

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.: 219/2001.

Reserved on : 26.2.2008

Decided on: 29.2.2008.

State of H.P. ... Appellant.

Versus

Bhag Din. ... Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?¹ No..

For the Appellant: Mr. Rajinder Dogra, Additional Advocate General.

For the Respondent: Mr. Ramakant Sharma, Advocate.

Rajiv Sharma, Judge:

The respondent was prosecuted in PFA case No. 7-III of 1996 in the Court of Chief Judicial Magistrate, Hamirpur, H.P. under section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 and was acquitted on 30.10.2000. Hence, the present appeal by the State.

The brief facts necessary for the adjudication of this case which can be gathered from the judgment of the trial court are that Sh. K.S. Verma (PW-5) had intercepted the accused Bhag Din on 2.9.1996 near SDM Court Chowk, Hamirpur while he was carrying about 60 kgs. of cow's milk in 6 small iron containers for sale to the general public for human consumption on motorcycle. The Food Inspector after

Whether reporters of local papers may be allowed to see the judgment? No.

disclosing his identity and intention to take sample after serving notice, purchased 750 Mls. of cow's milk out of drum containing about 18 kgs milk in the presence of Prakash Chand (PW-3) and Sh. Ramesh Chand (PW-4). The sample was divided into 3 neat, clean and dry bottles equally after adding 20 drops of formalin in each bottle as preservative and these bottles were properly stoppered, labelled and wrapped with thick wrapping paper separately. He affixed the paper slip bearing Code No. 48 and serial No.020/96 with the signatures of the Local Health Authority, Hamirpur on each bottle which were tied with thread and sealed and a *panchnama* was prepared on the spot and signatures of accused Bhag Din were also taken on each sample of the bottle. The sample was found to be adulterated by the Public Analyst on 8.10.1996 and thereafter the complaint was filed against the accused under section 2 (ia) (m) in contravention of section 7(i) punishable under section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954. The prosecution in order to prove its case examined as many as 5 witnesses. The accused was also examined under section 313 of the Code of Criminal Procedure.

The learned Additional Advocate General had strenuously argued that the prosecution has proved the case against the accused.

Mr. Ramakant Sharma, Advocate appearing on behalf of the respondent had supported the judgment dated 30.10.2000.

I have heard the learned counsel for the parties and have perused the record carefully.

PW-5 Sh. K.S. Verma, retired Food Inspector has stated that on 2.9.1996 he intercepted the accused near SDM Chowk, Hamirpur, who was carrying 60 kgs cow milk in 6 containers. He has further stated that he purchased 750 Mls. of cow milk as sample after stirring it clockwise and anti-clockwise and the same was put into three neat,

clean and dry bottles which were properly stoppered, labelled and fastened with thick paper and thread after giving cost of milk of Rs. 5.25 paisa. He had further deposed that a paper slip was affixed on each bottle with the signatures of Local Health Authority having code number and serial number and the signatures of the accused were taken on each bottle which were sealed in the presence of witnesses Ramesh Chand and Prakash Chand and have also signed panchnama Ex.P-3. The samples along with one form VII were sent in a sealed packet to the Public Analyst through Sh. Jagan Nath, Peon alongwith memo VII and specimen impression of the seal so used in a separate envelope was also sent to the Public Analyst as per receipt Ex.P-5 of Public Analyst. The remaining two parts of the sample were deposited with the Local Health Authority, Hamirpur.

PW-3 Sh. Prakash Chand had stated that in the year 1996, he was told by Sh. K.S. Verma, that sample of milk was taken so his signatures were taken but no sampling has taken place in his presence. Shri Prakash Chand was declared hostile. Similarly, PW-4 Ramesh Chand had denied the sampling in his presence and he also turned hostile. These witnesses are witnesses to the panchnama Ex.P-3 and though these witnesses had not denied the signatures on the panchanama Ex.P-3 including the notice Ex.P-1 and the receipt Ex.P-2 by Sh. K.S. Verma to the accused, but these witnesses had denied the factum of taking sample in their presence by the Food Inspector from Sh. Bhag Din.

It is evident from the copy of Ex.PW-1/A that it bears the complete address of accused but neither the postal receipt Ex.PW-1/B nor the acknowledgement Ex.PW-1/C bear the complete address of the accused though acknowledgement has been signed by the addressee. Thus, it is evident that the prosecution has failed to prove

the factum of taking sample from the accused since both the witnesses i.e. PW-3 Prakash Chand and PW-4 Ramesh Chand have turned hostile. The plea of the defence concerning non-service of notice under section 13 (2) of the Prevention of Food Adulteration Act, 1954 as discussed above has also rightly been upheld by the trial court.

From the above discussion it is clear that the trial Court has correctly appreciated the evidence and has rightly acquitted the respondent.

Accordingly, there is no merit in this appeal and the same is dismissed. The bail bonds furnished by the accused-respondent stand discharged.

February 29, 2008.
Awasthi.

(Rajiv Sharma)
Judge