

IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA

Cr. Appeal No. 436 of 2003.

Decided on: May 31, 2011.

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State of H.P. ....Appellant.

Versus

Rajan Kumar. .... Respondent.

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Coram

**Hon’ble Mr. Justice Surinder Singh, J.**

*Whether approved for reporting<sup>1</sup>? Yes.*

**For the appellant : Mr. J.S. Rana, Asstt. Advocate General.**

**For the respondent : Mr. Balwant Kukreja, Advocate.**

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**SURINDER SINGH, J:**

The respondent hereinafter referred to as ‘the accused’ was convicted and sentenced by the learned trial Court for the offence punishable under Section 16(1-A) of Prevention of Food Adulteration Act, 1954, in short ‘the Act’, as the Chillies powder purchased by the Food Inspector from his shop fell short of the requisite standard, but the learned Sessions Judge while allowing his Cr.A. No.5 of 2002, set aside his conviction/ sentence, consequently the accused was acquitted solely on the ground of non-

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<sup>1</sup>Whether reporters of the Local papers are allowed to see the judgment?

application of mind by the Chief Medical Officer, while according sanction under Section 20 of the Act, hence the present appeal by the State.

2. In short the prosecution case can be stated thus. On 27.7.1992, PW1 S.C. Sharma, Food Inspector intercepted the Karyana shop of the accused in village Lanj, wherein about 5 Kgs Chillies powder was displayed for sale to the general public.

(ii) The Food Inspector expressed his intention to take the sample of the Chillies powder and served a notice, after mixing it and making it homogenous, he purchased 600 grams for ₹24/-. To this effect, he issued receipt Ext.PW1/B.

(iii) The sample so purchased was divided into three equal parts and each part was put into three clean and dry bottles in the presence of PW3 Shri Rajinder Singh and PW4 Subhash Chand. Each bottle was stoppered, labeled and wrapped according to the prescribed procedure. A paper slip that goes round from bottom to top of the sample bottles bearing the signature, code number

and serial number of the Local (Health) Authority, District Kangra was pasted on the wrapper of the sample. Signatures of the accused were obtained in such a manner that the paper slip and the wrapper both carried a part of the signature and then sealed according to prescribed procedure.

- (iv) One part of the sealed sample was sent to the Public Analyst, Himachal Pradesh in a sealed packet under registered parcel alongwith Memo-VII, a copy whereof is Ext.PW1/H. On analysis, the Public Analyst opined that sample contained:-

**“An oil soluble coal tar dye other than prescribed is present in the sample of Chillies powder. The extraneous addition of colouring is prohibited in Chillies powder”.**

- (v) The Food Inspector made a request to the Chief Medical Officer concerned, who was authorized vide Notification No.HFW-H(B)(a)3-1/81 to give consent to launch prosecution under Section 20 of the Act and the Food Inspector was also authorized by the Chief Medical Officer under Section 20(1) of the Act

to launch prosecution against the accused. However, the Food Inspector vide his application Ext.PW1/K made a request to the Chief Medical Officer to accord sanction to prosecute the accused and submitted the entire record.

(vi) Vide Ext.PW1/L, Dr. V.P. Gupta, the then Chief Medical Officer, Kangra gave written consent to the Food Inspector to launch proceedings against the accused.

(vii) The copy of intimation Ext.PW2/A was sent to the accused with the forwarding letter Ext.PW2/B duly accompanied by the report of the Public Analyst as required under Section 13(2) of the Act, through registered A.D., postal receipt whereof is Ext.PW2/C on his address and the prosecution was launched by the Food Inspector for the aforesaid offence against the accused in the learned trial Court.

3. Finding reasonable ground to proceed against the accused for the said offence, he was accordingly summoned, pre-charge evidence was

led and ultimately, he was charge sheeted for the offence aforesaid, to which he pleaded not guilty and claimed trial.

4. To prove its case, prosecution examined PW1 S.C. Sharma, Food Inspector, PW2 Vinod Kumar, Senior Assistant, PW3 Rajinder Singh and PW4 Subhash Chand.

5. PW3 Rajinder Singh and PW4 Subhash Chand both turned hostile to the prosecution and denied the fact of taking the sample by the Food Inspector from the shop of the accused, whereas, PW1 Food Inspector while corroborating his version stated that both these independent witnesses were present at the time of sampling. He testified that after purchasing 600 grams of Chillies powder from the accused, it was put on a clean and dry newspaper, then made homogenous by mixing it, thereafter it was divided into three equal parts and then put in three dry and clean bottles as per procedure stated above. PW2 stated about the sanction accorded by the Chief Medical Officer and sending of the intimation alongwith report of Public Analyst to satisfy the requirement of Section 13(2) of the Act.

6. Learned trial Court relied upon the statement of the Food Inspector with respect to the sampling and also held the sanction to be legal and valid, as such convicted and sentenced the accused, which was upset in appeal by the learned Sessions Judge, as aforesaid.
7. Shri J.S. Rana, learned Assistant Advocate General vehemently argued that the learned Sessions Judge did not appreciate the evidence of the prosecution to uphold the legality of sanction. Therefore, the judgment of acquittal is perverse.
8. On the other hand, Shri Balwant Kukreja, learned counsel for the respondent supported the judgment passed by the learned Sessions Judge and argued that the sanction aforesaid does not spell out the application of mind by the Chief Medical Officer and otherwise also the acquittal of the respondent cannot be disturbed as the procedure for sampling was incorrect and its mixing on a newspaper could contaminate the contents with print dye, which might have effected the result of analysis.

9. I have given my thoughtful consideration to the rival contention of the parties and have scanned the record.
10. On the scrutiny of sanction, I feel that it falls of the requisite requirements which spells out non-application of mind by the Chief Medical Officer. To say so, I have the reasons, but first of all let us see and examine contents of sanction:-

**"OFFICE OF THE CHIEF MEDICAL OFFICER, KANGRA AT DHARAMSHALA.**

**No. Health/PFA/92-284**

**Dated:17.10.92**

***I Dr.V.P.Gupta, Chief Medical Officer Kangra at Dharamshala having been authorized by the Govt. of Himachal Pradesh vide their notification No.HFW-H(B)(a)3-1/81 dated 17<sup>th</sup> October, 1983 and after going through the report of Public Analyst No.168 dated 5.-9-92 in respect of sample No.Kr-1/3638 of Chillies Powder taken from sh. Rajan Kumar S/o Sh. Joginder Paul Prop.of Mahajan Karyana Store V.P.O. Lanj, Tehsil Kangra,H.P. on datted 27-7-92 at Lanj by Sh.S.C.Sharma Food Inspector of this office which found adulterated under section 2(ia)(J) of PFA Act, 1954. Opinion of the Public Analyst that an oil Soluble coal tar dye other than prescribed is present in the Sample of Chillies Powder. The extraneous addition of colouring matter is prohibited in Chillies Powder. As per the report of the P.A. I am of the opinion that it is a fit case for launching the prosecution against the above mentioned person under section 16(1)(1-A) of PFA Act, 1954 in the public interest.***

***Therefore, I give my written consent to Sh.S.C. Sharma Food Inspector of this office to launch the prosecution against the above mentioned person under Section 20(1) of the PFA Act,1954.***

***Sd/-***

**(Dr.V.P.Gupta)**  
**Chief Medical Officer**  
**Kangra at Dharamshala**

**No.Health/PFA/92-**

**Dated\_\_\_\_\_**

**Copy to Sh.S.C.Sharma, Food Inspector of this office for  
information and necessary action, please.**

**Chief Medical Officer,  
Kangra at Dharamshala”.**

11. The perusal of the above does not reveal whether the Chief Medical Officer while according sanction under Section 20 of the Act has seen, examined and gone through the other documents prepared by the Food Inspector, except the report of Public Analyst.
12. Although PW1 S.C. Sharma, Food Inspector stated that he had applied for the sanction vide letter Ext.PW1/L and produced all the documents mentioned in the said letter for the perusal of the Chief Medical Officer and after having going through all these documents the Chief Medical Officer is stated to have accorded the sanction in the above terms, whereas, PW2 Vinod Kumar, Senior Assistant in the office of Chief Medical Officer, Kangra stated that all the documents were handed over to him by the Food Inspector and he produced it before the Chief Medical Officer. After having



going through it, the sanction in the aforesaid terms was dictated to him.

13. Thus, both these statements are contradictory to each other. One says (PW1) that it is he who placed all the papers before the Chief Medical Officer and it was examined in his presence, whereas another says (PW2) that the Food Inspector did not produce the papers before the Chief Medical Officer, but it was he who placed the same before the Chief Medical Officer for its perusal. But, surprisingly the sanction order aforesaid does not make even a fleeting reference about producing all the documents before him by either of the aforesaid witnesses, whereas the sanction order makes the reference of only the report of Public Analyst.

14. Thus, the whole material as to at what point of time the food article was referred to the Public Analyst, the manner the report of the Public Analyst was considered in the light of the documents so produced before him and in what way the said article is adulterated either in nature or in substance or in quality find no mention. Unless these materials are contained in the sanction order alongwith the

documents considered, it cannot be said that there is proper application of mind while according the sanction under Section 20 of the Act. Since there is no reference of the any other document except Public Analyst report in the sanction order, it cannot be said to be a valid sanction, therefore, the prosecution case is liable to fail on this very ground.

15. The above position apart, even on merits, I do not find it a case worth converting the acquittal into conviction, on the ground that the procedure which was adopted by the Food Inspector for taking the sample was not proper on two grounds; firstly that he failed to testify during the trial that he made the aforesaid article of food homogeneous by "quartering" method as held by this Court in **State of H.P. vs. Chiranj Kumar** [ 2007 (3) Shim.LC 45], though the complaint makes mention of it, but Food Inspector does not substantiate it when examined in the Court; secondly, he stated that 600 grams of Chillies powder, purchased from the accused was mixed by the Food Inspector to make it homogenous on a clean and dry newspaper, thereafter divided

into three equal parts and sealed it as aforesaid in three equal clean and dry bottles, as stated above.

16. Be it stated that as per the opinion of the Public Analyst, the sample analyzed by him contained un-permitted 'coal tar dye'. It is a fact that most of the colours now used for dyes and printing inks are made from 'coal tar dye'. Even the printing ink is made from 'coal tar dye'. Thus, the very fact of mixing the purchased quantity of Chillies powder on newspaper, the possibility of getting transmitted its chemical into the Chillies powder cannot be ruled out as the newspaper are normally soggy and fragile and transmit their imprint on the other objects getting in touch, as observed by the Apex Court in **Sardarmal Jain vs. Nagar Nigam and Another [ 1996 SCC (Cri) 397]** and this fact which surfaces in the statements of the aforesaid witnesses introduces a lot of doubt in the food articles being adulterated as a deliberate act of the accused.

17. Therefore, for the reasons aforesaid, the acquittal of the respondent, passed by the learned first Appellate Court cannot be converted into conviction in any case, as such, the appeal filed by

the State is without any merit and is accordingly dismissed.

18. The respondent is discharged of his bail bonds entered upon by him during the proceedings of the case.

19. Send down the records.

**(Surinder Singh),**  
**Judge.**

May 31, 2011.  
(Pds)