

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 53 of 2003

Rajendra Kumar s/o Sri Jai Chand
r/o Near Police Station, Gadarpur,
Ward No.3 P.S. Gadarpur,
District Udham Singh NagarRevisionist

versus

State of Uttarakhand Opposite Party

Mr. Suresh Chand Bhatt, Advocate for the Revisionist.
Mr. Prabhakar Joshi, Brief Holder for the State.

Date of Order: 30.09.2011

Per : Hon'ble U.C. Dhyani, J.

1. This criminal revision no.53 of 2003 has been preferred by the revisionist Rajendra Kumar s/o Shri Jai Chand r/o near Police Station Gadarpur, ward no.3 Police Station, Gadarpur, district Udham Singh Nagar against the judgment and order dated 05.03.2003 passed by Additional District and Sessions Judge/Ist F.T.C., Haldwani, district Nainital whereby criminal appeal no. 30 of 1999 arising out against the judgment and order dated 25.11.1999 of Chief Judicial Magistrate, Nainital in criminal case no. 1389 of 1996 convicting and sentencing the revisionist under Section 7/16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 to undergo one year's rigorous imprisonment and to pay a fine of Rs.1000/- in default of

payment of fine to undergo 3 months' simple imprisonment was dismissed and conviction was affirmed.

2. The facts, as stated in the complaint filed by Shri M.S. Bisht, Food Inspector, Gadarpur are that on 18.07.1996 at 9 p.m. at Dineshpur, accused Rajendra Kumar was apprehended carrying a milk container on his motor-cycle. Milk was intended for sale and milk sample was taken. The license for milk vending was demanded from him, but, he could not produce the license. The vendor told the Food Inspector that he is carrying the milk of cow-buffalo for sale. The Food Inspector got suspicious that the milk might be adulterated and therefore, he, in the presence of Banwari Lal and another Food Inspector Sri N.K. Joshi purchased a sample of milk for 6/- and issued receipt thereof. The Food Inspector obtained the signature of the accused/revisionist on Form VI. He took the sample in three clean, dry and empty small bottles, introduced 20 drops of 40 percent formalin and sealed the bottles. He pasted label over the same and obtained the signatures of accused/revisionist. He obtained the signatures of the vendor on each sample and affixed the seal duly signed by C.M.O. He prepared Form VII in six copies. A sample along with Form VII was sent to Public Analyst, Lucknow and two samples were kept in the office of C.M.O., Nainital along with Form VII. According to the report of Public Analyst there was deficit of 7 percent milk fat and 8 percent non fatty milk solids. The milk was found to be adulterated. The prosecution sanction was obtained on the basis of the report of Public Analyst and the complaint was filed.

3. The trial court charged the accused/revisionist for the offence punishable under Section 7 read with section 16 of the Prevention of Food Adulteration Act. Evidence of the prosecution witnesses and statement of the accused under Section 313 Cr.P.C. were recorded. He was given an opportunity of adducing evidence in defence. After hearing the parties, learned trial court convicted the accused under Section 7/16 (1) (a) (i) of Prevention of Food Adulteration Act, 1954 and ordered to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default 3 months' simple imprisonment. Learned trial court/Chief Judicial Magistrate, Nainital has relied upon the evidence of Chief Food Inspector P.W.1 M.S. Bisht, who supported the prosecution story. P.W.2 Food Inspector M.K. Joshi has corroborated the evidence of P.W.1 M.S. Bisht. P.W.3 D.S. Negi, head clerk has proved prosecution sanction exhibit Ka-8 and the report of Public Analyst exhibit Ka-9 along with payment receipt exhibit Ka-10. The testimony of Banwari Lal was also referred to by the learned trial court in its judgment who has stated that accused Rajendra Kumar had brought milk container on motor-cycle for sale. Learned trial court has relied upon the evidence of P.W.4 Banwari Lal, who is an independent witness. Even otherwise, to procure the attendance of an independent witness is a rule of prudence, as has been enunciated by the Supreme Court in Prem Ballabh & Delhi Administration, A.I.R. 1997 S. C. 56. If the evidence of Food Inspector is trustworthy then his sole testimony can be relied upon by the court and corroboration is only sought as a matter of precaution. P.W.4 Banwari Lal might not have supported the prosecution version in toto, but, otherwise his partial support to the prosecution is trustworthy piece of evidence.

4. So far as the compliance of rules 16 and 17 by the Chief Food Inspector is concerned, learned trial court has held that all the three samples were sealed by the Chief Food Inspector after taking one part and memo of Form VII was sent to Public Analyst and rest of two samples along with memo of Form VII were sent to Local Health Authority as per rules. There was compliance of rules 16 and 17 of the Prevention of Food Adulteration Act.
5. Accused had taken a plea that he had been falsely implicated in order to save one Jaswant, but, it is such a plea which has not been substantiated by the accused.
6. Learned Additional Sessions Judge/1st F.T.C., Haldwani has dismissed the appeal filed by the accused convict against the order of learned C.J.M. He has also confirmed the sentence recorded by the learned C.J.M. against the accused.
7. Argument was advanced before the learned Additional Sessions Judge that there was non-application of mind by C.M.O. while granting sanction. Other pleas raised before the learned Additional Session Judge were more or less the same which were advanced before the learned Magistrate. Learned Additional Judge has cited as many as 7 rulings, which were presented on behalf of the accused/appellant. Learned Additional Session Judge has found that prosecution sanction exhibit Ka-8 is a typed-written paper and bears the initials of C.M.O./Local Health Authority on cuttings. It bears the signature of C.M.O. along with his official seal. He has found

that the ruling cited on behalf of defence are not at all applicable. Otherwise also the court itself can take judicial notice of such facts. It has also been duly proved by Shri D.S. Negi, head clerk of C.M.O. office. Prosecution sanction exhibit Ka-8 has been duly proved. It cannot be inferred that the prosecution sanction was given in a mechanical way. Learned Additional Sessions Judge has relied upon the evidence of P.W.4 Banwari Lal, who has supported the prosecution story partially and has also admitted his signatures on exhibit Ka-2. There is nothing on record to prove that accused Rajendra Kumar was falsely implicated in order to save one Jaswant Singh. The Chief Food Inspector has complied with the requirements of rules 16 (d), 17 (b) and 10. Form VI was prepared on the spot. The samples were taken as per exhibit Ka-2. The notice of Form VI was given before taking samples. Learned Additional Sessions Judge has held that the prosecution has been able to prove its case against the accused beyond reasonable doubt.

8. Initially when the revisionist was issued notice by this court, a report to this effect was submitted that he was not found residing at the given address. Shri Prabhakar Joshi, learned brief holder for the State then volunteered to furnish the correct address of the revisionist, in case he is found to be residing at a different address. On 23.09.2011, Sri Suresh Chandra Bhatt, Advocate has appeared before the Court along with the vakalatnama of the revisionist which is kept with record. Learned Counsel representing revisionist has not contested the revision on merits and instead, has submitted that a lenient view be taken so far as the sentence is concerned. Learned counsel

for the revisionist has also submitted that the accused remained in jail for 84 days and he has deposited the fine in the trial court. If that is so, this Court is inclined to accept the contention of the learned counsel for the revisionist in the interest of justice but the fact remains that the offence entails minimum sentence of 6 months' rigorous imprisonment and a fine of Rs. 1,000/-. This Court cannot and should not impose a lesser sentence than what is provided by the legislature. It's a case of milk vending. The adulterated milk is proved to have been sold by the revisionist and therefore the ends of justice will be met if the revisionist is awarded 6 months' rigorous imprisonment and fine of Rs.1,000/-, in default of which the same sentence as awarded by the trial court should be prescribed.

9. Accordingly, the revision is dismissed. The conviction recorded by the trial court and as affirmed by the appellate court against the revisionist Rajendra Kumar s/o Shri Jaichand is affirmed in respect of the offence punishable under Section 7/16 (1)(a)(i) Prevention of Food Adulteration Act. The sentence is, however, modified (reduced) to the extent that the revisionist will undergo rigorous imprisonment for six months, instead of one year and the period undergone by him in jail shall be set off against this sentence. The accused is on bail. His bail bond is cancelled. He is directed to surrender before the Court concerned to serve out the sentence awarded to him.

10. Lower court record be sent back.

Dated : 30.09.2011

(U.C. Dhyani, J)

Sanjay