2025:PHHC:046022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-43-2010
Reserved on: 26.03.2025
Pronounced on: 03.04.2025

ADITYA KUMAR

. . . . Petitioner

Vs.

STATE OF HARYANA

. . . . Respondent

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Argued by: - Mr. Salil Bali, Advocate, for the petitioner.

Mr. R.K.S. Brar, Addl. A.G., Haryana.

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DEEPAK GUPTA, J.

Accused Aditya Kumar *(petitioner herein)* has been convicted by the Court of Ld. Chief Judicial Magistrate, Hisar under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 ['for short 'the PFA Act'] vide judgment dated 20.10.2007 in a complaint lodged by Government Food Inspector, Hisar. Vide a separate order dated 23.10.2007, he was sentenced to undergo rigorous imprisonment for a period for three months and further to pay a fine of ₹500/- with default sentence of one month in case of non-payment of fine, for committing the said offence. Fine was, however, paid. Appeal filed against the aforesaid conviction and sentence was dismissed by ld. Additional Sessions Judge, Hisar vide his judgment dated 07.01.2010.

2. Against the aforesaid conviction and sentence, petitioner has approached this Court by way of the present revision. Revision was admitted on 12.01.2010 and on the same day, the sentence of the petitioner was directed to be suspended during the pendency of this petition.

3. As per prosecution case, on 28.09.1999, Sh. Sham Lal Mahiwal, Government Food Inspector, Hisar accompanied by Dr. Ashok Chaudhary inspected the premises of the petitioner, who was found in possession of 20Kg of Dal Masur kept for public sale in a gunny bag. After completing statutory requirements, 600 gms of Dal Masur was purchased for the purpose of analysis. The purchased Dal Masur was divided in three parts and converted into the sealed parcels. One of the parcels along with the slip of LHA, Hisar was sent to Public Analyst, Haryana for the analysis. Other two parcels along with the copies of memo of Form-VII were deposited with Local Health Officer, Hisar. Report of the public analyst Haryana was received, as per which the sample was coloured with sunset yellow synthetic colour, whereas, it should be free from the same. Accused was alleged found to have contravened the provisions of the PFA Act, 1954 and Rules, 1955 framed thereunder and as such, after complying statutory requirements, the prosecution was launched.

4. After trial, the charge against the accused was held to be proved and accordingly, he was convicted the sentenced as noted above.

5. Conviction has been assailed by ld. counsel for the petitioner on various grounds to the effect that there was non-compliance of Rules 17 & 18 of the PFA Rules; violation of Rule 28 of the PFA Rules and non-compliance of Rule 22 of the PFA Rules. It is also the contention that there is non-compliance of Section 13(2) of the PFA Act.

6. It is contended by ld. counsel that though as per the prosecution case, the copy of the report of Public Analyst along with the forwarding memo Ex. PW2/A was sent to the petitioner-accused through registered post and the said registered envelop was never received back, but there is no evidence to show that accused was ever served with the said letter and thus, there is a non-compliance of Section 13(2) of the PFA Act. Learned counsel has relied upon ***Narayana Prasad Sahu Vs. The State of Madhya Pradesh, 2021 (4) RCR (Criminal) 669***, in which it was held by Hon'ble Supreme Court that mere dispatch of the report to the accused is

not sufficient compliance with the requirement of Sub Section (2) of Section 13 of the PFA Act and that report must be served on accused.

7. It is noticed that in the above case before Hon'ble Supreme Court, the endorsement of the postman showed that number of attempts were made to serve the letter upon the addressee i.e. the accused but he was not available even after giving intimation and therefore, letter was returned by the postman. However, the clerk who had dispatched the report was though examined by the prosecution and it relied upon the remarks made by the postman on the postal envelope, but the postman, who allegedly made the remarks admittedly was not examined by the prosecution. It was in these facts and circumstances that Hon'ble Supreme Court held that examination of the postman was necessary so as to prove that at any point of time, accused had refused to receive the letter. Hon'ble Supreme Court also noted Rule 9B of the PFA Rules, so as to hold that more than one mode is prescribed by the said Rule for serving the report of the public analyst on the accused. After the postal packet was returned, not even an attempt was made to personally serve the report upon the accused and thus, there was non-compliance of the mandatory requirement of Sub Section (2) of Section 13 of the Act and consequently, conviction and sentence was set aside.

8. I am afraid that the aforesaid authority is of no advantage to the petitioner in the present case, as it is distinguishable from the facts of the present case. As the judgments of the Courts below would reveal that copy of the report of the public analyst (Ex. PD) along with the forwarding memo Ex.PW2/A was sent to the accused through registered post. Postal receipt in this regard is Ex.PW2/B. Registered envelope containing the letter was never returned back, raising presumption that it was served upon the addressee i.e. the accused.

9. The petitioner-accused want to take benefit of the fact that on the postal receipt, the only address mentioned is 'Aditya Kumar resident of Hisar' and not the complete address. Ld. trial Court has rightly observed that

in the forwarding Memo Ex.PW2/A, the complete address of the accused-petitioner has been mentioned specifically giving details of his shop and that it is quite usual that on the postal receipt handed over to the person, who sends the envelope by registered post, only the small address is mentioned thereon. In case the report along with the forwarding memo of the LHA was not served upon the accused, obviously the same would have been returned back as unserved. However, the registered envelope in this case was not returned back to the complainant. Moreover, it has been observed by the Courts below that in his statement under Section 313 CrPC, accused never pleaded that he had not received the report of the Public Analyst along with the forwarding memo. Said contention was raised only for the first time during arguments and so, has been rightly rejected by the trial Court. As such, this Court does not find any merit in this contention.

10. Ld. Counsel for the petitioner then pleaded non-compliance of Rule 22 of the PFA Rules by submitting that at least 250 gm Masur Dal was required to be sent for the purpose of analysis. However, in the present case 600 gm of sample of Dal Masur was purchased, which was divided into three parts, which means that only 200 gm of Masur Dal was sent for the purpose of analysis and so, there is non-compliance of Rule 22 of the PFA Rules. There is no merit in the contention. It has been rightly observed by the trial Court by relying upon judgment of Hon'ble Supreme Court in the case of ***State of Kerala Vs. Allasserv Mohammad, 1978 Criminal Law Journal 925*** that Rule 22 of the PFA Rules is to be treated as directory. It is for the Public Analyst to opine as to whether the quantity of the sample sent to him for the purpose of analysis, was sufficient or not. In case the Public Analyst found the sample to be sufficient for analysis and had given his report, no prejudice could be caused to the accused.

11. In this case also, the report of the Public Analyst did not reveal that quantity of sample sent to him was insufficient for the purpose of analysis. As such, the contention is held to be devoid of any merit.

12. Ld. Counsel for the petitioner also pleads violation of Rules 17 & 18 of the PFA Rules, which read as under: –

> **"17. Manner of despatching containers of samples :**- The containers of the sample shall be despatched in the following manner, namely:-
>
> (a) The sealed container of one part of the sample for analysis and a memorandum in Form VII shall be sent in a sealed packet to the public analyst immediately but not later than the succeeding working day by any suitable means.
>
> (b) The sealed containers of the remaining two parts of the sample and two copies of the memorandum in Form VII shall be sent in a sealed packet to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable means;
>
> (c) The sealed container of one of the remaining two parts of the sample and a copy of the memorandum in form VII kept with the Local (Health) Authority shall, within a period of 7 days, be sent to the public analyst on requisition made by him to it by any suitable means."
>
> Provided that in the case of a sample of food which has been taken from container bearing Agmark seal, the memorandum in Form VII shall contain the following additional information namely :-
>
> (a) Grade;
>
> (b) Agmark label No. /Batch No;
>
> (c) Name of packing station,]
>
> **18. Memorandum and impression of seal to be sent separately:-** A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the public analyst by any suitable means immediately but not later than the succeeding working day."

13. After going through the judgment passed by the trial Court, specially the observations made in para No.19 and 20 of its judgement, which is reproduced as under, this Court does not find merit in the contention: -

> "19. One other dispute raised on behalf of accused is as regards violation of Rules 17 and 18. It is pertinent to mention here that Rule 17 prescribe procedures of dispatching containers of samples as one sealed container is required to be sent to Public Analyst in a sealed packet and other two parts of the sample are required to be sent to Local Health authority alongwith Memorandum in Form VII. This fact has been specifically detailed by the then Food Inspector Shri Sham Lal PW1 who has specifically detailed that one sealed sample alongwith copy of Form VII was sent to the Public Analyst, Chandigarh and remaining two sealed sample alongwith Form VII were sent to Local Health Authority. Manner of sampling and seizure at the spot by the Food Inspector is corroborated on record from the testimony of PW2 Dr. A.C.Chaudhary who has accompanied him at the spot. From such a specific detail given in the statement of PW1, it is evident that there is no violation of Rule 17 as alleged.
>
> 20. Rule 18 of PFA Rules, 1955 provides that copy of Memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the Public Analyst by any suitable means immediately but not later than the succeeding working day. From the testimony of PW1 GFI Sham Lal, it is evident that he has not given a specific detail of compliance of Rule 18. Though, he has detailed about sending of sample in compliance of rule 17 to the Public Analyst, but has nowhere deposed that copy of memorandum and specimen impression of the seal used to seal the packet was separately sent to the Public Analyst. Though, this fact was not specifically put to this witness in the cross-examination and it has been raised for the first time during the course of arguments but it is pertinent to mention here that from the report of Public Analyst Ex. PD, it has come that specimen impression of seal used to seal the packet was also sent separately to the Public Analyst. From the report Ex. PD, it is clearly evident that seals affixed on the container and the outer cover of

> the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and the sample was in a condition fit for analysis. In such circumstances, wherein, there is a specific recital in the report of Public Analyst that specimen impression of the seal was separately sent by the Food Inspector, for the mere omission on the part of Food Inspector to depose as such in his testimony, no benefit can be given to the accused. In somewhat similar circumstances in a case before Hon'ble Apex Court in case ***State Vs. Jai Narain 1984 FAJ Page 25***, it was observed that when the report contains a recital to the effect that the seal affixed on the container of the sample tallied with the specimen impression separately sent by the Food Inspector, said recital in the report of Public Analyst must be presumed to be correct and in view of said presumption, it was not necessary for the prosecution to adduce evidence to prove that the Food Inspector had sent separately specimen impression of the seal used for sealing container. The facts of this case are similar to the case titled State Vs. Jai Narain cited supra and in such circumstances, wherein, there is a specific recital in the report of Public Analyst, it cannot be held that there was non-compliance of Rule 18 in this case."

14. The last contention of ld. counsel is that there was no violation of Rule 29 of the PFA Rules on the part of the accused, inasmuch the report of the Public Analyst shows that sample was coloured with added permitted sunset yellow synthetic colour. It is argued that there was no prohibited added colour added to the sample and as such, there was no violation.

15. Rule 23 of the PFA Rules, which is relevant for this case, reads as under: -

> **"23. Unauthorised addition of colouring matter prohibited :-** The addition of a colouring matter to any article of food except as specifically permitted by these rules, is prohibited."

16. It is clear from the aforesaid Rule that addition of any colouring matter to any article of food, except as specifically permitted by the Rules of the PFA Rules, is prohibited. Rule 28 of the PFA Rules provides about the synthetic food colours, which may be used; whereas, Rule 29 of the PFA

Rules provides about the use of permitted synthetic food colours in or upon any food other than those enumerated in the said Rule. Meaning thereby, except the food items, which are enumerated in Rule 29 of the PFA Rules, use of permitted synthetic food colour is prohibited in any other food article.

17 The perusal of the Rule 29 of the PFA Rules would reveal that Dal Masur is not included therein and as such, use of synthetic food colour in Dal Masur is strictly prohibited and therefore, the contention of Ld. counsel for the petitioner that there was no violation of the Rules is without any merit.

18. On account of the entire discussion as above, it is held that there is no illegality or perversity in the judgment of conviction as recorded by the trial Court, which has been correctly affirmed by the appellate Court. **As such, the present petition against the judgment of conviction is hereby dismissed.**

19. As far as the impugned order of sentence is concerned, the accused-petitioner has been sentenced to undergo the minimum sentence as provided under the Statute i.e. rigorous imprisonment for a period of three months and fine of ₹500/- with default sentence of one month.

20. As per the custody certificate, petitioner has already undergone the actual custody period of seven days and he is not involved in any other offence. It is also noticed by this Court that offence in question was committed in September, 1999 and after a protracted trial of more than 8 years, he was ultimately convicted in October 2007 and then his appeal was dismissed by the Appellate Court in January 2010. The sentence of the petitioner was suspended by this Court in January 2010 and this way, he is out on bail for the last more than 15 years.

21. In the above circumstances, whether it will be justifiable to send him behind bars to carry out the remaining sentence; or can he be

released on probation; or whether sentence can be reduced for the period already undergone by him?

22. As per Section 20AA of the PFA Act , the provisions of Probation of Offenders Act 1958, or Section 360 of the Code of Criminal Procedure are not applicable to a person convicted of an offence under the provision of the PFA Act, unless that person is under the 18 years of age.

23. In this case, at the time of recording conviction in 2007, the age of the petitioner is mentioned to be 36 years as per the custody certificate, which means that at the time of committing the offence, he was 27 years of age and not less than 18 years of age. As such, he cannot be granted benefit of probation in view of Section 20AA of the PFA Act.

24. Although, in ***Ishar Dass Vs. State of Punjab, 1972 PLR 475,*** it was held by Hon'ble Supreme court that provisions of Probation of Offenders Act, 1958 are not excluded in the case of person found guilty of offence under the PFA Act, but it is important to notice that Section 20AA was inserted in PFA Act, 1958 by way of an amendment in 1976 and therefore, the case of ***Ishar Dass (supra)*** is not applicable in the present case.

25.1 In yet another case titled ***State of Punjab Vs. Mithu Singh, 1988 (3) SCC 607***, it was held by Hon'ble Supreme Court that Section 20AA of the PFA Act applies also to the offences committed prior to its enactment.

25.2 In the present case, since the offence was committed in 1999; whereas, the amendment by inserting Section 20AA was brought in 1976, as such this authority is also of no help to the case of the petitioner so as to give him the benefit of probation.

26. In ***Joginder Singh Vs. State of Punjab, 1980 PLR 585***, a Full bench of this Court held that benefit of provisions of the Probation of Offenders Act, 1958 can be extended even in a case, where minimum sentence is provided. However, in that case before this Court, the accused

had been convicted for the offence under Section 61 of the Punjab Excise Act, 1914. That was not a case committed under the provisions of the PFA Act and so, not applicable to the facts of present case.

27. In ***Lakhvir Singh etc. Vs. The State of Punjab and another, 2021 AIR (Supreme Court) 555***, benefit of probation was extended in a case, where minimum sentence was provided. However, that was the case under the provisions of Indian Penal Code. Similarly in ***Tarak Nath Keshari Vs. State of West Bengal, 2023 SCC Online SC 605***, the benefit of probation was granted despite the fact that minimum sentence of imprisonment was provided, but that was the case under the provisions of Essential Commodities Act, 1955. Thus, in none of these cases, the provisions of the PFA Act were applicable.

28. In ***State of Haryana Vs. Yad Ram 1987(1) RCR (Criminal) 264***, a Full Bench of this Court has held that when conviction is recorded under the Prevention of Food Adulteration Act, then the minimum sentence provided in the provision cannot be further scaled down.

29. Thus, from the legal position as above, it emerges that when a conviction is recorded under the provisions of PFA Act, neither the accused can be granted the benefit of Probation of Offenders Act, 1958 nor he can be sentenced to the period of imprisonment lesser than as provided in the Act.

30. However, in the case of ***Yad Ram (Supra)***, the effect of Article 21 of the Constitution of India was not discussed, providing for speedy trial.

31. It cannot be disputed that right to speedy and expeditious trial is one of the most valuable and cherished right guaranteed under the Constitution. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39A of the Constitution of India recognizes the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access

of justice so that every person is able to receive an expeditious, inexpensive and fair trial.

32. Though our Constitution does not expressly declare the right to speedy trial as a fundamental right, but the said right was recognized in ***Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar (1980) 1 SCC 81***, wherein it was held by Hon'ble Supreme Court that speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution of India. Subsequently, in the serious of judgments, Hon'ble Supreme Court has held that a reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. Hon'ble Supreme Court has gone to the extent that speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitute denial of justice.

33. Speaking about the need of speedy trial, the Constitutional Bench of Hon'ble Supreme Court in ***Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569*** has observed as under: -

> "The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure."

34. As has been observed in the case of ***Hussainara Khatoon & Ors (supra),*** no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21.

35. It has been reiterated by Hon'ble Supreme Court in ***Mahendra Lal Dass Vs. State of Bihar (2002) 1 SCC 149*** that right to speedy trial encompasses all the stages, namely, stages of investigation, inquiry, trial, appeal, revision and re-trial. Each case has to be decided on its own merits. As has been held in ***P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578***, it must be left to the judicious discretion of the Court seized of an individual case to find out from the totality of the circumstances of the case, if the time consumed up to a given point of time amounted to violation of Article 21. In ***State vs. Narayan Waman Nerukar (2002) 7 SCC 6,*** Hon'ble Supreme Court held that while considering the question of delay, the Court has a duty to see whether the prolongation was on account of any delay in tactics adopted by the accused and other relevant aspects, which contributed to the delay. There cannot be any empirical formula of universal application in such matters.

36. In ***Chander Bhan Vs. State of Haryana, (1996) 1 RCR (Crl) 125***, it has been observed by a Coordinate bench of this Court as under: -

> "8. Now it cannot be disputed that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights were not a teasing illusions to be mocked at. These were meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Court shall understand this right and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 10 years or more without any case at all cannot be within the spirit of the procedure established by law. <u>It is correct that although minimum sentence</u>

to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony, which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extraordinary jurisdiction.

9. An identical question had arisen before the apex Court in ***Braham Dass v. State of Himachal Pradesh (1988) 2 FAC 13***; wherein their Lordships were pleased to observe as under:-

> "Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and High Court while reversing the judgment of acquittal made by the appellate judge has not made clear reference to Clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act, the Court should take strict view of such matter."

10. This view was followed by this Court in ***Nand Lal v. State of Haryana (1992) 1 Rec. Cri R. 82*** and ***Ishwar Singh v. State of Haryana 1994(1) RCR 160.*** The present case is fully covered by the view expressed by the Apex Court and by this Court in the judgments cited above and I have no reason to differ therewith.

11. For the reasons mentioned above, the conviction of the petitioner for an offence under Section 16(1)(a)(i) read with Section 7 of the Act is hereby maintained. However, keeping in view the facts and circumstances of the case and the fact that the petitioner has already faced the agony of the protracted prosecution and suffered mental harassment for a long period of ten years, his sentence is reduced to the period of sentence

already undergone. Sentence of fine is, however maintained along with its default clause."

37. Another Coordinate Bench of this Court has taken the similar view in ***Vikas Mehta Vs. State of Haryana, Law Finder doc ID #2041916*** by placing reliance upon ***Des Raj Vs. State of Haryana, 1996(1) RCR (Criminal) 689.***

38. Keeping in mind the abovesaid legal principles, when facts and circumstance of the present case are examined, it is noted that petitioner faced protracted trial from 1999 till 2007, when he was ultimately convicted by the trial Court. There is nothing on record to indicate that there was any attempt on the part of the accused-petitioner to delay the trial. His appeal was dismissed in 2010. After the present Criminal Revision was admitted by this Court in 2010, because of the huge pendency, the file could not be listed for final hearing and when it has now been listed for final hearing in 2025, it is almost more than 15 years from the date of its admission.

39. Thus, the sword of conviction kept on hanging on the head of the petitioner for the last 26 years. It is easy to say that for almost all the time, the petitioner was on bail, but one cannot imagine the agony & trauma, which is faced by such a person, whose conviction has been recorded by the Court. The Court also cannot ignore the age factor, inasmuch as at the time when the offence was committed in 1999, petitioner was hardly 27 years of age. Now, after passing of the 26 years, he is 53 years of age and so, sending him behind bars at this stage to undergo the remainder of the sentence, will not be in the interest of justice.

40. Keeping in mind all the aforesaid circumstances, this Court is not inclined to direct the petitioner to undergo remainder of the sentence. Rather, the impugned order of sentence as passed by the trial Court and affirmed by the Appellate Court, is hereby modified. The sentence of the petitioner is reduced to the period already undergone by him. However, the sentence of fine as imposed upon the petitioner is increased from ₹500/- to

₹10000/-, which is required to be deposited by him before Ld. CJM, Hisar, within a period of 4 weeks from the date of receipt of the certified copy of the instant order. It is made clear that in case the enhanced fine is not deposited within the aforesaid period of four weeks as per this order, the present order reducing the sentence of the petitioner to the period already undergone, shall automatically stand vacated and in that eventuality, petitioner will have to undergo the actual sentence of 3 months apart from the sentence of default imposed by Ld. Chief Judicial Magistrate, Hisar.

The present Criminal Revision stands disposed of accordingly.

(DEEPAK GUPTA)
JUDGE

03.04.2025
Vivek

Whether speaking/reasoned? ***Yes***
Whether reportable? *Yes*