

retained in service, the respondent was denied equal opportunity to hold public service under Article 16 of the Constitution. But there is nothing in Article 16 of the Constitution which supports the view expressed by the learned District Judge. By Article 16 all citizens are entitled to equality of opportunity in matters relating to employment or appointment to any office under the State. By merely terminating the employment of the respondent, the respondent was not denied of equal opportunity to hold public service. Under Article 16 of the Constitution, it is not one of the fundamental rights that a person who is an employee of the State shall be entitled to continue in service and that his employment shall not be terminated so long as persons junior to him remain in service."

It is patent that in view of the abovesaid authoritative enunciation, the observations in *Harminder Singh's case* (2) (supra) can no longer hold the field as they directly conflict with the ratio of *P. P. Midha's* (3) judgment. With the greatest deference to the learned Single Judge, we find ourselves bound by the Supreme Court judgment above and have to hold that the observations in *Harminder Singh's case* (2) do not lay down the correct legal position and have thus to be ignored altogether.

(11) As both the contentions raised on behalf of the petitioner fail, this writ petition has consequently to be dismissed. We, however, do not make any order as to costs.

K. S. K.

REVISIONAL CRIMINAL

Before D. S. Tewatia and B. S. Dhillon, JJ.

SURINDER KUMAR,—Convict-Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Cr. Re. No. 441 of 1970.

September 20, 1973.

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 7/16—Conviction under—Whether can be based on the sole testimony of the Food Inspector—Offences under the Act—Desirability of the imposition of deterrent sentences.

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Held, that conviction of an accused person under section 7/16 of Prevention of Food Adulteration Act can be based on the sole testimony of a Food Inspector if his testimony satisfies the judicial conscience about its reliability and truthfulness. To hold that the sole testimony of an official witness howsoever reliable cannot be considered sufficient to convict an accused person unless it is corroborated on material particulars by independent evidence would be putting his testimony into straight jacket which course in some cases is likely to lead to miscarriage of justice. The testimony of an official witness cannot be considered at par with that of an approver, which requires to be corroborated before being accepted even if it passed the test of reliability. Primarily what is required is that the testimony adduced before a Court should be able to bear judicial scrutiny and pass the test of reliability. The moment it does and the Court holds the testimony as worthy of credence, then unless there is any rule of law requiring corroboration, the testimony that is considered reliable in all respects has to be given full effect even if it happens to be the testimony of a sole witness, official or non-official, as the function of the Court is to weigh the evidence and not to count the heads.

Held, that wide-spread adulteration of every item of food and medicine has assumed ominous proportions in the country. The imposition of a deterrent sentence as provided by law can to some extent dampen the unashamed enthusiasm with which the adulterators are merrily conducting their nefarious activities. Any leniency on the part of the Courts regarding sentence in respect of social crimes of such magnitude, as has the tendency to affect most adversely the life and health of the entire community, is not desirable. In such cases, the imposition of the maximum dose of punishment, provided by the law, and not the minimum should be the rule, unless very exceptional circumstances warrant the imposition of a lesser sentence.

Case referred by Hon'ble Mr. Justice S. C. Mittal, on 4th May, 1972 to a Larger Bench for decision of an important question of law involved in the case. The case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Bhopinder Singh Dhillon on 20th September, 1973.

Petition under Sections 435/439 of the Code of Criminal Procedure for revision of the order of Shri Harbans Singh, Additional Sessions Judge, Jullundur, dated the 22nd May, 1970, modifying that of Shri N. S. Bhalla, Judicial Magistrate, 1st Class, Jullundur, dated the 10th October, 1969, convicting the petitioner.

B. D. Mehra, Advocate, for the petitioner.

Bachittar Singh, Advocate, for the respondents.

JUDGMENT

TEWATIA, J.—Surinder Kumar was convicted by Shri N. S. Bhalla, Judicial Magistrate First Class, Jullundur, for an offence under section 7/16 of the Prevention of Food Adulteration Act, 1954, hereinafter referred to as the Act. He was sentenced to six months' rigorous imprisonment and a fine of Rs. 1,000 and in default to six months' R.I. On his appeal though his conviction was maintained by the Additional Sessions Judge, Jullundur, his sentence was, however reduced to three months' rigorous imprisonment and a fine of Rs. 250, and in default of payment thereof, a further rigorous imprisonment of three months was awarded. He has come to this Court in revision against the abovesaid judgment of the Additional Sessions Judge, Jullundur.

(2) S. C. Mital, J., before whom this revision petition initially came up for hearing, has referred it by his reference order dated 4th May, 1972 to a larger Bench for decision and that is how this revision petition happens to be laid for decision before us.

(3) The necessity for reference of the revision petition for decision to a larger Bench arose on the raising of an issue by the counsel for the petitioner before the Single Judge that Piara Lal PW 3 the only independent witness—Mohan Singh PW 2 another non-official witness being himself a milk-vendor and thus being dubbed as interested witness—having resiled, the conviction of the petitioner could not be sustained on the sole testimony of Food Inspector Madanjit Singh, PW 1, who is an official witness, unless his statement received corroboration on material particulars from independent source. This contention was advanced before the Single Judge on the strength of the following observations of Gujral, J., appearing in *Lekh Singh v. The State* (1):—

“It is a matter of common experience that persons who are concerned with the agency responsible for launching prosecution under the Prevention of Food Adulteration Act or under other similar provisions are generally overzealous in the performance of their duties and this anxiety on their part to bring the culprits to book makes them lose the character of independent and reliable witnesses,

(1) 1971 P.L.R. 729.

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and tars them with the taint of partisan witnesses. It is for this reason that as a matter of prudence it is not considered safe to accept the evidence of such witnesses without independent corroboration."

Since the learned Single Judge was of the opinion that Gujral, J., had stated the proposition in too wide terms and thus was not inclined to accept his views, so the revision petition was referred to a larger Bench for decision.

(4) Mr. B. D. Mehra, learned counsel for the petitioner, besides placing reliance on the abovesaid decision of Gujral, J., also made reference to three other unreported decisions of this Court, viz., (1), *Babu Ram v. The State of Punjab* (2), decided by S. B. Capoor, J., (2), *Tilak Raj v. The State* (3), decided by S. S. Sandhwalia, J., and (3) *Kulbir Singh alias Ghula Ram v. The State of Punjab* (4), decided by my brother Bhopinder Singh Dhillon, J.

(5) In *Babu Ram's case* (2) there was no discussion and Capoor, J., after quoting *Food Inspector Cannanore Municipality v. P. Kannan, Pandavalappi House* (5), merely observed that in the set up of that case he would not be inclined to sustain the conviction of the petitioner on the sole testimony of the Food Inspector.

Tilak Raj's case (3), pertained to an excise offence. In that case, two independent witnesses who had resiled were declared hostile and the only other evidence that survived was that of the official witnesses. This circumstance eventually posed the question as to whether the conviction could be grounded on the sole testimony of the official witness. In view of the fact that one Ram Labhaya had also been apprehended with 800 grams of opium right in front of the house of the petitioner before the apprehension of the latter, it was not considered beyond the pale of possibility to plant a little opium so recovered on the person of the petitioner and this added to a few other peculiar circumstances with which were considered implausible, led the learned Judge to hold that it would not be safe to convict the petitioner on the sole testimony of the official witness.

(2) Cr. Re. No. 317 of 1967, decided on 13th August, 1968.

(3) Cr. Re. No. 1048 of 1968, decided on 15th December, 1969.

(4) Cr. Re. No. 382 of 1969, decided on 16th April, 1970.

(5) A.I.R. 1964 Kerala 261.

(6) Before my brother Dhillon, J., in the case of *Kulbir Singh alias Ghula Ram* (4), no doubt the case was under the prevention of Food Adulteration Act and like Gujral, J., he also came to the conclusion that the rule of caution and prudence required that before grounding the conviction of the petitioner on the sole testimony of the Food Inspector, some corroboration of his testimony should be available from an independent source. But my learned brother Dhillon, J., so held in the peculiar facts of the case before him.

(7) I am of the considered opinion that to hold that the sole testimony of an official witness howsoever reliable cannot be considered sufficient to convict the petitioner unless it is corroborated on material particulars by independent evidence would be putting his testimony into straight jacket which course in some cases is likely to lead to miscarriage of justice. The testimony of an official witness, as has been pointed out by their Lordships of the Supreme Court, about which more a little later, cannot be considered at par with that of an approver, which requires to be corroborated before being accepted even if it passed the test of reliability. Primarily what is required is that the testimony adduced before a Court should be able to bear judicial scrutiny and pass the test of reliability. The moment it does and the Court holds the testimony as worthy of credence, then unless there is any rule of law requiring corroboration, the testimony that is considered reliable in all respects has to be given full effect even if it happens to be the testimony of a sole witness, official or non-official, as the function of the Court is to weigh the evidence and not to count the heads. The latter principle is enshrined in the provisions of section 134 of the Indian Evidence Act, 1872. The question as to whether the uncorroborated testimony of the Food Inspector could be considered sufficient to base the conviction thereon came up for consideration before their Lordships of the Supreme Court in *Babulal Hargovindas v. State of Gujrat* (6). The following pragmatic observations of P. Jaganmohan Reddy, J., who delivered the judgment for the Court, are instructive on the point:

“It is not a rule of law that the evidence of the Food Inspector cannot be accepted without corroboration. He is not an accomplice nor is it similar to the one as in the case of

(6) A.I.R. 1971 S.C. 1277.

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wills where the law makes it imperative to examine an attesting witness under section 68 of the evidence Act to prove the execution of the Will. The evidence of the Food Inspector alone if believed can be relied on for proving that the samples were taken as required by law. At the most Courts of fact may find it difficult in any particular case to rely on the testimony of the Food Inspector alone though we do not say that this result generally follows. The circumstances of each case will determine the extent of the weight to be given to the evidence of the Food Inspector and what in the opinion of the Court is the value of his testimony. The provisions of section 10 (7) are akin to these under section 103 of the Criminal Procedure Code when the premises of a citizen are searched by the police. These provisions are enacted to safeguard against any possible allegations of excesses or resort to unfair means either by the police officer or by the Food Inspectors under the Act

If there has been any rule of caution sanctified by practice that the testimony of an official witness must pass not only the test of reliability, but also must receive corroboration on material particulars before being considered sufficient to provide by itself the basis for grounding the conviction of an accused thereon, then surely their Lordships would have referred to that spect in the judgment. Their Lordships of the Supreme Court even in the case of a police officer have held that his testimony cannot be approached with a preconceived prejudice against its reliability, as would be borne out from their following observations appearing in *Aher Raja Khima v. State of Saurashtra* (7):

“The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.”

(8) In view of the authoritative pronouncement of their Lordships of the Supreme Court on the precise aspect that is under issue

(7) A.I.R. 1956 S.C. 217.

before us, it cannot at all be held that the testimony of the Food Inspector, howsoever, reliable it may be considered, must receive corroboration from independent source before it could be considered sufficient to furnish a basis for the conviction of an accused. I am of the opinion that the approach of the Court to the testimony of an official witness can be no different from that which the Court normally has towards the testimony of any other witness, i.e., if his testimony satisfies the judicial conscience about its reliability and truthfulness, than nothing more is required and the logical conclusion that follows therefrom is that it has to be given full effect by considering it adequate to ground the conviction of an accused thereon.

(9) Now coming to the merits of the case, it may be stated here that the two Courts below have concurrently found the testimony of the Food Inspector, as also of Mohan Singh PW 2, who deposed to the taking of milk samples by the Food Inspector in his presence and to the attestation of memo by him, as also by Piare Lal reliable, and the learned counsel for the petitioner has not drawn our attention to any material infirmity in their testimony. On an independent appraisal of their testimony, I cannot persuade myself to differ from the conclusion of the Courts below regarding the reliability both of the testimony of the official witness, as also of the other witness, who was dubbed by the defence both before the Courts below as also before us, as an interested witness in that that he being a milk-vendor himself would be under the influence of the Food Inspector and would stand in the same position, for the purpose of evaluation of his testimony, as the official witness himself. I may only add that there is no allegation whatsoever against the Food Inspector that he was in any way either prejudiced against the petitioner or was inimical towards him, nor there exists any material on the record or a suggestion to this effect that Mohan Singh P.W. 2 was prejudiced against the petitioner. The petitioner was intercepted right in front of the shop of Mohan Singh P.W. 2. He, therefore, was the most natural witness to be associated by the Food Inspector. The testimony of a witness who is engaged in the same business as that of the accused cannot be discarded or considered unreliable on that ground alone, unless there exists some material showing that there existed either some kind of rivalry between the two or the witness was under the influence of the Food Inspector as having been obliged by him as was the case in a decision reported

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in *State v. Sadhu Singh* (8) wherein two milk-vendors were simultaneously apprehended and samples were taken from them. While the one was proceeded against, the other was cited as a witness. In that case, the inference was irresistible that the witness had been shown favour by the Food Inspector by not proceeding against him and so he being directly under the influence of the Food Inspector, would be prepared to toe the latter's line. Such a circumstance, no doubt was bound to have an adverse repercussion on the reliability of the official witness as well. But no such circumstances exists in the present case to cast doubt about the veracity of either witness in the present case.

(10) Piara Lal PW 3 the other independent witness, who turned hostile, could not deny his signatures on various documents. If his signatures had been taken either under duress or at a time different from the one when the samples were taken, then surely it was expected of him to make a grievance of the same to the higher authorities. He took no such step. Thus I have no doubt that the stand that he took at the trial was calculated to oblige the accused and did not represent the truth. Hence his testimony to the extent that he took the stand contrary to the one that his signatures bore out on various documents cannot thus be allowed to cast a doubt on the reliability of the official witness.

(11) Mr. Mehra, learned counsel for the petitioner, lastly urged on the strength of *B. G. Goswami v. Delhi Administration* (9), that considerable time having elapsed since the initiation of the proceedings against him the petitioner may not be sent to jail and the sentence of imprisonment be substituted by that of fine.

(12) In *B. G. Goswami's case*, it has no doubt been observed that the prolonged proceedings do have a bearing on the nature of the sentence that may be imposed on an accused and in that case the Supreme Court on that score refrained from sending the accused to jail. That was a case of Government servant in whose case a sentence of imprisonment would have deprived him of his job and in the circumstances it was considered desirable that a sentence of fine in place of unexpired sentence of imprisonment would meet the

(8) A.I.R. 1962 Pb. 548.

(9) 1973 C.A.R. 277.

ends of justice. The circumstances in the present case are entirely different. The wide-spread adulteration of every item of food and medicine has assumed ominous proportions in this country. The imposition of a deterrent sentence as provided by law can to some extent dampen the unashamed enthusiasm with which the adulterators are merrily conducting their nefarious activities. We, therefore, do not sanction any leniency on the part of the Courts regarding sentence in respect of social crimes of such magnitude, as has the tendency to affect most adversely the life and health of the entire community. In such cases, the imposition of the maximum dose of punishment, provided by the law, and not the minimum should be the rule, unless very exceptional circumstances warrant the imposition of a lesser sentence.

(13) For the reasons stated, we find no merit in the revision petition and the same is dismissed.

DHILLON, J.—(14) I entirely agree with my learned brother D. S. Tewatia, J., that merely because a witness is an official witness, his statement cannot be disbelieved on this ground alone. Whether a statement given by a witness in a Court of law should be believed or not is a question which is to be determined by the Court keeping in view the facts and circumstances of that particular case. If one good witness, whether official or non-official, is believed, it is open to the Court to record a finding of conviction but whether a single witness should be believed or not or whether corroboration would be necessary to his statement for relying on his testimony is a question which is to be examined by the Court in the background of the facts and circumstances of a particular case. *Kulbir Singh alias Ghula Ram v. The State of Punjab* (4), was decided by me on its own facts and if this decision is taken to be laying down that Food Inspector, in no case, can be believed, I take this opportunity to make it clear that I never held so while deciding that case.

(15) I entirely agree with my learned brother Tewatia, J., that there is no reason to interfere with the concurrent finding of fact believing the testimony of the Food Inspector and as also that of Mohan Singh (P.W.) in this revision petition. I, therefore, agree that this revision petition should be dismissed.

K.S.K.