

**Harjeet Singh Vs. State**

**Harjeet Singh Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/696849](http://sooperkanoon.com/696849)

**Court :** Delhi

**Decided On :** Apr-30-1998

**Reported in :** 1998IVAD(Delhi)737; 1998(2)ALT(Cri)19; 1998CriLJ3536; 1998(3)Crimes285; 76(1998)DLT511; 1998(46)DRJ96

**Judge :** Dalveer Bhandari, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16 and 20

**Appeal No. :** Crl. Revision No. 54 of 1981

**Appellant :** Harjeet Singh

**Respondent :** State

**Advocate for Def. :** Mr. B.T. Singh, Adv.

**Advocate for Pet/Ap. :** Ms. Neeta Thakur, Adv

**Judgement :**

ORDER

Dalveer Bhandari, J.

1. This revision petition is directed against the order of the learned Additional Sessions Judge, Delhi passed in Criminal Appeal No. 45 of 1980.

2. The petitioner was convicted for an offence punishable under Section 7 read with Section 16 of the Prevention of Food and Adulteration Act, 1954 and was sentenced to four months' R.I. and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo further R.I. of three months by the learned Metropolitan Magistrate.

3. The petitioner aggrieved by the order of the learned Additional Sessions Judge preferred this revision petition. Brief facts necessary to dispose of this petition are recapitulated as under:

4. On 13.6.1978, the Food Inspectors Mr. R.K. Ahuja and Mr. A.P. Singh went to the factory of M/s H.S. Oberoi Sons & Co. and had taken nine bottles of carbonated water from one crate out of a lot of different crates on payment of Rs. 26.40. These nine bottles were divided into three parts and these were separately sealed in accordance with the Rules. The case of the prosecution is that though the contents in the carbonated water showed the presence of saccharine but the bottle had no label declaration to that effect so the public analyst opined the sample to be adulterated.

5. According to Rule 47 of the Prevention of Food Adulteration Rules, permissible limit of saccharine is to the extent of 100 parts per million (PPM). According to Rule 32, a label has to be affixed specifying the name, trade name or description of food contained in the packet and the name and business address of the manufacturer or vendor or packer. The carbonated water bottle purchased by the Food Inspector had no such label. Ram Kaur was found to be the sole proprietor of the said firm while her son Harjeet Singh was alleged to have sold the sample for analysis as a person actually working on spot. Under Section 2(ix)(k) an article is deemed to be misbranded if it is not labeled in accordance with the requirements of the Act and the Rules. therefore, both the appellants have been charged for the offence of mis-branding.

6. During the pendency of this revision petition, Ram Kaur expired and her revision petition became infructuous. Learned counsel for the petitioner Ms Neeta Thakur submitted that there is no valid sanction for prosecution as envisaged under Section 20 of the [Prevention of Food Adulteration Act, 1954](#). She has drawn my

attention to the original sanction order which was granted by the Secretary (Medical) Delhi Administration on 30.10.1978. This sanction is on cyclostyled proforma where the names of the petitioners Harjeet Singh and Ram Kaur have been filled in later on. Similarly, carbonated water, name of the Inspector and date of lifting of the sample were filled in later on. The learned counsel for the petitioner submits that there has been no application of mind before granting sanction for the prosecution.

7. Learned counsel has placed reliance on number of decided judgments of this Court. In R.N. Gujral and another v. Pritipal Gupta : 1988 (2) P F A C 84 this Court observed that sanction granted on a cyclostyled form wherein the name of the accused had been typed in the body of a form the date of lifting of the sample and also the food articles namely, mustard oil has been typed in that form. The offence made out under the Prevention of Food Adulteration Act for which offence the respondent was tried, has also been mentioned. The Court observed that the sanction of prosecution was not a proper sanction and therefore, the entire trial was vitiated.

8. Ms. Thakur, the learned counsel for the petitioner also placed reliance on State (Delhi Admn.) v. Shyam Lal; 1987 (2) P F A A 198. In this case also the sanction to prosecute was recorded by the Secretary (Medical) Delhi Administration and the sanction granted on a cyclostyled form wherein the name of the accused had been typed in the body of the form and the food article as well as the date of the lifting of the sample was also typed out. The Court observed that the sanction to prosecute was not valid and on that ground dismissed the appeal by the Delhi Administration.

9. The learned counsel for the petitioner also placed reliance on Ms. Shakun and another v. Delhi Administration Delhi; 1989 (1) P F A C 387, while placing reliance on the aforesaid two judgments, the revision petition filed by the petitioner was allowed in this case.

10. The learned counsel also invited my attention, to another reported case State v. Brij Mohan : 1985 (1) P F A C 74. In this case the court placed reliance on two celebrated cases Gokulchand Dwarkadas Morarka Vs . The King . The Court observed as under :

'The sanction to prosecute is an important matter : It constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. A sanction which simply names the persons to be prosecuted and specifies the provision of the order which he is alleged to have contravened is not a sufficient compliance with Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943'.

11. `The Court also placed reliance on Mohd. Iqbal Ahmed Vs . State of Andhra Pradesh; : 1979 CriLJ633 . In the said case the court observed that :

'What the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecution and must therefore be strictly complied with before any prosecution be launched against the public servant concerned.'

12. The learned counsel for the petitioner also placed reliance on another judgment of this Court in Nand Kishore & Anr. Vs . State (Delhi Admn.); : 44(1991)DLT247 . In this case the Court has arrived at the conclusion that if the sanction for the prosecution shows lack of application of mind by the authority concerned, in that event the conviction in Food Adulteration Act, 1954 can be sustained.

The sanction to prosecute is a very vital and important matter. It constitutes a condition precedent to the institution of the prosecution. The sanctioning authorities either the Central Government or the State Government have absolute discretion either to grant sanction or withhold the sanction. It must be clearly borne out from the sanctioning order that before granting sanction or withholding sanction, the sanctioning authority had all the necessary facts constituting the offenses before it. It should also be clear from the sanctioning order that there has been proper application of mind before taking the decision. Grant of sanction or withholding of the sanction is not an idle formality or acrimonious exercise but a

solemn and sacrosanct act which has to be performed with extreme caution and care. This is virtually the foundation on which the entire future course of action is totally dependent.

13. When ratio of all those cases is applied to the facts of this case the conclusion becomes irresistible. The sanction granted by the Secretary (Medical) Delhi Administration on 30.10.1978 was on a cyclostyled proforma and in the body all the names and facts were typed out such as - the name of the accused, the sample of what commodity, the name of the Food Inspector and under what provisions the accused has been prosecuted. It becomes abundantly clear from bare perusal of the sanctioning order that the sanction was granted in a mechanical manner and without any serious application of mind. The solemn and sacrosanct duty was not performed in the manner in which it ought to have been performed.

14. In view of this matter, this Court is left with no option but to allow this Revision Petition and the order dated 13.11.1978 granting the sanction is set aside. Consequently, the petitioner in this petition stands discharged.

15. This petition is accordingly allowed and disposed of.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**