

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.385 OF 2007

BALRAJ SHARMA

.. APPELLANT(S)

VERSUS

STATE (UT CHANDIGARH)

.. RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No.1222 of 2006, dated 06.06.2006. By the impugned judgment and order, the High Court has dismissed the appeal of the appellants and confirmed the conviction and sentence awarded by the Trial Court for the offence under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act (for short, "the Act").

2. Brief facts of the prosecution case are:

the appellant was a nominee of Hotel Regency at Chandigarh. On 06.11.1992, Food Inspector, M.K Sharma, inspected the premises of the Hotel and found 5 kg of tomato soup for sale. The food inspector purchased a sample of the soup measuring 1500 ml. for the purpose of analysis. In furtherance of the above, one part of the sample was sent to the Public Analyst, Chandigarh.

3. In the report of the Public Analyst, it was found that the sample was containing colour with added S.S.Y Coaltar Dye. Since the sample was found to be adulterated, a complaint was filed before the Chief Judicial Magistrate. The Chargesheet was filed against the appellant before the Trial Court where the appellant pleaded not guilty and the case was committed to trial.

4. In order substantiate its case, the prosecution relied on the evidence adduced by the

Food Inspector who was present at the hotel and took the sample of the soup and the report of the Public Analyst. The counsel for the appellant would contend before the Trial Court that there was no complaint from any of the customers of the hotel who were present while the Food Inspector carried out his visit. He would further contend that the appellant has not sent the copy of the report of the Public Analyst.

5. The learned Magistrate rejected the aforesaid contentions raised by the counsel for the appellants holding that a complaint from a customer is not necessary, further, as per the evidence on record it is clear that the appellant has indeed sent a copy of the report of the Public Analyst. After appreciating the evidence on record, the learned Magistrate convicted the appellant for the offence under Section 16(1)(a)(1) read with Section 7 of the Act and sentenced the appellant to rigorous

imprisonment for a period of six months and imposed a fine of Rs.1000/- and further sentenced the appellant to rigorous imprisonment for a period of two months in default of payment of fine by order dated 03.11.2000.

6. Aggrieved by the order passed by the learned Magistrate the appellants preferred an appeal before the Sessions Court. The counsel for the appellant before the Sessions Court would submit that there is no standard provided for the quality of the tomato soup in the Act and the sample cannot be termed as adulterated. He would further submit that on 06.10.1995, the appellant was nominated as a person responsible for the Company but thereafter he left the services of the Hotel and the appellant was not present when the sample was taken. Lastly, the counsel for the appellant would submit that the findings in the Public Analyst report is not

conclusive on the basis of the tests conducted by the Public Analyst.

7. The counsel for the respondent-therein would submit that as per the definition of adulteration under Section 2(ia), the sample in question was found to be containing non-permitted colour and accordingly, the learned Magistrate has rightly convicted the appellant. He would further submit that the appellant is a nominee of Hotel Regency which is a company and thus he was rightly prosecuted.

8. The Trial Court after hearing the parties to the *lis*, rejected the contentions of the appellant and observed that as per Section 7 of the Act a person can be held liable for adulteration or misbranding of food for the purpose of sale, storage or distribution in contravention of the Act or the

rules made thereunder. As far as the standard of quality of food is concerned the Trial Court held that various rules have been framed in this regard. The Trial Court further laid emphasis on Appendix-B of the Prevention of Food Adulteration Rules (for short, "the Rules") where definition of food and standard of quality of some food items is mentioned. Although tomato soup and standard of quality of the same is not mentioned in Appendix-B, notwithstanding, as per Rule 23 of the Rules addition of any colouring matter to any article of food is prohibited unless such an addition is specifically permitted in the Rules. The Trial Court held that Rule 28 provides a list of permitted synthetic food colours and Rule 29 provides the list of the food articles in which such an addition of synthetic food colours is permitted. Rule 29(g) does permit addition of permitted synthetic food colours to flavouring agents and soup powder for the period

upto 31.12.1977, however, the said rule will not come in aid of the appellants since it is clear from their statements under Section 313 of the Code of Criminal Procedure, 1973 that the soup was not prepared from soup powder but from tomato juice and colour was added to it.

9. The Trial Court rejected the plea of the appellants on the report of the Public Analyst being inconclusive on the ground that it is an undisputed and admitted fact by the appellant that colour was added to the soup and as such no further evidence is required to prove the same. As regard to the contention raised by the appellants that he was a nominee and hence he was not liable to prosecution, the Trial Court referred to Section 17 of the Act wherein the procedure for prosecution of companies is laid down, the said Section provides that where an offence has been committed by a company, a person

who has been nominated under Section 17(2) to be responsible for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The Trial Court thus rejected the contentions raised by the appellants and upheld the order of the Chief Judicial Magistrate by its order dated 01.06.2006.

10. Aggrieved by the aforesaid order, the appellant approached the High Court. The counsel of the appellants primarily contended that when the sample of soup was collected on 06.01.1992, the appellant was not in the service of Hotel Regency and only joined service with effect from 10.06.1995. The High Court rejected the aforesaid contention on the ground that such a factual plea cannot be permitted to be taken at the appellate stage and such a plea was indeed available to the appellants

before the Chief Judicial Magistrate but was not taken at that stage. The High Court thus dismissed the appeal and upheld the sentence and conviction of the Trial Court by order dated, 06.06.2006.

11. Aggrieved by the order so passed by the High Court, the appellant is before us in this appeal.

12. Heard learned counsel for the parties to the *lis*.

13. The counsel for the appellant would submit that the appellant was not in service of Hotel Regency when the sample was collected by the Food Inspector.

14. After going through the judgment and order passed by the High Court and the Courts below, we are of the considered opinion that the factual

plea of the appellant of not being in service when the sample was taken cannot be permitted to be taken for the first time at this appellate stage. Further, both the Courts have concurrently held that the appellant is guilty of an offence punishable under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act and sentenced the appellant to undergo rigorous imprisonment for a period of six months and a fine of Rs.1,000/-.

15. The minimum sentence that could be awarded if the conviction is upheld by the High Court is six months, and therefore, though the learned counsel for the appellant contended that the appellant is suffering from various ailments, we cannot reduce the sentence.

16. Accordingly, while disposing of the appeal, we direct the appellant to surrender before

the jail authorities within one month's time from today and serve the remaining period of sentence.

Ordered accordingly.

.....CJI.
[H.L. DATTU]

.....J.
[V. GOPALA GOWDA]

.....J.
[AMITAVA ROY]

NEW DELHI,
SEPTEMBER 02, 2015.

ITEM NO.6

COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 384/2007

RANBIR ARYA

Appellant(s)

VERSUS

THE STATE (U.T. OF CHANDIGARH)
(With office report)

Respondent(s)

WITH

CrI.A. No. 385/2007
(With Office Report)

Date : 02/09/2015 These appeals were called on
for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. Vaibhav Sharma, Adv.
Mr. Rajeev Sharma, Adv.

Mr. Rajeev Kumar Bansal, Adv.
Mr. Amit Sharma, Adv.
Ms. Kamakshi S. Mehlwal, Adv.

For Respondent(s) Mr. Jatinder Kumar Bhatia, Adv. (NP)

UPON hearing the counsel the Court made the following
O R D E R

CrI.A. No. 385 of 2007

The appeal is disposed of. The appellant is directed to surrender before the jail authorities within one month's time from today and serve the remaining period of sentence.

CrI.A. No. 384 of 2007

List Next week.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Vinod Kulvi]
Asstt. Registrar

[Signed order in CrI.A.385/2007 is placed on record]