

**State of H.P. Vs. Krishan Kumar**

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**Court :** Himachal Pradesh

**Decided On :** Jun-28-1999

**Reported in :** 2000CriLJ2060

**Judge :** M.R. Verma, J.

**Acts :** Prevention of Food Adulteration Act - Sections 2, 10(7), 16(1) and 16(1A);  
;Prevention of Food Adulteration Rules, 1955 - Rule 29

**Appeal No. :** Cri. Appeal No. 205 of 1996

**Appellant :** State of H.P.

**Respondent :** Krishan Kumar

**Advocate for Def. :** S.D. Vasudeva, Adv.

**Advocate for Pet/Ap. :** K.D. Batish, Addl. Adv. General

**Disposition :** Appeal dismissed

**Judgement :**

**M.R. Verma, J.**

1. This is an appeal against the judgment dated February 9, 1995 passed by the learned Additional Sessions Judge (II), Kangra at Dharamshala whereby the judgment dated January 31, 1994 passed by the learned Judicial Magistrate, I-

Class (II), Nurpur convicting the accused under Section 16(1-A) of the Prevention of Food Adulteration Act (hereafter referred to as the 'Act') read with Rule 29 of the Prevention of Food Adulteration Rules, 1955 (hereafter referred to as the 'Rules') awarding him sentence of undergoing rigorous imprisonment for one year and fine in the sum of Rs. 2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months has been set aside and the accused has been acquitted.

2. The case of the prosecution, in brief, is that PW-1 B.S. Sidhu, Food Inspector visited the shop of the accused in the Court Complex at Nurpur on March 25, 1992 and allegedly, after observing the formalities as provided under the Rules, purchased a sample of cooked 'Dal Masar' prepared in 'Vanaspati' for the purpose of analysis and the sample so purchased was dealt with in accordance with the Rules and part thereof was got analysed from the Public Analyst. Vide report Ext. PH, the Public Analyst opined that the sample contained oil soluble coaltar-dye of orange shade which is not a permitted food colour. Moreover, the addition of even coaltar food colour to such foods as the sample is, is not permitted under the provisions of Rule 29 of the Rules.

3. After obtaining the requisite sanction, PW-1 B.S. Sidhu, Food Inspector, lodged a complaint against the accused under Section 16(1)(a)(i) and (1-A) of the Act and Rule 29 of the Rules. The accused came to be tried by the learned Judicial Magistrate I-Class (II), Nurpur who convicted the accused under Section 16(1-A) of the Act read with Rule 29 of the Rules and sentenced him as aforesaid.

4. Feeling aggrieved, the accused preferred an appeal against the said conviction and sentence which was heard and disposed of by the learned Sessions Judge (II), Kangra at Dharamshala who set aside the conviction and sentence as passed by the trial Magistrate and acquitted the accused. Hence this appeal by the State.

5. I have heard the learned Additional Advocate General for the appellant and the learned counsel for the accused.

6. The judgment of acquittal passed by the learned Sessions Judge is based on three grounds, namely (1) that no independent witness was associated in the

process of taking the sample by the Food Inspector; (2) that the Public Analyst in his report has not given the opinion that the article of food is adulterated and is injurious to health and the opinion of the Public Analyst based on paper chromatographic test is not a sure test to ascertain the coaltar dye and (3) that the sanction to prosecute the accused is illegal as having been accorded without proper application of mind by the sanctioning authority.

7. A perusal of 'panchnama' Ex. PC shows that there is no endorsement therein mentioning that the Food Inspector made attempts to join independent witnesses to witness the process of taking the sample and none was available or if anyone was available, he refused to be a witness of the process. However, it is mentioned in the complaint that 'one witness working as preparation of papers of registration refused to sign the documents'. The name of such person, however, has not been indicated nor it is mentioned in the complaint that except such person any other independent witness was available or refused to be a witness on request having been made to that effect. In his statement as PW-1, Food Inspector Sh. B. S. Sidhu has stated that on the spot he had called one person with a view to associate him as a witness in the process of taking the sample but he refused. Therefore, he had to join his own Peon as a witness. He has, however, admitted in his cross-examination that at the relevant time lawyers and their clerks were present in the Court premises and were doing their work. It simply means that at the relevant time, the Court work was going on, therefore, it cannot be said that except one man no other independent person was available on the spot who could be joined in the process of taking the sample nor it is the case of the Food Inspector that he requested some of them to witness the process but they refused. Thus, it cannot be said that the Food Inspector did make genuine efforts to join some independent witness to witness the process of taking the sample. This conclusion is further strengthened by the fact that the Food Inspector has not taken this aspect of the matter seriously as is evident from the fact that in the 'Panchnama' wherein he was supposed to mention the names of the witnesses present vide para 2 no name has been mentioned. Even the name of Dulo Ram who was allegedly present at the time of taking the sample and was associated as a witness in the process of taking the sample by the Food Inspector is not mentioned therein. Thus, the Food Inspector has failed to comply with the

provisions of Section 10(7) of the Prevention of Food Adulteration Act. The only witness who has been joined in the process of taking the sample by the Food Inspector is PW-2 Dulo Ram who is admittedly his peon and as already stated hereinabove, even his name has not been mentioned in para 2 of the 'Panchnama' Ex. PC. What renders the statements of the Food Inspector and his Peon more suspicious is the fact that in the 'Panchnama' Ex. PC initially the Sr. No. of the sample had been given as 03488 at two places but 0 of the said number has been cut at both the places. Similar cuttings have been noticed in Form VI Ex. P-A and the receipt Ex. PB in both of which said Dulo Ram appears to be a witness. Thus, Dulo Ram was a convenient witness to the Food Inspector being his Peon and anything signed by him could be corrected. I will discuss it at a later stage in detail that these corrections in the documents have been made at a highly belated stage. Against the aforesaid background, a suspicion is created about the conduct of the Food Inspector as also PW Dulo Ram, therefore, their statements are rendered suspicious and thus, non-joining of an independent witness in this case to witness the process of taking the sample and preparation of the papers required to be prepared during the process of taking the sample, is rendered fatal to the prosecution case.

8. So far as the second ground for acquittal of the accused relied on by the Sessions Judge that the Public Analyst in his report has not given the opinion that the article of food is adulterated and is injurious to health and the opinion of the Public Analyst based on paper chromatographic test is not a sure test to ascertain the coaltar dye is concerned, it is incapable of being sustained. The standards have been duly prescribed for the food articles under the Prevention of Food Adulteration Rules. Therefore, such food articles must conform to the prescribed standard and if it does not conform to the prescribed standard, it will be deemed to be adulterated irrespective of the fact that the Public Analyst has not certified it to be so or that he has not opined that the admixture found in the food article or the variation found in the standard of the food article in comparison to the prescribed standard, is injurious to health, except in cases covered under Section 2 (ia), (b), (c), (d), (e), (f), (h), (i), (1) and (m). The case in hand is not covered under any of the aforesaid provisions but is covered under Section 2(i-a)(j) of the Act whereby an article of food shall be deemed to be adulterated if any colouring matter other

than that prescribed in respect thereof is present in the article, or if the amount of the prescribed colouring matter which is present in the article, is not within the prescribed limits of variability, as in this case the sample contained an oil soluble coaltar dye of orange shade which is not a permitted food colour and even coaltar food colour to such food article i.e. 'Masar' is not permitted under the provisions of Rule 29 of the Prevention of Food Adulteration Rules. Thus, the offence in such a case is complete once oil soluble coaltar dye of orange shade has been found in the sample because such dye of orange shade is not a permitted food colour and, thus, the sample has to be deemed to be adulterated in view of the provisions of Section 2(i-a)(j) referred to above.

9. So far as the existence of the nonpermitted substance in the food article as opined by the Public Analyst is concerned, it has to be taken as correct unless the contrary is shown. Such a report is ipso facto admissible in evidence and in case the accused entertained any doubt about the correctness of the report, which on the face of it does not appear to be so, it was for him to have alleged and proved that the report is incorrect.

10. So far as the last ground for acquittal of the accused relied upon by the learned Sessions Judge is concerned, it is sustainable, but for the reasons other than those assigned by the learned Sessions Judge. The learned Sessions Judge has observed that the authority competent to grant sanction has signed the letter of sanction on 29-5-1992 whereas the same has been despatched to Food Inspector on 1-6-1992 but there is no explanation why the letter remained unsigned for 3 days which only indicates that the letter has been put up for signatures by the Dealing Assistant which the Chief Medical Officer has signed in a casual manner which is against the statutory provisions of law. The conclusions apparently and on the face of it is incorrect. If the sanction order has been signed by the competent authority on 29-5-1992 but it was despatched to the Food Inspector on 1-6-1992 that does not mean that the letter was signed by the sanctioning authority without application of mind. Thus, this reasoning cannot be acceptable as reasonable.

11. However, there is other aspect of the case which indicates that the sanctioning authority has not applied its mind to the material placed before it or the material as a whole was not placed before it. In either case, the sanction as accorded by him will be bad in law. It may be seen that the serial number of the sample initially has been given as 03488 in Form VI Ex. PA, receipt Ex. PB, Panchnama Ex. PC, Form VII Ex. PD and another Form VII Ex. PF, but subsequently the 0 appears to have been scored out whereas in Annexure 5 Ex. PJ, this number has been indicated as 3488 and is so mentioned in the application made by the Food Inspector to the Chief Medical Officer for grant of sanction to launch prosecution against the accused, Ex. PK and the sanction order Ex. PL. It may be noticed that out of the aforesaid documents Exs. PA, P3 and PC have been prepared on 25-3-1992 whereas documents Ex. PD and PF appear to have been prepared on 26-3-1992. The document Ex. PJ has been prepared on 11-5-1992 and the application Ex. PK on 20-5-1992 and the sanction order on 20-5-1992. It remains an unexplained mystery as to when and why the serial number in these documents came to be changed. In case this change would have been brought about only in the initial documents dated 25-3-1992 in the ordinary course, it could be treated as a correction of a clerical error having been corrected on the same day but the uncorrected number as given on the initial documents Ex. PA, Ex. PB and Ex. PC has been repeated even in the documents Exs. PD and Ex. PF dated 26-3-1992. It, however, appears that the corrections about the number has not been made even on 26-3-1992. The reason is obvious. The report of the Public Analyst Ex. PH is dated 29th of April, 1992. This report also reveals that initially the serial number of the sample has been typed as 03488 but subsequently the figure 0 has been scored out but not with the ink with which the report has been signed by the Public Analyst. It simply means that it was Serial Number 03488 of the sample which was communicated even to the Public Analyst. Thus, these corrections appear to have been made after 29th of April, 1992. No doubt, in Annexure 5 Ex. PJ dated 11-5-1992 the serial number of the sample has been given as 3488 and similar number has been given in Ex. PK dated 20-5-1992 and the sanction order Ex. PL dated 29-5-1992 but a subsequent document Ex. PW-2/B dated 2-6-1992 again gives the serial number of the sample as 03488 and it has not been corrected. Thus, what can be said on the basis of the document Ex. PW-2/B dated

10-6-1992 is that it remains a mystery as to how, when and why serial numbers have been changed. In case this number has been changed before the papers were examined by the sanctioning authority and sanction accorded on 29-5-1992, in that event, the serial number of the sample could not be 03488 in the document Ex. PW-2/B which came into being subsequently. Thus, if all the papers were placed before the sanctioning authority, it ought to have come to know of the changes made in the serial number and some clarification about such changes would have been asked for, particularly about the change made in the report of the Public Analyst, which prima facie does not appear to have been made by the Public Analyst. There is no explanation or clarification as already stated hereinabove as to how, why and when these changes have been brought about nor the sanctioning authority appears to have applied its mind to this aspect of the matter. Therefore, it cannot be said that the sanction Ex. PL was accorded by the sanctioning authority after due application of mind and not in a routine manner. Thus, there being no proper sanction, the accused is entitled to acquittal.

12. As a result of the above discussion, I do not find any reason to interfere with the order of acquittal as passed by the learned Sessions Judge. Consequently, the appeal fails and is accordingly dismissed. The bail bonds furnished by the accused are discharged.