RLP marked salt from him, but no defence evidence was led.

After completing the trial and going through the evidence on record, the learned trial court had found that there was no proper sanction in the matter and also found that there have been contradictory evidence of the Food Inspector and the independent witness aforesaid and the statement of the Food Inspector was not enough to base the conviction. Further that it could not be proved that the sample was put in the clean and dry bottles. Thus, there was every possibility resulting in increase in insoluble matter and the sample was not taken in accordance with rules, therefore, acquitted the respondents.

The first attack of the learned Additional Advocate General is that the learned trial court has wrongly came to the conclusion that the sanction Ext.P9 was not accorded in accordance with law. As a matter of fact the application of mind should be spelt out from the sanction order itself.

A perusal of the sanction letter does not indicate that there was an application of mind by the Sanctioning Authority while according the sanction for prosecution against respondent No.1, as the order is lacking the relevant materials as to on what point of time, food article was referred to the Public Analyst. In what manner, he had considered the report of the Public Analyst. Section 2(ia) of the Act, gives a sufficient indication about the various kinds of foods articles and it envisages the duty of the Officer to state in the order in what way the food is adulterated, either in nature or substance or in quality. Based upon it, what is the opinion of the Public

Analyst about these three factors of adulteration. It has been held in **The State of Maharsthra** v. **Hirji Dhanji Shah [1998 Cr.L.J. 1828]** that unless these materials are contained in the order, we cannot say there is a proper application of mind in giving consent under Section 20 of the Act. Since the Sanction Ext.P9 referred to above lacks the material particulars, therefore, it cannot be said to be a valid sanction.

The next contention of the learned Additional Advocate General, is that the respondent No.1 has admitted the picking up the sample of salt which was found to be adulterated, therefore, respondents should have been convicted, on the sole testimony of the Food Inspector which was free from any embellishment.

It is not the law that the evidence of the Food Inspector must necessarily needs corroboration of the independent witnesses. It is a by now well settled that the evidence of the Food Inspector is not inherently suspected, nor be rejected on that ground. He discharges the public function in purchasing the articles of food for analysis and if the article of food so purchased in the manner prescribed under the Act is found adulterated, he is required to take action as per law. He discharges public duty. His evidence is to be tested on its own merits and if found acceptable the Court would be entitled to accept and rely on, to prove prosecution case. If in a given case, where the factum of the very purchase is put in question and any personal allegations are made against the Food Inspector, perhaps it may be necessary for the prosecution to dispel the doubt and to examine the Panch witnesses seeking

corroboration to the evidence of the Food Inspector. (Please see **State of U.P**. v. **Hanif [1992(1) P.F.A. Cases, 175].**

In the instant case, the factum of purchase of the salt by the Food Inspector has not been disputed, but the manner in which the sample was extracted has been assailed in his cross-examination and also in the statement of respondents under Section 313 of the Code of Criminal Procedure, to the effect that the sample was not taken in accordance with the rules. As PW2, the Food Inspector has stated that there was a sealed polythene bag having 70 Kgs of salt (RLP mark). He expressed his intention to take sample from this polythene bag. According to him, he purchased 600 gms of salt, made the payment, executed a receipt in presence of Sher Singh (PW1) and then he divided the purchased salt into three equal parts and put into three clean and dry bottles thereafter sealed it in accordance with the rules. Now, the question arises whether the Food Inspector had obtained the representative sample of this food item? My answer to this query is "NO", because the Food Inspector had not made the food article homogenous before picking up the sample, thus did not adopt the correct method for obtaining the representative sample of the salt aforesaid. It is a matter of common knowledge that the insoluble matter is lighter in weight than the salt. In transit light matter accumulates on the top. Therefore, it has been repeatedly held by this court and also by the apex court in various judgments that before lifting the sample it must be made homogenous. These facts are not only required to be pleaded but also required to be proved on record during the trial of the case. In the instant

case this is neither pleaded nor proved. The Food Inspector, only deposed having purchased the salt and it was thereafter divided it into three equal parts. Therefore, in these circumstances it cannot be said to be a representative sample and the Public Analyst report based on the examination of such a sample looses its importance and cannot be made basis for the conviction of the accused.

The trial court has held that the sample was not put into neat, clean and dry bottles by the Food Inspector. For that the statement of PW2, Food Inspector needs to be seen. According to him, he had procured the bottles from the stores and he did not know since when these bottles were lying there. However, he had neither ensured nor stated in his examination before the trial court that after obtaining these bottles from the store, he got it cleaned and dried properly before putting it into use. Therefore, in the above circumstances, when the sample was not made homogenous and due to lack of evidence on this score, the ultimate result is bound to be materially effected on analysis. Thus, the statement of the Food Inspector which fell short of requisite standard is not acceptable, thus cannot be relief upon. It was rightly held by the trial court that the marginal excess of Point 90% of the insoluble matter can be the result of above factors. The reliance can be put on **State of Himachal Pradesh** v. **Gulshan Kumar** **[1999(3) Shim.L.C. 405**

For the aforesaid reasons, I do not find anything worth interference in the judgment of acquittal passed by the trial court, which is neither perverse nor unreasonable. Accordingly, the appeal is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 31st, 2007. **(Surinder Singh)**
(PDS) **Judge**.