



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE Dr. JUSTICE H.B. PRABHAKARA SASTRY

CRIMINAL REVISION PETITION No.1094 OF 2018

BETWEEN:

Sri. Syed Ahammed
S/o. B. Syed Yusuff
Aged about 58 years,
M/s. Select Coffee Works,
Azad Road, Sakaleshpura
Hassan District - 573134.

..Petitioner

(By Sri. J.S. Somashekar, Advocate)

AND:

State of Karnataka
by Food Inspector,
O/o. Local (Health) Authority,
Taluk Health Office,
Sakaleshpura,
Hassan District - 573134.

SPP High Court Building
High Court of Karnataka,
Bengaluru. 560 001.

.. Respondent

(By Sri. V.S. Vinayaka, High Court Govt. Pleader)

This Criminal Revision Petition is filed under Section 397 read with 401 of the Code of Criminal Procedure, 1973, with the following prayer:

" (a) Call for records in C.C.No.1022/2008 on the file of Civil Judge and JMFC Sakaleshapura and set aside the order of conviction and Sentence dated 20.06.2016 passed by the Civil Judge and JMFC Sakaleshapura in C.C.No.1022/2008.

(b) Set aside the judgment and order of conviction confirmed by the learned 5th Additional District and Sessions Judge, Hassan, passed in Criminal Appeal No.138/2016 dated 14.03.2018.

(c) Pass and such other/orders that deemed fit in the circumstances of case in the interest of justice and equity."

This Criminal Revision Petition having been heard through physical hearing/video conferencing hearing and reserved on **04-11-2022**, coming on for pronouncement of Orders this day, the Court made the following:

ORDER

The present petitioner was accused in Criminal Case No.1022/2008, in the Court of the Civil Judge and J.M.F.C., at Sakaleshpura, (hereinafter for brevity referred to as "the Trial Court"), who, by the judgment of conviction and order on sentence dated 20-06-2016 of the Trial Court, was convicted for the offence punishable under Section 7(i), 7(ii) read with Section 16 of the Prevention of Food Adulteration Act, 1954

(hereinafter for brevity referred to as "the Act") and was sentenced accordingly.

Aggrieved by the same, the accused preferred an appeal in Criminal Appeal No.138/2016, in the Court of the 5th Additional District and Sessions Judge at Hassan (hereinafter for brevity referred to as the "the Sessions Judge's Court"), which, after hearing both side, dismissed the appeal, by confirming the judgment of conviction and order on sentence passed by the Trial Court. It is challenging the judgments passed by both the Trial Court as well the Sessions Judge's Court, the accused/petitioner herein has preferred the present revision petition.

2. The summary of the case of the complainant as mentioned in his complaint filed under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as "Cr.P.C.") was that, on the date 20-06-2008, the complainant, as a Food Inspector, while on his duty at Azad

Road, Sakaleshpura, at about 5:00 p.m., visited a Shop by name M/s. Select Coffee Works and inspected the coffee seeds and its powder which were meant for public sale and noticed that the accused had stored and was selling misbranded and adulterated coffee powder in his Shop. The complainant, who was accompanied with his staff, purchased 600 grams of coffee powder and subjected them for scientific analysis and through the report from the Analyst, confirmed that the coffee powder was adulterated and misbranded as it was found that the caffeine content in it was 0.4% and aqueous extract was 55.0% and that it was also misbranded by virtue of non-printing of batch number and 'best before' on it. Hence, the complainant alleged that the accused has committed the offences punishable under Sections 7(i) and 7(ii) and 16(a)(i) of the Act.

3. The accused appeared in the Trial Court and contested the matter through his counsel. The accused

pleaded not guilty and claimed to be tried. As such, in order to prove the alleged guilt against the accused, the prosecution got examined four (04) witnesses from PW-1 to PW-4, got marked documents from Exs.P-1 to P-16 and produced two Material Objects (coffee powder packets) as MO-1 and MO-2. However, neither any witness was examined nor any documents were got marked on behalf of the accused.

4. The respondent - State is being represented by the learned High Court Government Pleader.

5. The Trial Court and the learned Sessions Judge's Court's records were called for and the same are placed before this Court.

6. Learned counsel for the accused/revision petitioner and learned High Court Government Pleader for the respondent - State are physically appearing in the Court.

7. Heard the learned counsels from both side. Perused the materials placed before this Court including the impugned

judgments passed by both the Courts and also the Trial Court and learned Sessions Judge's Court's records.

8. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the Trial Court.

9. After hearing the learned counsels for the parties, the only point that arise for my consideration in this revision petition is:

Whether the impugned judgments of conviction and order on sentence passed by the Trial Court and confirmed by the Sessions Judge's Court holding the accused (petitioner herein) guilty for the alleged offences punishable under Sections 7(i), 7(ii) read with Section 16(a)(i) of the Prevention of Food Adulteration Act, 1954, warrants any interference at the hands of this Court?

10. The learned counsel for the revision petitioner in his argument, canvassed mainly two points. The first point was

that the coffee power was not adulterated, because, even the Public Analyst report at Ex.P-9 does not say that the commodity/article was injurious to the health, as such, it does not attract Clause (l) or Clause (m) of Section 2(ia) of the Act.

His second point of argument was that there was no misbranding of the commodity since the Shop of the accused was a small Shop where he is only a retailer in coffee seeds and coffee powder.

11. Per contra, learned High Court Government Pleader for the respondent - State in his argument submitted that, it is not necessary that, under Clause (l) of Section 2 (ia) of the Act, a commodity should be necessarily injurious to health. He further submitted that the non-mentioning of the batch number and non-printing of 'best before' on the cover being an admitted fact itself is mis branding.

12. The complainant - PW-1(CW-1) - Sri. Balasubramanya P.N., who got himself examined as PW-1

in his evidence has stated that, on the date 20-06-2008, at about 2:00 p.m. he had visited the Indian Coffee Works at Azad Road at Sakaleshpura and at about 5:00 p.m., he had visited another Shop by name Select Coffee Works and the owner of the Shop by name Syed Ahammed was present. He has also deposed that he had purchased about 600 grams of coffee powder in 3 different packets of equal quantity (200 grams each) by paying a sum of ₹60/- and he had obtained a receipt. Subsequently, he had issued notice under Form No.6 to the accused and had sent the said coffee powder for scientific analysis. He had also drawn the mahazar at the place of incident and has deposed that on the date 21-06-2008, he had dispatched the said recovered articles for examination to the Public Analyst by affixing Form No.7, memorandum along with sample seal and had kept the two other packets with the competent authority. On the date 19-08-2008, he had received the report that the said coffee powder was adulterated and misbranded and had requested

the DHO of the concerned District to permit him to launch the prosecution against the accused and subsequently the permission was accorded to the complainant. He has identified the signature on the mahazar and also he has produced the relevant documents and the same were marked as Exs.P-1 to P-15 and he had identified the accused also before the Court.

Though the complainant (PW-1) was subjected to a detailed cross-examination, however, except making denial suggestions, nothing material could be elicited in his cross-examination, so as to weaken the evidence of PW-1 given in his examination-in-chief.

13. PW-2 (CW-5) - Dr. B.S. Nagarajurao is the District Health Officer, who, in his evidence has stated that, he had granted the permission to the complainant to launch the prosecution against the accused as per Ex.P-11 and that the

said permission was granted to him after verifying the various documents.

14. PW-3 (CW-2) - Sri. Raveendra, who is a retired Health Officer, in his evidence has stated that, PW-1 had handed over him three packets consisting of coffee powder suspected to be adulterated. He had given a specimen number to the same and that PW-1 sent it for analysis to the Health Analyst at Mysuru. He further stated that, on the date 28-08-2008, they received the report stating that the sample coffee power that was sent for analysis was adulterated and accordingly, the prosecution was launched against the accused. This witness was not cross-examined from the accused's side.

15. PW-4 (CW-6) - Sri.S.N. Nanjundaiah is the Public Analyst, who, in his evidence has stated that, while working as Food Analyst at the Regional Laboratory at Mysore on the date 23-06-2008, he received the packet in this case and

conducted analysis of the contents of the said packet. He noticed that the content of caffeine in the commodity was found to be less and also aqueous content was more than the required level, as such, he arrived at a conclusion that the said commodity was adulterated and issued a report as per Ex.P-9. This witness also was not subjected to cross-examination from the accused's side.

16. The evidence of PW-2 - the District Health Officer of the Health and Family Welfare Department, Hassan, would go to show that, based upon the request made by the complainant as per Ex.P-10, it is only after going through the necessary material placed before him, he accorded permission as per Ex.P-11 for prosecuting the accused for the alleged offences. Thus, the initiation of criminal action against the accused was in accordance with law.

17. The mahazar at Ex.P-2 shows that, PW-1 joined by his staff and in the presence of panchas has drawn the seizure

panchanama. Due to the inability to secure the said pancha - Sri. Khalandar, despite issuing a non-bailable warrant against him, the said witness was not examined. However, the evidence of PW-1 is trustworthy and believable and shows that he visited the Shop of the accused on the date 20-06-2008 and purchased 600 grams of coffee power from him. He also obtained a receipt in that regard as per Ex.P-4 from the Shop. His evidence also would go to show that, he bifurcated the purchased 600 grams of coffee power into three packets of equal quantity (200 grams each) and sent the same along with proper seal affixed on it for the purpose of analysis.

18. The evidence of PW-3 further corroborates the evidence of PW-1 that, PW-1 had handed over to him itself three packets containing coffee power suspected to be adulterated. After that, it was him who had given the specimen number and sent it for its analysis to the Food Analyst at Mysore.

19. The un-denied evidence of PW-3 and PW-4 would go to show that the article/commodity was sent for its scientific analysis to PW-4, who conducted analysis and upon the same issued his report as per Ex.P-9. The said report which is at Ex.P-9 shows that though the prescribed standard for the presence of caffeine in the coffee powder was not less than 0.6%, however, the commodity (sample) tested was showing only 0.4% of caffeine in it. Furthermore, the aqueous extract, which according to prescribed standard, was to be not more than 50% was found to be at 55%. The Analyst also noticed that the label fastened to the article by the seller was showing that it was manufactured by Select Coffee Works, Azad Road, Sakaleshpura, but the batch number, 'best before' and 'veg' or 'Non-veg' symbol were also not printed upon it. Thus, PW-4, a Public Analyst cum Regional Assistant Chemical Examiner, Mysore Division, Mysore, came to an opinion that, the sample analysed by him was adulterated and misbranded.

The said report at Ex.P-9 and the evidence of PW-4 has remained undisputed.

20. It is in the light of the above evidence, when the argument of the learned counsel for the petitioner is analysed, the learned counsel for the petitioner does not deny the collection of the commodity by the complainant (PW-1) in the form of purchase of 600 grams of coffee powder from the coffee Shop of the accused and getting the same tested through PW-4 - Public Analyst and receiving the report as per Ex.P-9. However, his contention is that, since the Public Analyst and Chemical Examiner (PW-4) has not opined that the commodity/article was injurious to health, the commodity tested cannot be called as adulterated. He drew the attention of the Court to the definition of "adulterated" at Section 2(ia) and Clause (I) of Section 2(ia) which reads as follows:

"2. Definitions. -In this Act unless the context otherwise requires, -

(i)...

(ia) "adulterated" - an article of food shall be deemed to be adulterated-

xxx xxx xxx
 xxx xxx xxx

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, but which renders it injurious to health."

No doubt the above definition not only mentions that variation in the constituents than the prescribed standard itself is not sufficient, but the said variation should render the article of food injurious to health, however, Clause (m) of the very same Section 2(ia) of the Act also is required to be read. The said provision reads as follows:

2(ia)(m): "If the quality or purity of the article falls below the prescribed standard 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."*

The above section is squarely applicable to the case on hand.

21. The learned counsel for the revision petitioner could not able to convince the Court that the article in question which was the coffee powder was a primary food as defined

under Section 2(xiia) of the Act. Thus, the article/commodity has proved to be adulterated.

22. Admittedly, the food article sold was not labelled in accordance with the requirement of the Act and the Rules made there under, by mentioning its batch number, 'best before' and 'Veg' or 'Non-veg' symbol, which is clearly an offence under Section 7(i) and 7(ii) punishable under Section 16(1)(a) of the Act.

23. It is analysing these facts and appreciating the materials placed before them in their proper perspective, since both the Trial Court and the Sessions Judge's Court have properly held the accused as guilty of the alleged offences, I do not find any reason to interfere in them.

24. It is the sentencing policy that the sentence ordered must be proportionate to the gravity of the proven guilt of the accused. It must not be either exorbitant or for namesake.

25. In the instant case, the present petitioner/accused was sentenced to undergo simple imprisonment for a period of six months and to pay a fine of ₹1,000/-, in default of payment of fine, to undergo simple imprisonment for a period of fifteen days. Since in the light of the facts and circumstances of the case, the sentence ordered by the Trial Court and confirmed by the Sessions Judge's Court being proportionate to the gravity of the proven guilt against the accused, I do not find any perversity, illegality or error in the impugned judgments warranting any interference at the hands of this Court.

Accordingly, I proceed to pass the following:

ORDER

[i] The Criminal Revision Petition stands **dismissed.**

[ii] The revision petitioner/accused -
Sri. Syed Ahammed, to surrender before the Court

of the Civil Judge and J.M.F.C., at Sakleshpur,
within forty-five (45) days from today and to serve
the sentence.

Registry to transmit a copy of this order to both the Trial
Court and also the Sessions Judge's Court along with their
respective records, immediately.

**Sd/-
JUDGE**

BMV*