

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS).

CRR NO.2779 of 2004

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IA NO:CRAN/1/2025

**BHAGIRATH GHOSH
VS.
THE STATE OF WEST BENGAL**

For the Petitioner : **Mr. Prabir Kumar Mitra, Sr. Adv.,
Mr. Prabir Majumder, Adv.,
Ms. Sangeeta Chakraborty, Adv.,
Ms. Anindita Kundu, Adv.**

For the State : **Mr. Kallol Mondal, learned Public Prosecutor,
Mr. Pritam Roy, Adv.
Ms. Samira Grewal, Adv.**

Last heard on : **02.09.2026**

Judgement on : **02.09.2026**

Uploaded on : **08.09.2026**

CHAITALI CHATTERJEE (DAS), J. :-

- 1.** The instant criminal revisional application has been filed challenging the judgment and order dated September 22, 2004 passed by the learned Additional Sessions Judge, 1st Court, Nadia, Krishnagar, affirming the judgment and order dated March 24, 2000 passed by the learned Chief Judicial Magistrate, Nadia, in case no.735C of 1997 under Sections 16(1)(a)(i) and 7(1) of the Prevention of Food Adulteration (PFA) Act.
- 2.** The prosecution case in a nutshell is that on May 16, 1997, the Sub Divisional Food Inspector, Krishnagar Sadar Sub Division, Shri Debasish Roy, visited the sweetmeat shop of the present petitioner and found that the

petitioner has stored 8 kg. of Dahi (curd) for sale in several earthen pots lying in the shop. The said Food Inspector purchased 600 gms. of Dahi under proper receipt and thereafter, took one part of the sample and sent the same to the Public Analyst, Nadia, for analysis and opinion after observance of all the legal formalities. The other two parts of the sample were sent to the local (Health) authority, Sadar Sub Division, Nadia, as per the provisions of PFA, Act, 1976.

3. On the basis of the report of the Public Analyst, Nadia, and after getting sanction from the higher authority, a complaint was lodged before the learned Chief Judicial Magistrate, Nadia, against the present petitioner which was registered as Case No.735C of 1997. The learned Magistrate took cognizance and directed to issue process. After appearance before the learned Magistrate, charge was framed under Sections 19(1)(a)(i) and 7(1) of the PFA Act against the present petitioner which was duly read over and explained to him and since he pleaded not guilty and claimed to be tried and, accordingly, the trial commenced.
4. In order to bring home the charges, the prosecution examined as many as two witnesses, one is the complainant and the other is a staff of the complainant's office. None was examined by the defence.
5. The learned Chief Judicial Magistrate after analyzing the evidence and considering the entire facts and circumstances of the case, passed an order of conviction on March 24, 2000 under Sections 16(i)(a)(i) and 7(1) of the PFA Act and sentenced the present petitioner to suffer imprisonment for six months and to pay fine of Rs.1,000/-, in default, to suffer further rigorous imprisonment for another fifteen days.
6. Assailing the said order, a criminal appeal was filed before the learned District and Sessions Judge, Nadia at Krishnagar, and the learned court upon

hearing all the parties, affirmed the order of conviction passed by the learned Chief Judicial Magistrate. Hence, this revisional application has been filed before this Court.

7. The learned Senior Advocate, representing the petitioner, argued that the court of Magistrate as well as the learned appellate Court failed to take into account that no independent seizure list witness was examined and it is hit by Section 10(7) of the PFA Act as well as Section 100(4) of the Code of Criminal Procedure. It is the contention of the learned Senior Advocate that there was no answer given by the prosecution as to whether the sample so collected was from one pot or from all. No inference regarding adulteration of the food can be drawn if the sample was taken from all the pitchers where the food was stored. It is the further contention that ultimately the report of the analyst was that the Dahi was of low fat category and was thereby adulterated. But no such report was submitted whether any harmful ingredient was mixed and the low quantity of fat in the curd depends on the milk which was used to prepare the curd. It is further contended that low fat can never be spurious and be called as adulterated. The further argument advanced is that the possibility of losing fat from the collected Dahi of 600 gms. by the Food Inspector cannot be ruled out and during the process of churning by the Food Inspector before or after mixing the Farmolin, it has happened or not. Rule 55 of PFA Rules, 1955, gives a thorough chart of preservatives and nowhere this Farmolin can be found for using as preservative. In addition, the trial Court never invoked Section 360 or Section 361 of the Code of Criminal Procedure to extend the benefit or any reason was assigned as to why such benefit was not extended when the period of imprisonment was only for six months. The learned Senior Advocate has relied upon the following decision to substantiate his contention:

- i) Dinesh Kumar Vs. The State of Madhya Pradesh¹

¹ (2004)8 Supreme Court Cases

- ii) Biswanath Vs. State of Maharashtra²
- iii) Bhagwan Singh Vs. State of Rajasthan³
- iv) State of Delhi Administration Vs. Puran Mal⁴

8. Lastly, it is contended that the matter is pending since last 26 years causing enough and, therefore, he prays for setting aside of the conviction.

9. The learned counsel for the State, on the other hand, argued that it can be found from the judgment of both the learned trial Court and the learned appellate Court that the Food Inspector on being informed purchased the quantum of curd which later on was duly sealed and all the formalities were complied with and subsequently, on the basis of the report of the said analyst, the complaint was lodged. The learned trial Court after analyzing the evidence adduced by the prosecution as well as considering the defence plea, arrived at the conclusion that the offence has been committed by the petitioner since card was adulterated. Accordingly, the learned counsel for the State prayed for dismissal of the revisional application.

10. Heard the submissions of the learned advocates for the parties. Perused the materials on record. At the outset, it can be seen that the instant revisional application was filed way back in the year 2004 and on October 18, 2004, this matter was admitted and directed to appear under the heading “Contested Application” after serving a copy of the same to the opposite party. In the meantime, the sentence was directed to remain stayed.

11. Long thereafter in the year 2019, the matter was listed and when none appeared, it was dismissed for default. The petitioner preferred the restoration application CRAN 1 of 2025 on the ground stated therein that he was not

² (2005) Supreme Court Cases Criminal 1285

³ (1976) 1 Supreme Court Cases 15

⁴ (1985) 2 Supreme Court Cases 589

aware about the proceeding since it was long pending before this Court. This Court considering the fact that the revisional application was filed against an order of conviction, recalled the order of dismissal and restored the revisional application back to its original file and number. In that way, the instant matter is pending before this Court for long 26 years.

12. The contention as can be found from the submissions of both the learned advocates for the parties that admittedly the petitioner had a sweetmeat shop and the Sub-Divisional Food Inspector, Shri Debasish Roy, purchased the said 600 gms. of mixed Dahi at a consideration of Rs.15/- upon issuing proper receipt and then one part of such sample was sent to the Public Analyst, Nadia, for opinion after observance of all legal formalities. The Public Analyst, Nadia, on examination, expressed his opinion that sample of mixed Dahi was “adulterated for low fat content” on the basis of which only the subsequent complaint was lodged. The learned appellate Court as well as the learned trial Court was of the opinion that it was not mandatory to cite a customer or an independent witness while purchasing any article by any person, suspecting the same as adulterated. So, the accused cannot take that ground in order to absolve himself from the charges levelled against him.

13. On close scrutiny of the discussions made by the learned appellate Court as well as the learned Court of Magistrate, it is found that the order of conviction was passed solely considering the report of the Public Analyst and the evidence adduced by D.W.1., the Sub-Divisional Food Inspector who visited the shop on May 16, 1997. It further reveals that no date and time was mentioned in course of evidence or in the judgment delivered by both the learned courts that the sample which was prepared in a packet containing one part of the said curd which was sealed and sent to the Public Analyst also contained the signature of the present petitioner. It is seen that it was sent through a messenger to the Public Analyst when no date and time has been found as to when it was sent. The messenger was not cited as a witness. The Public Analyst has not come before the court to prove the document. No witness was cited on behalf of the local body (Health) where also the other part of the

sample was sent. Only the instructions were given by the concerned officer through the local authority on the basis of which, the proceeding was started. The accused was intimated by a letter under Section 13(2) of the Act, if he liked to get the sample examined by the Central Food Laboratory. But this part has not been admitted by the present petitioner.

14. In the decision of **Dinesh Kumar** (supra) relied upon by the learned advocate for the petitioner, no finding that the Public Analyst was there that addition of *kesari dal* injuriously affected the nature, substance or quality thereof and, therefore, set aside the conviction. In the instant case also, in the report of the Analyst, nothing came forward in order to show that the curd was adulterated because of low fat content and was spurious or it could cause health hazard and not fit for human consumption. In this decision, Section 2(i) was discussed which defined “adulterated” and Section 2(i)(c) deals with substitution of an article by inferior or cheaper substance which affects injuriously the nature, substance or quality thereof and to that extent, no observation was found in the Public Analyst’s report which was the foundation for passing the order of conviction.
15. In the decision of **Vishwanath** (supra), 13 bottles of illicit liquor was recovered by the Excise party and one tin containing liquid from the possession of the appellant therein. Sample was taken from 13 bottles in a single bottle and sent for chemical analysis. In that case also, no evidence was found that the quality of alcohol seized from the appellant was more than five litres and also to show whether all 13 bottles contained alcoholic substances. Accordingly, the order of conviction was set aside.
16. In the decision of **Bhagwan Singh** (supra), sufficient doubt was raised and it was held by the Hon’ble Supreme Court that the trial Court and the High Court failed to analyze the circumstances which throw considerable doubt on the prosecution case against the appellant and, therefore, set aside the order of conviction passed against the appellant since the case was not free from reasonable doubt.

17. In the decision of **State (Delhi Administration)** (supra) in connection with Prevention of Food Adulteration Act, 1954, where the case was insect infested and the definition of Section 2(ia)(f) where the expression or otherwise unfit for human consumption whether to be considered as conjunctive or disjunctive were discussed. It was opined that on plain reading of the definition, the phrase “or is otherwise unfit for human consumption” can be read conjunctively as well as disjunctively. It relates to a distinct and separate class altogether. It was further observed that the last clause “or is otherwise unfit for human consumption” is residuary provision which would apply to a case what covered squarely within the clauses preceding it. If the phrase is to be read disjunctively, mere proof of the article of food being filthy, putrid, rotten, decomposed or insect infected would be per se sufficient to bring the case within the purview of the word “adulterated”, as defined in sub-clause (f) and it would not be necessary in such a case to prove further that the article or food were unfit for human consumption.

18. In the instant case, not a single document was found to have been found by the learned Chief Judicial Magistrate or the learned appellate Court which contained the word like filthy, putrid, rotten, decomposed to inspire confidence to hold that the curd was adulterated only due to low fat content. Therefore, the crux of the judgment if can be considered is that 600 gms. of curd which was purchased by the Food Inspector and thereafter observed certain procedure and sent the samples in three location but nowhere it was mentioned that how long it took to send it to Public Analyst or after what period such report of the Analyst was submitted and/or when the complaint was lodged. The other reports were not received. The Public Analyst did not mention that due to low fat content the curd was unfit for human consumption and hence this court is unable to agree with the view as expressed by the Learned Appellate court as the Prosecution has failed to establish by satisfactory evidence the requirement of section 2 (ia) (m) of the Act.

- 19.** In summing up as can be gathered from the facts and circumstances of the case as well as from the judgments as relied upon by the learned advocate for the petitioner and the materials on record, this Court is of the view that both the learned courts only on the basis of the report of the Public Analyst that curd contained low fat, passed the order of conviction which, according to this Court, is not sufficient to consider the same as adulterated and hence not sustainable in the eye of law.
- 20.** Accordingly, this criminal revisional application stands allowed. The judgment and the order of conviction passed by the learned Chief Judicial Magistrate which was affirmed by the learned appellate Court is hereby set aside. The petitioner be released forthwith from the respective bail bond.
- 21.** The revisional application and the connected application are, accordingly, disposed of.
- 22.** Let a copy of this order be sent to the concerned court by the department at an early date for information and necessary compliance.
- 23.** All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.
- 24.** Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]