

IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH
BAHAWALPUR
(JUDICIAL DEPARTMENT)
Crl. Appeal No.44 of 2018

Muhammad Mukhtiar & another Vs. The State,

JUDGMENT

Date of Hearing	09.06.2021
For Appellants	Mr. Muhammad Umair Mohsin Advocate
For State	Jam Muhammad Tariq Deputy Prosecutor General

SOHAIL NASIR, J. For avoiding any confusion in discussion to be made later on it is observed that ‘The Punjab Pure Food Ordinance, (VII of 1960) *{PPFO}*’ was promulgated on 11th March, 1960 in which certain amendments were made time to time. It was 6th July, 2011, when ‘The Punjab Food Authority Act (XVI of 2011) *{PFAA}*’ was also enforced. By way of its’ Section 58(1) ‘*PPFO*’ was repealed, however under Clause 3 some of the provisions were declared to continue to remain in force. It is as under: -

“The standards, safety requirements and other provisions of the repealed Ordinance or the rules made thereunder, shall, to the extent of consistency with the Act, continue to remain in force till the standards, safety requirements are prescribed under the Act”

2. Later on ‘The Punjab Pure Food (Amendment) Act (VI of 2016) also came into field on 06th February, 2016 with the following preamble: -

“It is necessary further to amend the Punjab Pure Food, Ordinance (VII of 1960) to provide for more effective enforcement of the law, rationalization of punishments, and for other purposes”

3. The amendments were made in Sections 2, 17, 21, 29, 30, 35 and Schedule of the '**PPFO**'. Sections 23, 23-A and 36 were substituted, whereas Sections 35-A, 35-B, 3-C and 35-D were inserted in the said Ordinance.

4. Therefore, right now '**PFAA**' is an enforced legislation and at the same time the standards, safety requirements and other provisions of '**PPFO**', to the extent of consistency with the '**PFAA**', also holds the field.

5. Coming to the case, Muhammad Mukhtiar and Muhammad Riaz (*appellants*) were tried by the Special Court¹ Bahawalpur in case FIR No. 152 (**PG**) recorded on 24.05.2017 under Sections 23-A/23-B/23-D/23-G/23-F of the '**PPFO**' at Police Station Sadar Bahawalpur. On conclusion of trial, vide judgment dated 07.12.2017 both were convicted and sentenced as under:-

***Under Section 23 PPFO**, to undergo one month R.I each and fine of rupees one hundred thousand each. In default of payment of fine they were ordered to further undergo fifteen days SI each.*

***Under Section 23-B PPFO**, to undergo one month R.I each and fine of rupees one hundred thousand each. In default of payment of fine they were ordered to further undergo fifteen days SI each.*

***Under Section 23-D PPFO**, to undergo three days R.I each and fine of rupees twenty five thousand each. In default of payment of fine they were ordered to further undergo three days S.I each.*

***Under Section 23-E PPFO**, to undergo three days R.I. each and fine of rupees ten thousand each. In default payment of fine they were ordered to further undergo three days S.I each.*

***Under Section 23-G PPFO**, to undergo six months R.I each and fine of rupees five hundred thousand each. In default of payment of fine to further undergo three months S.I each.*

¹ Court of a Magistrate exercising the powers under Section 30 Cr.P.C, established under Section 40 (8) of the Punjab Pure Food Authority Act, 2011

All sentences were ordered to run concurrently. Benefit of Section 382-B, Cr.P.C was also extended to the appellants.

6. Feeling aggrieved from the judgment of learned Special Court, appellants have approached this Court by filing the appeal under Section 29-N of the '**PPFO**'.

7. Facts of the case, as evident from complaint (**PA**), are that Dr. Zeeshan Rauf (**Pw-1**) received an information that Muhammad Mukhtiar was running a factory of lemon bottles; taking benefit of that business, he was also preparing misbranded/adulterated Cold Drinks of 'Coca Cola', 'Sprite' and 'Mirinda' etc; Rana Muhammad Saleem, Food Inspector (**Pw-2**) made bargain with Muhammad Mukhtiar for purchase of different brands of the Cold Drinks where after, on 24.05.2017, a raid was conducted at the factory where both appellants were apprehended, however, one Muhammad Kashif was succeeded to escape; there was one bag containing caps of bottles, one bag of labels of Coca Cola, one bag of caps of different brands, one bag of Citric Acids, 30 packs of Sprite and Coca Cola (*one litter*), three packs of Sprite (*1.5 liter*) and 25 packs of Coca Cola(*1.5 liter*). According to complaint the recovered material was made into sealed parcels after separation of samples.

8. On the basis of above complaint FIR (**PG**) was recorded by Muhammad Ilyas S.I (**Pw-3**) where after conclusion of investigation resulted into submission of report (**Challan**) under Section 173 Cr.P.C in Court.

9. A charge under Sections 23-A/23-B/23-D/23-G/23-F of the '**PPFO**' was framed against appellants on 28.09.2017, which they pleaded not guilty and demanded their trial.

10. In support of its' case prosecution had produced Dr. Zeeshan Rauf (**Pw-1**), Rana Muhammad Saleem (**Pw-2**), Muhammad Ilyas S.I (**Pw-3**) and Muhammad Asghar Constable (**Pw-4**).

11. Both appellants were examined under Section 342 Cr.P.C where they pleaded their innocence.

12. **HEARD**

13. There are serious questions of sealing, sampling and safe custody thereof involved in this case. Under Section 20 of the '**PPFO**' methods of taking samples is provided and that is as under: -

“(1)An Inspector after purchasing or procuring or seizing any food with the intention of submitting the same for analysis shall, forthwith, divide the food in three parts to be then and there separated and each part shall be marked, sealed or fastened in such manner as the nature of the case will permit; and the person from whom the sample is taken may, if he so desires, also affix his seal or mark on each of the three parts.

(2) An Inspector shall—

(a) if required to do so, deliver one part to the person from whom the article is purchased or seized or the sample is taken;

(b) retain one part for future comparison; and

(c) submit one part to the Public Analyst:

Provided that.....

14. In this case raid was conducted by Dr. Zeeshan Rauf, District Officer (Health). Under Section 2(13) of '**PPFO**' "*Health Officer*" means: -

“The District Health Officer or the Assistant District Health Officer and includes a Medical Officer of Health, an Assistant Medical Officer of Health of a Local Authority, and any other person appointed by Government to be Health Officer for the purposes of this Ordinance”

15. Later on by way of an amendment² the words '*District Health Officer*' and the '*Assistant District Health Officer*' were substituted by '*District Officer (Health)*' and '*Deputy Officer (Health)*'.

² Punjab Pure Food (Amendment) Ordinance, 2001 dated 21st December, 2001

Through the same Amending Ordinance, Clause (4) was inserted in Section 16 of the '**PPFO**' which says that the Health Officer and Sanitary Inspector shall be '*ex-officio*' Inspectors in respect of all foods within the limits of their respective jurisdiction.

16. Therefore raid by Dr. Zeeshan Rauf District Officer (Health) was in the capacity of an ex-officio Inspector.

17. It is also important to mention here in terms of Section 2(f) of '**PFAA**' a Drink falls within the definition of '*Food*'.

18. Finally under Section 21 of the '**PPFO**' the Public Analyst upon receiving of sample of food shall as soon as possible analyze the same and issue a report showing the result.

19. Position in the case in hand is otherwise. Dr. Zeeshan Rauf (**Pw-1**) in his examination-in-chief simply stated that: -

ہم نے رو برو گواہان سمپل لئے اور سرٹی کیے۔ پبلک انالسٹ کو سمپل
بھجوائے تھے اور رپورٹس موصول ہوئی تھی

20. Rana Muhammad Saleem/Food Inspector (**Pw-2**) did not state a single word about preparation of any parcel of sample or recovered Drinks. Relevant portion of his examination-in-chief is as under: -

اس تاریخ کو ریٹی کٹی تو موقع پر مختار، رطض اور کاشف موقعے پر بوتل لے کر
رہے تھے۔ موقع سے بوتل کے ڈھکن اٹک تھوڑا، دو تھوڑے مختلف برانڈ کے برآمد
کئے تھے۔ ایک تھوڑا لٹل اور سٹرک ایسڈ، 2/1 تھوڑا اور لٹل والی بوتل 30 پیک
اور 1 2/1 لٹر والی 28 پیک بھی برآمد ہوئے۔ اس کے بعد پول میں کو بلوا لی گئی
ملزمان کو اپنی حراست میں لے لی

21. Similarly, Muhammad Ilyas S.I (**Pw-3**) also denied about preparation of any parcel. He said that: -

”موقع پر جو مال مقدمہ قبضہ میں ہم نے لیا اس کو سرٹی نہ کی تھی“

22. Appellants have been convicted for keeping the adulterated /misbranded material, on the basis of reports of 'Government Public Analyst Punjab Food Authority Multan' (**PB & PC**). For the sake of arguments if it is presumed that provisions of Section 20 of the '**PPFO**' were complied with by the Inspector in its letter and spirit,

still there is another challenge for prosecution that is proof of 'chain of safe custody' of the parcels of samples. It is argued by learned DPG that question of chain of safe custody shall be applicable only in case of recovery of Narcotics. This argument is devoid of force. To my mind for safe administration of justice, in every case where prosecution relies on the report of an expert and demands conviction on the basis thereof, it cannot deviate from the duty to establish the chain of safe custody which means safe transmission of the alleged material from spot of recovery till its receipt by the Government Analyst. Therefore prosecution must prove that: -

- i. *Parcels were made at crime scene in accordance with the procedure prescribed by the law.*
- ii. *Before dispatch of parcels of samples to the Government Analyst, those were kept in safe custody by an authorized officer.*
- iii. *Those were deposited by an official in the office of Government Analyst.*

23. This chain has to establish by producing all relevant witnesses in the Court. It must be unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain will cast doubts on the safe custody and authenticity of the Report of the Government Analyst.

24. The Drinks and other material were taken into possession on 24.05.2017. Reports of Government Analyst (**PB and PC**) show that the samples were received personally in that office on 26.05.2017. But the statements of all witnesses are silent that during the intervening period where those parcels remained? Who the official was, he deposited those parcels in that office? Although Dr. Zeeshan Rauf (**Pw-1**) stated that: -

پبلک انالسٹ کو سمپل بھجوائے تھے

But by whom, he was completely silent throughout his statement. Even today prosecution has no answer about the one who had taken the parcels to the office of Government Analyst.

25. Law has also prescribed the procedure for sending the samples to an expert. Rule 50(3) of 'The Punjab Pure Food Rules, 2011' is the relevant Rule showing that how a sample has to be forwarded to expert. It says as under: -

“The sealed container of one part of the sample shall be forwarded to the Public Analyst immediately but not later than the succeeding working day by any suitable means, along with a letter in Form 5 giving full particulars of the sample and enclosing a clear impression of the seal used for packing”. (Emphasized)

26. Prosecution has not produced Form 5 to show that how and in what manners and by whom the samples were sent to that office? The relevant columns of reports of expert with regard to 'sealed with' is also blank. It means that there was no specific seal on any of the parcel if was sent to Government Analyst.

27. It is surprising that on one hand Dr. Zeeshan Rauf (**Pw-1**) claimed that he got dispatched the parcels to Government Analyst, whereas, on the other hand Food Inspector Rana Muhammad Saleem (**Pw-2**) stated that all material was handed over to police and same was the stance of Muhammad Ilyas SI (**Pw-3**) and Muhammad Asghar Constable (**Pw-4**).

28. No doubt that preparation of adulterated or misbranded material is injurious to public health but for seeking conviction, prosecution in all circumstances is under obligation to produce evidence that must meet the standard of credibility and reliability. In 'Abdul Majeed vs. The State 2011 SCMR 941' it was held that: -

“The basic principle of criminal law is that it is the burden of the prosecution to prove its case against the accused beyond reasonable doubt. This burden remains throughout and does not shift to the accused, who is only burdened to prove a defence plea, if he takes one.”

29. Same view finds support from 'Nasrullah alias Nasro vs. The State 2017 SCMR 724'.

30. The learned Trial Court completely ignored the infirmities and inherent defects in prosecution's case beside serious doubts about manners of proceeding at crime scene. On the principles of benefit of doubt the apex Court in 'Muhammad Imran vs. The State 2020 SCMR 857' was pleased to hold that: -

"It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation."

31. Concluding the discussion made above this Criminal Appeal is allowed. Impugned judgment dated 07.12.2017 is set aside. Appellants are acquitted from the charges. They are on bail. Their sureties are discharged from the terms and condition of bail bonds. Case property shall be dealt with, in the same manners as directed by learned Trial Court.

**SOHAIL NASIR
JUDGE**

Approved for reporting.

JUDGE.

Sharif.