

## Jamil vs State on 21 March, 2024

**Author: Praveer Bhatnagar**

**Bench: Praveer Bhatnagar**

[2024:RJ-JP:11523]

HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 858/2005

Jamil son of Niwaj Khan, R/o Kutukpur, Police Station Nagar,  
District Bharatpur. At presnt in Sub-jail, Deeg, District Bharatpur.

----Petitione

Versus

The State of Rajasthan through PP

---Respondent

For Petitioner(s)	:	Mr.Dharmendra Choudhary
For Respondent(s)	:	Mr.Chitragupt Chopra, Public Prosecutor

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR Order Date of Reserve :: 31/01/2024 Date of Pronouncement :: 21/03/2024 REPORTABLE:

1. The matter pertains to an incident which occurred in the year 1994 and the present criminal revision is pending since the year 2005.
2. This criminal revision petition under Section 397 read with Section 401 Cr.P.C. has been preferred against the judgment dated 30.08.2005 passed by learned Additional District & Sessions Judge No.2, Deeg, District Bharatpur in Criminal Appeal No.30/2002, whereby, the learned Appellate Court has upheld the judgment of conviction dated 15.01.1998 passed by the learned Additional Chief Judicial Magistrate, Deeg, District Bharatpur in Criminal Case No.135/1996, whereby the revisionist-petitioner was convicted and sentenced under Section 7/16 of the Prevention of Food Adulteration Act to six months' rigorous imprisonment [2024:RJ-JP:11523] (2 of 10) [CRLR-858/2005] with fine of Rs.1000/- and in case of default of payment of fine, to further undergo one month imprisonment.
3. Brief facts of the case are that the Food Inspector - Shri Shikhar Chand filed a compliant (Exhibit P-10) alleging that during patrolling on 27.10.1994, he stopped

one Jamil, who was taking milk on cycle. On inquired about the milk, Jamil told that milk is of buffalo and cow. On suspicion of adulteration, he purchased 750gm milk @ Rs.6/- in front of witnesses and prepared a receipt, on which, taken signatures of the witnesses but the accused-

petitioner denied to give signature. Thereafter, the samples were sent in laboratory for testing. The samples were found to be adulterated in the sample testing report (Exhibit P-8) and Prosecution Sanction (Exhibit P-9) was also taken and thereafter, notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 (for short "the Act of 1954") was sent to the accused- petitioner through registered post and the complaint was filed. On complaint, cognizance for offence under Section 7/16 of the Act of 1954 was taken by learned Magistrate and charges were framed. The accused denied the charges and claimed to be tried. After hearing the parties, the trial Court passed an order dated 15.01.1998 convicting and sentencing the petitioner for the offence under Section 7/16 of the Act of 1954. The petitioner filed an appeal against the order of the trial Court and but the Appellate Court dismissed appeal of the petitioner vide order dated 30.08.2005. Hence, this petition.

4. Learned counsel for the petitioner submits that the Courts below erred in passing the order. He submits that the Court below have not taken into consideration that provisions of Section 13(2) [2024:RJ-JP:11523] (3 of 10) [CRLR-858/2005] of the Act of 1954 have not been complied with. He further submits that as per the prosecution story, analyst report was sent to the petitioner through registered post on 17.04.1996, however, neither acknowledgment nor any evidence was produced before the Courts below showing that registered post was received by the petitioner. He also submits that the Court below has not taken into consideration the statement of Sher Mohammad (DW-1) that petitioner was not engaged in business of sale of milk.

5. Learned counsel submits that the Appellate Court has not taken into consideration that the trial Court has convicted the petitioner after adopting the summary trial, whereas trial Court ought to have conducted warrant trial. He further submits that Prosecution Sanction, given by Chief Medical Officer, was given in a routine way and was without application of mind. In view of the above, learned counsel for the petitioner prays that the orders dated 30.08.2005 and 15.01.1998 may be quashed and set aside.

6. Learned Public Prosecutor opposes the prayer made by learned counsel for the petitioner.

7. I have considered the submissions made by learned counsel for the parties and perused the material available on record.

8. In Amit Kapoor Vs. Ramesh Chander & Ors. [(2012) 9 SCC 460], the Apex Court was considering the scope of powers granted under Section 397 of the High Court and in paragraphs 8 of the said judgment, the Apex Court observed:-

"8. Before examining the merits of the present case we must advert to the discussion as to the ambit and scope of the power which the Courts including the High Court can exercise under Section 397 and Section 482 of the Code. Section 397 of the Code vests

the Court with the power to call for and examine the records of [2024:RJ-JP:11523] (4 of 10) [CRLR-858/2005] an inferior Court to satisfy itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well founded error and it may not be appropriate for the Court to scrutinise the order, which upon the face of it is a token of careful consideration and appears to be in accordance with law. If one looks into various judgements of this Court, it emerges that revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, or the material evidence is ignored or Judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but merely indicative. Each case would have to be determined on its own merits.

9. Thus in the light of the law laid down, this Court has to see whether there is patent illegality or error of jurisdiction and findings recorded by the courts below are perverse and against the evidence.

10. I have gone through the Judgments passed by the courts below and don't find any perversity in arriving at the finding that the accused petitioner was found in possession of milk meant for sale which on due examination found to be adulterated. Sheer non-support of independent eyewitnesses is not enough to negate the testimony of the food inspector particularly in the absence of any specific allegation of previous enmity with the accused- petitioner.

11. As far as the non-compliance of Section 13 (2) of the Food Safety and Standards Act, 2006 (for short "the Act of 2006") is concerned, it is evident that after filing the analyst report a copy of the same was sent to the accused through [2024:RJ-JP:11523] (5 of 10) [CRLR-858/2005] registered post at his address. The postal receipt indicating the address is enough to presume that the accused received the Food analyst report. Under Section 114 of the Indian Evidence Act read with Section 27 of the General Clauses Act, the Court may presume that the accused duly received the report.

12. The Apex Court in the case of C.C. Alavi Haji Vs. Palapetty Muhammed & Anr. [(2007) 6 SCC 555] opined that Section 27 of the General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. A similar view was taken by the Court in the case of M/s. Madan & Co. Vs. Wazir Jaivir Chand [(1989) 1 SCC 264]. In this case, the Apex Court, while dealing with whether the duty of the landlord was complete by sending of notice with reference to the presumption under Section 27 of General Clauses Act, held that once there is a proper tender of the demand notice at the correct address then there is service of the demand notice in view of the

presumption as per Section 27 of the General Clauses Act. Similarly, in the case of Parimal Vs. Veena @ Bharti [(2011) 3 SCC 545], the Apex Court held that in view of Section 114(f) of Evidence Act read with Section 27 of General Clauses Act, there is a presumption that the addressee has received the letter sent by registered post. However, the presumption is rebuttable on a consideration of evidence of impeccable character.

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13. It is also a settled law that the burden to rebut the presumption lies on the party challenging the factum of service. In the instant case, the petitioner has not challenged the factum of service. The registered postal receipt (Exhibit P13) shows that the said report was sent to the petitioner's address and in absence of any specific defence the Court may presume that the accused has received the report. The Courts below, in their judgments, have dealt with the issue in detail. Further, the accused neither raised any objection in the trial nor attempted to get sample analysed through the Court from the central laboratory. Therefore, the arguments raised by learned counsel for the accused-petitioner that the petitioner did not receive a public analyst report are without any substance. Accordingly, I do not find any perversity and illegality in the impugned order convicting the accused- petitioner under section 7/16 of the Act of 2006.

14. The alternative plea for reduction of sentence was analysed in the latest pronouncement rendered in the matter of M/S A.K. Sarkar & Co. & Anr. Vs. The State of West Bengal (Special Leave Petition (Criminal) No.6095/2018) dated 07.03.2024 and after relying upon judgments of T. Barai Vs. Henry Ah Hoe [(1983) 1 SCC], Nemi Chand Vs. State of Rajasthan [(2018) 17 SCC 448] and Trilok Chand Vs. State of Himachal Pradesh [(2020) 10 SCC 763] after taking into consideration the provision enshrined in Article 20 of the Indian Constitution, the Apex Court held as under:-

"All the same, the above provision does not prohibit this Court, to award a lesser punishment in a befitting case, when this Court is of the opinion that a lesser punishment [2024:RJ-JP:11523] (7 of 10) [CRLR-858/2005] may be awarded since the new law on the penal provision provides a lesser punishment i.e. lesser than what was actually applicable at the relevant time. The prohibition contained in Article 20 of the Constitution of India is on subjecting a person to a higher punishment than which was applicable for that crime at the time of the commission of the crime. There is no prohibition, for this Court to impose a lesser punishment which is now applicable for the same crime."

15. In the matter of T. Barai v. Henry Ah Hoe [(1983) 1 SCC 177], the Apex Court held that when an amendment is beneficial to the accused it can be applied even to cases pending in Courts where such a provision did not exist at the time of the commission of offence. The Apex Court further held that:-

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense."

16. In the aforesaid matter accused appellants were convicted under section 7/16 of the Prevention of Adulteration Act for simple imprisonment for a period of six months along with a fine of [2024:RJ-JP:11523] (8 of 10) [CRLR-858/2005] Rs.1,000/- each, for a fine of Rs.2,000/-respectively. The Apex Court, after taking into consideration the provisions of section 52 containing the punishment clause in the newly enacted Food Safety and Standards Act, converted the sentence of appellant No.2 from three months of simple imprisonment along with a fine of Rs.1,000/- to a fine of Rs.50,000/- (Rupees Fifty Thousand) and upheld the sentence of fine of another appellant number 1.

17. In the present case, the petitioner is convinced for the offence under Section 7/16 of the Prevention of Food Adulteration Act for simple imprisonment of 6 months along with a fine of Rs.1000/-. It is alleged against the petitioner that he sold substandard milk.

18. Indubitably the Prevention of Food Adulteration Act 1976 stands abrogated and replaced with the Food Safety and Standards Act, 2006. In the repealed Act 1976 the definition of Adulteration is provided under section (i), which reads as under :-

"adulterated"--an article of food shall be deemed to be adulterated--

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

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(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, but which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to

19. The instant case falls under section (m) of the old Act. In the Act of 2006, the definition of "adulterant" is provided under Section 3(1)(a), which reads as under:-

(a) "adulterant" means any material which is or could be employed for making the food unsafe or sub-standard or mis-branded or containing extraneous matter;

20. In Section 51 of the Act of 2006, penalty for selling/ storing substandard articles is prescribed, which is as under:-

"51. Penalty for sub-standards food.-Any person who whether by himself or by any other person on his behalf [2024:RJ-JP:11523] (10 of 10) [CRLR-858/2005] manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees."

21. Thus from the above provision, it is conspicuous that under the new act, only the penalty of a fine is stipulated therefore applying the doctrine articulated in the above-referred matters and also considering the fact that the crime itself was committed in the year 1994 and twenty nine and a half years have elapsed since, while upholding the conviction of the petitioner under section 7/16 of Prevention of Food Adulteration Act, the sentence is modified from six months of simple imprisonment along with fine of Rs.1,000/- to a fine of Rs.50,000/- (Rupees Fifty Thousand only). The amount shall be deposited with the concerned Court within a period of three months from today. If the petitioner fails to deposit the aforesaid fine in the prescribed limit then the trial Court shall proceed to recover it, in accordance with law.

22. With the aforesaid directions, the revision petition is partially allowed. All other pending applications, if any, stand disposed of. The record of the case is sent forthwith to the concerned Court to do the needful.

(PRAVEER BHATNAGAR),J Preeti Asopa /32 Powered by TCPDF (www.tcpdf.org)