

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Revision No. 767 of 2005
Date of Decision: 26.08.2013**

State (Food Inspector)petitioner

versus

Babu SinghRespondent

**CORAM: HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MR.JUSTICE FATEH DEEP SINGH**

Present: Mr.Sukant Gupta, Additional P.P. for U.T.Chandigarh

Mr.M.S.Joshi, Advocate for the respondent

Mr.Sandeep Vermani, Advocate, Amicus Curiae

Fateh Deep Singh J.

A complaint under Section 7 (i) read with Section 16 (1) Clause (a) (i) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act) was filed by Food Inspector, Union Territory, Chandigarh, against accused-respondent Babu Singh, milk vendor, on the averments that on 19.10.2000 at about 08:30 am, the accused-respondent was in possession of 40 litres of buffalo milk meant for public sale and the Food Inspector, who has been notified so and appointed vide Chd.Admn.Gazette Notification No.2828-UTFI (2)-AH-97/13667 dated 08.10.1997, after necessary formalities had drawn the sample as per rules after filling Form No.VI, in the presence of independent witnesses and in due course sample was sent to the public analyst and was found to be deficient in milk fat by

13% and in milk solids not fat by 31% of the minimum prescribed standard for buffalo milk, leading to the filing of the complaint before the learned Chief Judicial Magistrate, Chandigarh, on 31.01.2009. It was after the accused was served charge sheet to which he had pleaded not guilty and during the course of trial, an application was moved on 17.09.2003 for discharge of the accused on the grounds that the Food Inspector, who had drawn the sample had not undergone the requisite training and therefore the prosecution was invalid and sought dismissal of the complaint. The application was opposed by the State contending that the application was mala fide as the Food Inspector had undergone proper training and no prejudice has been caused to the accused-respondent and there was no legal infirmity in the appointment of Food Inspector or in the drawing of the samples.

The Court of learned Chief Judicial Magistrate, Chandigarh, through impugned order dated 24.05.2004 allowed this application and thereby discharged the accused and which finding has been impugned in the Criminal Revision No.767 of 2005 by the State on the strength of the contentions detailed in the revision petition.

It was subsequent during the hearing of the criminal revision, the learned Single Bench through order dated 12.04.2013 has referred the matter for decision by larger Bench in the light of important questions of law arising in the revision petition which have been enumerated as follows:

1. Whether complainant-Food Inspector, acting as de

facto food Inspector but who had not undergone requisite training, was competent to purchase the food article for analysis and could maintain complaint under the Prevention of Food Adulteration Act, 1954 for prosecution of the respondent accused?

2. Whether the complainant-Food Inspector if held to be not competent to take sample as Food Inspector, could be treated as private purchaser of the food article for analysis under Section 12 of the Prevention of Food Adulteration Act, 1954 and could maintain complaint for prosecution of the respondent accused under proviso to Section 20(1) of the said Act?

Heard learned counsel for the parties.

It was keeping in view the dire need to have uniformity regarding standards of food meant for human consumption and in the light of the rampant adulteration of food stuffs and other such things a need had arisen for enactment of a Central Legislation, whereby such articles have been placed in List III i.e. Concurrent List of the Constitution of India and thereby the Central Legislation by way of the Act had come into being.

Section 9 of the Act postulates the notification in the Official Gazette appointing such persons as the Central or State Governments may deem necessary as they think fit having prescribed qualifications to be Food Inspectors for such local areas and assign powers to them stand invested in terms of the Section 10

of the Act. Section 9(2) embodies that a Food Inspector so notified would be deemed to be a public servant in terms of Section 21 of the Indian Penal Code, 1860. By virtue of Section 10 confers powers on the Food Inspector to take sample of any article or food and wayback in ***State of U.P. Versus Hanif AIR 1992 SC 1121***, it was laid down that the evidence of the Food Inspector is not to be inherently suspected nor should be rejected on the ground of lack of any corroboration as it embodies upon him to draw samples for analysis as per the rules framed by way of Prevention of Food Adulteration Rules, 1955. However, at the same time, it is obligatory upon him to follow the procedure in drawing the samples as per law and which procedure has been enshrined by way of Section 11 of the Act.

The contentions of Mr.Sandeep Vermani,Amicus Curiae that the scope of the Act has been made much wider by The Prevention of Food Adulteration (Amendment), Act, 1986 (70 of 1986) which has come in force from 01.05.1987 empowering any purchaser of any article of food other than a Food Inspector, a recognised consumer association etc. from having such food article analysed by the public analyst subject to certain procedure could not be controverted on behalf of the accused-respondent. It is not the case of the accused side that there has been any remiss in drawing the samples and the only grouse is over the fact that Food Inspector did not possess requisite training and thus was not competent to draw such a sample and which has weighed heavily in the mind of the learned Magistrate as the impugned finding reflects by purely holding that the Food Inspectors have not undergone proper training

in food inspection and sampling work as their training has already been held to be not as per provisions of Act and Rules, therefore, these Food Inspectors cannot be held to have taken the sample properly as it would have taken by a Food Inspector who had undergone proper training from the proper authority in food inspection and sampling work. Even if for the sake of arguments as per the contentions of the counsel for the accused-respondent that the Food Inspector had not undergone requisite powers but even then in the light of the allegations that the milk was being sold publicly have to be used at large, the Food Inspector can be termed as a purchaser in terms of Section 12 of the Act and there is no bar to his acting in such a manner and furthermore by virtue of Section 20 of the Act, a prosecution for such an offence under this Act can be instituted even by such a purchaser after producing a copy of the report of the public analyst along with the complaint and therefore even by that scope it would be highly inappropriate as has been held by the learned court below that prejudice has been caused to the accused.

It is not contended as to the very appointment of a Food Inspector and learned counsel for the respondent could not show how even in the absence of proper training the act of the Food Inspector in drawing the sample renders it an illegality as the Hon'ble Supreme Court in his propounding *De Facto Doctrine* in **Gokaraju Rangaraju vs. State of Andhra Pradesh (1981) 3 Supreme Court Cases 132** has held that the same has received judicial recognition even in foreign countries and even if there is any defective

appointment but it cannot be permitted to be questioned over the title of a public servant to his office and the acts done during the discharge of such office under a colour of unlawful authority cannot be held to be defective merely on that scope and which is the proposition laid down in **“S.K.Sinha and others vs. Assistant Collector of Customs and others” 1985 CrLJ 1137, “Hamilton Houswares Pvt. Ltd. vs. Designated Authority, Directorate General of Anti-Dumping and Allied Duties and others” 2012(1) Mh.LJ 442, “Madan Lal vs. The Registrar, Co-operative Societies, Punjab, Chandigarh” 1995(2) SCT 191, “Jagdish Singh Walia vs. State of Punjab and others” 2005(3) RCR (Civil) 665, “S.K.Jain vs. State of Punjab (P & H)” 1996(2) SCT 458, “Tul Par Machine & Tool Company, Faridabad vs. Joginder Pal, Workman and others” 1983 (2) ILR (Punjab) 357 , “Central Bank of India vs. C.Bernard”(1991) 1 Supreme Court Cases 319 and “Swatantar Kumar Lamba vs. State of Haryana” 1995 (1) Recent Criminal Reports 546 (P & H) , expressing its opinion in “Lalchand vs. State of Madhya Pradesh” 1980 (II) FAC 38 (MP) and “MCD and another vs. Shori Lal”1975 FAC 192 (Delhi) on similar question as to lack of training by a Food Inspector it was held that if there is no illegality or irregularity in drawing of the sample then such a grouse is unsustainable and at the most the Food Inspector can be treated as a purchaser by way of a private citizen on whose complaint an accused-respondent can be prosecuted. Answering in a similar situation, the Hon'ble Supreme Court in **“Suresh H.Rajput etc. vs. Bhartiben Pravinbhai Soni and others etc.”1996 AIR****

(SC) 2883 has detailed at length and has held that the qualifications of Food Inspectors cannot be challenged in collateral proceedings what is the material is whether the Food Inspector had taken the samples in accordance with the provisions of the Act or the Rules made thereunder. Further elaborating that in case the Court finds that if he committed any contravention what would be its effect on the prosecution is a matter to be considered but his qualifications cannot be looked into when he lays prosecution for adulteration of the articles of food under the Act and similar view has been espoused in ***G.Y.Ramekra vs. Rehmanbai I Ghenchi and others 2005 Cri.LJ 3841*** where reliance has been placed on Suresh's case (supra). Thus, from this established position of law as has been detailed and discussed above, it clearly stands established that even a Food Inspector who had not undergone the requisite training was competent to purchase food articles for analysis and to maintain a complaint under the Act even as a public servant or in the capacity of a consumer and, therefore, we answer these questions of law so referred to this Court by the learned single Bench, accordingly. In the light of the same, the matter be sent back to the learned single Bench to proceed ahead into the matter as per law.

(Hemant Gupta)
Judge

(Fateh Deep Singh)
Judge