



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 787/2009

Shankar Lal S/o Tolu Jat, resident of Fatehpura, Tehsil Kapasan,
District Chittorgarh Rajasthan

-----Petitioner

Versus

State of Rajasthan

-----Respondent

For Petitioner(s)	:	Ms. Alisha Durgan Mr. Abhishek Charan
For Respondent(s)	:	Mr. S.S. Rathore, PP

HON'BLE MR. JUSTICE RAVI CHIRANIA

Order

1.	Date of conclusion of Arguments	15.09.2025
2.	Date on which the judgment was reserved	15.09.2025
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of pronouncement	11.12.2025

- 1 By way of present criminal revision petition filed under Section 397 read with Section 401 Cr.P.C, the petitioner has challenged the judgment dated 04.07.2009 passed by the learned Additional Sessions Judge No.2, Chittorgarh in Criminal Appeal No 17/2006 whereby the judgment dated 01.07.2006 passed by the learned Additional Chief Judicial Magistrate, Kapasana, District Chittorgarh in Criminal Case No 278/1996 was upheld. The petitioner was convicted and sentenced for the offence under Section 7 and 16 of the Prevention of Food Adulteration

Act, 1954 (hereinafter referred to as “the Act of 1954” or “the Act” for short).

Conviction for offence under Section	Sentences
Section 7 and 16 Prevention of Food Adulteration Act, 1954	6 months of imprisonment and a fine of Rs. 500 and in default of payment of fine to further undergo 1 months S.I.

- 2 The prosecution case, in brief, is that a complaint was filed against the petitioner on 17.07.1996 stating that on 26.11.1994, Food Inspector Labh Shankar apprehended the petitioner who was carrying cow’s milk for sale. After following the requisite formalities, he purchased 750 grams of milk for Rs. 4/-. The sample was divided in two parts, and one part was sent to the Public Analyst, Udaipur. **The Public Analyst’s report dated 08.12.1994 (Exhibit P-13) found the milk to be adulterated, as the Milk Solid Non-Fat (hereinafter “MSNF”) content was 6.17% against the prescribed minimum standard of 8.5%.**
- 3 Charges under Section 7 and 16 of the Prevention of Food Adulteration Act, 1954 were framed against the petitioner by the Learned Trial Court. The petitioner denied the charges, pleaded not guilty, and claimed trial.

- 4 During the course of trial, the prosecution has examined as many as 5 witnesses in support of the case and exhibited 18 documents in support of its case. Thereafter, statement of petitioner was recorded under Section 313 Cr.P.C wherein the petitioner denied the charges but no evidence was produced in defence.
- 5 After completion of trial, Learned Trial Judge vide the judgment dated 01.07.2006 convicted the petitioner, as noted above.
- 6 Feeling aggrieved and dissatisfied by the judgment of conviction and sentence, the petitioner preferred an appeal before the Appellate Court under Section 374 of the Code of Criminal Procedure, 1973, however, the same was also rejected vide the judgment dated 04.07.2009 and the judgment passed by the Trial Court was upheld.
- 7 Learned counsel for the petitioner contended that the finding of adulteration is based merely on a marginal deviation in the MSNF content. The Public Analyst's report records that the fat content was 4.8% as against the prescribed minimum standard of 3.5%, which is higher than the standard, while the MSNF content was 6.17% against the standard of 8.5%. It was argued that such marginal deviation, in the absence of any finding of added water or addition/presence of any foreign substance, ought not to result in criminal conviction.
- 8 It is further argued by the learned counsel that there was an inordinate and unexplained delay in filing the complaint. **The**

sample was taken on 26.11.1994, yet the complaint was filed only on 17.07.1996, after nearly one and a half years, though the report of the Public Analyst was received on 08.12.1994. This delay, it is argued, vitiated the petitioner's valuable statutory right under Section 13(2) of the Act to have the second sample analyzed by the Central Food Laboratory. The relevant portion of Section 13(2) is reproduced as follows:

*"On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person , if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, **informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.**"*

(emphasis supplied)

9 Learned counsel submits that there was serious and intentional non-compliance with Section 11(3) as well as Section 13(2) of the Act, since the sample taken on 26.11.1994 was deposited with the Public Analyst only on 28.11.1994, and his report was received on 08.12.1994

10 Lastly, it was urged that the independent witness, Suresh (PW-2), did not support the prosecution version and was declared hostile, thereby destroyed the complete evidentiary foundation of the case.

- 11 On the other hand, learned Public Prosecutor opposed the submissions made by the learned counsel for the petitioner and supported the impugned judgments and prayed for the dismissal of the revision petition.
- 12 Heard the arguments of both sides and perused the material available on the record.
- 13 Before examining the merits of the present case, it is necessary to recapitulate the settled principles governing the scope of revisional jurisdiction under Sections 397 and 401 Cr.P.C. The revisional power is supervisory in nature and is intended to correct jurisdictional errors, patent illegalities, or material irregularities. The Hon'ble Supreme Court in ***Amit Kapoor v. Ramesh Chander***¹, has elaborated the contours of this jurisdiction in the following terms:

"12. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under [Section 397](#) and [Section 482](#) of the Code. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely in-

¹ (2012) 9 SCC 460

dicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the [Cr.P.C.](#)

(...)

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases”

- 14 Applying the above principles governing revisional jurisdiction, this Court has proceeded to examine the present matter strictly within the parameters delineated by the Hon’ble Supreme Court in **Amit Kapoor** (supra). The Court is mindful of the fact that interference under Sections 397 and 401 Cr.P.C. is warranted only where the findings of the courts below disclose patent illegality, perversity, material irregularity, or a manifest miscarriage of justice. Having perused the record and considered the rival submissions in light of this limited scope, this Court finds considerable force in the contentions raised by learned counsel for the petitioner, particularly regarding the failure to follow the settled law and the established procedure under the Act of 1954 and appreciation of evidence.

- 15 Before proceeding further, it is necessary to examine the statutory definition of "**adulteration**" as contained in Section 2(ia)(m) of the Act of 1954, which reads as under:

"(m) If the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health.

*Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities **not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.***

Explanation.—Where two or more articles of primary food are mixed together and the resultant article of food—

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health,

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause."

(emphasis supplied)

- 16 A plain reading of the above provision makes it evident that every deviation from the prescribed standard does not automatically constitute adulteration in the penal sense. The statute expressly contemplates situations where marginal variations, particularly in primary food, may occur due to natural causes beyond human control. In such situations, the article is expressly excluded from the ambit of adulteration. The legislative intent is that those deficiencies which show deliberate adulteration, manipulation, or addition of extraneous/foreign substances, or which render the article injurious to health, warrant penal consequences. When applied to the present case, where the fat content was above the standard and only the MSNF content showed a marginal deficiency **without any indication of added water or foreign matter, the devi-**

ation appears to fall within the protected domain contemplated by the proviso, thereby militating against a finding of culpable adulteration.

17 As noted from the record of the Trial Court, the case of the prosecution rests entirely on the alleged deficiency in the MSNF content. The fat content, however, was 4.8%, which is above the minimum prescribed limit of 3.5%. Further, there is no finding, whatsoever, of added water or the presence of any foreign substance. When the fat component exceeds the standard and the only deviation pertains to SNF in isolation, without any evidence suggestive of adulterative intent or contamination, **the marginal deficiency assumes the character of natural variation contemplated by the proviso. Such a deviation, therefore, does not satisfy the statutory threshold of culpable adulteration warranting criminal prosecution or the imposition of a mandatory minimum sentence.**

18 This Court finds substantial force in the argument that the case is covered by the maxim *de minimis non curat lex* (the law does not concern itself with trifles). The Punjab & Haryana High Court in ***Municipal Committee Amritsar v. Karam Singh***² applied the above principle in a case concerning adulterated milk. In that case, the milk fat was 4.6% (against 4%) and the solids-not-fat were 8.0% (against 8.5%). The Court observed:

"28. The case before us is one which is to a large extent covered by the maxim: *de minimis non curat lex* (law does not take care of trifles). As will be presently discussed the adulteration, if any, was marginal.

29. ...it will be seen that the 'milk fat' was in excess of the prescribed percentage, by 0.6%, while the 'milk solids not fat' were deficient by

² MANU/PH/0554/1971

about 0.5%. Offsetting the 0.6% excess of 'milk fat' against the 0.5% deficiency of 'milk solids', the overall deficiency works out to hardly 0.1%. Since this deficiency is negligible, no grave injustice will be perpetuated if the acquittal is not set aside."

19 Applying the same principle to the present case, the fat content is in excess by 1.3%, while the MSNF content is deficient by 2.33%. The object of the Act is to punish intentional and unscrupulous adulteration that is harmful to public health. A conviction in this case, for what is essentially a marginal and technical deviation in the absence of any evidence of mal-intent or addition of foreign matter, appears to be purely technical and would result in a grave miscarriage of justice. The ratio of ***Karam Singh*** (supra) is rightly applicable to the facts of this case.

20 This court also noted grave and serious delay on the part of the prosecution, which appears to be intentional, resulting in violation of the petitioner's valuable right under Section 13(2) of the Act. The sample was taken on 26.11.1994, while the complaint was filed on 17.07.1996. This delay of over 18 months is inordinate which is wholly unexplained as per the record of the trial court. The right of an accused under Section 13(2) to get the second sample analysed by the Central Food Laboratory is not a mere formality but a valuable statutory safeguard for the defence, and the same has been illegally denied, with no justification, and is a patent illegality committed by the prosecution.

- 21 The law in regard to Section 13(2) of the Act is settled by the Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi v. Ghisa Ram***³. The Court eloquently held:

"7. ...when a valuable right is conferred by S. 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him... In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst..."

"8. ...the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right."

- 22 In the present case, the product milk is a highly perishable item. The delay of one day in first sending the sample for test, and then delay in filing of complaint, has taken away the right to have the second sample analysed under Section 13(2), which is a gross violation of the law. The act of prosecution of filing of the complaint after an unconscionable delay of over 18 months without any justification, has squarely fallen foul of the principle laid down in the case of ***Ghisa Ram*** (supra). This serious and explained delay, attributable entirely to the prosecution's conduct, rendered the petitioner's valuable right under Section 13(2) utterly illusory, as the sample in his possession would have inevitably deteriorated and become unfit for analysis by the Central Food Laboratory. Consequently, the petitioner has been seriously prejudiced in

³ AIR 1967 SC 970

his defence, and this fact has been seriously ignored by the court below while passing the judgement.

23 The appellate court further erred in placing the entire burden on the accused to have applied for analysis. The legal right is enlivened when the prosecution is launched, and the prosecution has a corresponding duty to act with promptitude. Following the law as laid down by the Hon'ble Supreme Court in the case of **Ghisa Ram** (supra), this Court holds that the conviction in the case cannot be sustained.

24 This court further noted the non-compliance with Section 11(3) and the statement of hostile independent witness, Suresh (PW-2) and finds that the case of prosecution is seriously doubtful.

25 The cumulative effect of the above-discussed reasons such as the marginal nature of the MSNF deficiency, invoking the principle of *de minimis* as upheld in **Karam Singh** (supra), and the inordinate and prejudicial delay in filing the complaint in violation of Section 13(2), which violated the petitioner's statutory right as recognised in **Ghisa Ram** (supra) by the Hon'ble Supreme Court leads to the definite conclusion that the prosecution has failed to prove its case against the petitioner beyond all reasonable doubt and both the learned courts below committed serious error in law by passing the impugned judgements. The conviction of the petitioner, therefore, cannot be sustained for the above reasons.

26 Consequently, the revision petition succeeds. The impugned judgment dated 04.07.2009 passed by the Learned Additional Sessions Judge No. 2, Chittorgarh, in Criminal Appeal No. 17/2006, and the judgment of conviction and sentence dated 01.07.2006 passed by the Learned Additional Magistrate, Chief Judicial Kapsan, District Chittorgarh, in Criminal Original Case No. 278/1996, are set aside.

27 The petitioner, Shankar Lal S/o Tolu Jat, is acquitted of the charge under Section 7/16 of the Prevention of Food Adulteration Act. The petitioner was on bail during the pendency of the revision petition, and his sentence remained suspended. In view of his acquittal, his bail bonds stand discharged and sureties released. He shall be released forthwith, if not required to be detained in any other case.

(RAVI CHIRANIA),J