



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 289 of 2014**

**Reserved on: 02.03.2026**

**Date of Decision: 01.4.2026.**

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State of H.P.

...Appellant

Versus

D.K. Kaushal

...Respondent

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*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

*Whether approved for reporting?<sup>1</sup> Yes*

For the Appellant : Mr Prashant Sen, Deputy Advocate General.

For the Respondent : Mr Subhash Punshi, Advocate.

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***Rakesh Kainthla, Judge***

The present appeal is directed against the judgment dated 01.5.2014, passed by learned Additional Sessions Judge-II, Shimla (learned Appellate Court), vide which the judgment of conviction dated 20.03.2012 and order of sentence dated 31.03.2012 passed by learned Judicial Magistrate First Class-II, Shimla (learned Trial Court) were set aside. (*Parties shall*

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1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.



*hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeal are that the complainant, LD Thakur Food Inspector (PW2), filed a complaint against the accused Sunil Kumar and M/s Usha Trading Company for the commission of an offence punishable under Section 16 (1) (a) (1) read with Section 7 of Prevention of Food Adulteration Act (PFA Act). It was asserted that the complainant inspected the premises of Usha Trading Company on 4<sup>th</sup> March 2002 at about 2 PM and found Sunil Kumar conducting the shop's business. Sunil Kumar had two 15-litre plastic jars of Ricela, refined rice bran oil, in his shop for sale to the general public. The food inspector issued a notice (Ex.PW2/A) to him, declaring his intention to take a sample of the oil for analysis. The complainant purchased 375 ml of Rice Bran Oil for ₹10 as a sample for analysis. The oil was taken into a neat, clean and dry jug and was divided into three equal parts of 125 ml each. Each part was put into three neat, clean and dry bottles. The bottles were labelled and wrapped in thick paper separately. A paper slip bearing the code and serial number of the Local Health Authority (LHA), Municipal Corporation (MC)



Shimla S-II/2511 and signed by the LHA was affixed with gum from top to bottom on each of the bottles. The signatures of the accused were taken in such a manner that they covered the paper slip and wrapper. The bottles were fastened with strong thread and sealed with sealing wax in such a manner that all the knots were covered by the sealing wax. Sanjeev Goswami (PW5) and Charan Dass (PW1) witnessed the proceedings of sealing. A Panchama (Ex.PW2/C) was prepared, which was signed by witnesses, the accused and the Food Inspector. One part of the sample was sent to a public analyst, Kandaghat, along with Form VII (Ex.PW2/D), in a sealed packet through Shri Charan Das. A copy of form VII (Ex.PW2/E), along with the seal impression, was sent separately in a sealed letter to the public analyst, Kandaghat, through Shri Charan Dass under intimation to the LHA MC, Shimla. The two remaining parts of the sample, along with two copies of form VII, were deposited with LHA MC, Shimla, in a sealed packet for record under intimation (Ex.PW2/F). The public analyst found that the acid value of the contents of the sample was 0.66 against the maximum prescribed standard of 0.5, and the sample was adulterated. He issued the report (Ex.PW2/G). This report was forwarded to the



Food Inspector by the LHA vide letter dated 16 April 2002 (Ex.PW2/H). The complainant filed an application (Ex.PW2/J) before the Chief Medical Officer (CMO), Shimla, seeking consent to launch the prosecution. CMO went through the documents and issued the written consent (Ex.PW2/K). The Food Inspector filed a complaint before the learned Trial Court and intimated the LHA vide letter (Ex. PW4/A). LHA sent a notice (Ex. PW4/B) to the accused by post and obtained postal receipts (Ex. PW4/C and Ex. PW4/D).

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to them for the commission of an offence punishable under Section 16(1)(a)(i) of the PFA Act, to which they pleaded not guilty and claimed to be tried.

4. Learned Trial Court also summoned M/s Purnima Sales Corporation (wholesaler), M/S Tanish Marketing Parwanoo (supplier) and M/s AP Solvex Limited (Manufacturer) under Section 20A of the PFA Act. When they appeared, notices of accusation were put to them for the commission of offences



punishable under Section 16 (1) (a) (i) of the PFA Act, to which they pleaded not guilty and claimed to be tried.

5. The complainant examined five witnesses to prove its case. Charan Dass (PW1) witnessed the sampling and carried the sample to the public analyst at Kandaghat. L D Thakur is the complainant. Naresh Kumar (PW3) proved the written consent. R D Sharma (PW4) was posted as a dealing assistant in LHA. Sanjeev Goswami (PW5) witnessed the sampling process.

6. The accused, Sunil Kumar, in his statement recorded under Section 313 of Cr.P.C. on his behalf and on behalf of Usha Trading Company, admitted that the complainant had visited his shop on 04.03.2002, and he was running the business. He admitted that he had two plastic jars of 15 litres of Ricela Rice Bran Oil for sale to the public. He admitted that the complainant had purchased the sample of oil and put it in a jug. He denied the rest of the complainant's case. He stated that he had purchased the jars from M/s Purnima Sales Corporation. He claimed that he was innocent, and the sample was taken from a sealed jar, which was kept in the same condition in which it was purchased.



7. The accused Nitin Aggarwal, proprietor of M/S Tanish Marketing Company, denied the complainant's case in its entirety. He claimed that he was innocent and was falsely implicated.

8. The accused D K Kaushal denied the complainant's case in its entirety. He stated that no bill or warranty was produced on record. The name of the company is mentioned as a manufacturer on the jar. He claimed that he was innocent and that he was falsely implicated.

9. Learned Trial Court held that the complainant had visited the shop of accused Sunil Kumar on 4<sup>th</sup> March 2002 at 2 PM, where the accused Sunil Kumar was running the business of the shop. The accused had displayed two plastic jars of Ricela, Refined Rice Bran oil for sale to the general public. The complainant purchased a sample of oil after issuing a notice to the accused Sunil Kumar. The complainant completed the formalities in the presence of Charan Dass and Sanjeev Goswami. The sample was sent to a public analyst for analysis, who found it to be adulterated. CMO gave a sanction after applying her mind. The oil was manufactured by M/S AP Solvex



Limited and remained in the same condition in which it was manufactured. Therefore, only the manufacturer and not the distributor, supplier or seller could be held liable. Hence learned Trial Court convicted the accused DK Kaushal of the commission of an offence punishable section 16 (1) (a) (i) of the PFA Act and sentenced him to undergo simple imprisonment for six months, pay a fine of ₹2,000 and in default of payment of fine to undergo further simple imprisonment for 15 days for the commission of the aforesaid offence.

10. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge II, Shimla (learned Appellate Court). The learned Appellate Court held that there was no evidence that the jar and bottles were clean and dry. The oil was not stirred and made homogeneous before taking a sample. This violated the mandatory provisions of rules 14, 17 and 18 of the PFA Rules. The learned Magistrate was required to conduct proceedings *de novo* after assuming charge on his transfer, but failed to do so. The sample was analysed after a delay, and the possibility of an increase in the acid



content due to the delay could not be ruled out; hence, the learned Appellate Court acquitted the accused.

11. Being aggrieved by the judgment passed by the learned Appellate Court, the State has filed the present appeal asserting that the learned Appellate Court erred in appreciating the material on record. The statement of the complainant was duly corroborated by the statements of Charan Daas and Sanjeev Goswami, and the documents placed on record. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

12. I have heard Mr Prashant Sen, learned Deputy Advocate General, for the appellant-State and Subhash Punshi, learned counsel for the respondent/accused.

13. Mr Prashant Sharma, learned Deputy Advocate General, for the appellant-State, submitted that the learned Appellate Court erred in acquitting the accused. The accused Sunil Kumar did not dispute that the sample was taken in clean and dry bottles. There was no delay in analysing the sample. The proceedings were conducted as a summons case and not as a summary case. There was no requirement to conduct the



proceedings *de novo*. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

14. Mr Subhash Punshi, learned counsel for the respondent/accused, submitted that the learned Appellate Court had rightly held that the sample was not taken in clean and dry bottles. There was a delay in analysing the sample. The proceedings under the PFA Act have to be conducted in a summary manner, and the learned Magistrate was required to conduct *de novo* proceedings on the assumption of charge after the transfer of his predecessor. The learned Appellate Court had taken a reasonable view that could have been taken based on the evidence produced before the Court, and this Court should not interfere with the reasonable view of the learned Appellate Court while deciding the appeal against the acquittal, even if another view is possible. Hence, he prayed that the present appeal be dismissed. He relied upon *State of Gujarat vs Gulabgiri Shambugiri Goswami and Distributor J H Shah 2007 FAJ 344*, *Ramesh G Bandekar vs Sehumal S Virvani 2008 FAJ 125*, *State of HP vs Gulshan Kumar 2000 (1) FAC 108*, *State of Gujarat vs Rajendra Tulsidas 2011 (2) FAC 299*, *State of Maharashtra vs Vinayak*



*Mahadeora Waze 2005 (2) FAC 126, State of Gujarat vs Tharkarsibhai Prabhudasbhai Bhatti 2008 (3) Current Criminal Reports 42, Narender Kumar vs State of HP 1993 (1) FAC 15, Nebh Raj vs State (Delhi Administration) & Anr. 1980 (2) FAC 191, State vs Dev Raj 2003 (2) FAC 426, Vishwanath vs State of HP Latest HLJ 2002 (HP) 174, and H L Nellashékara vs Food Inspector 2006 (3) Criminal Court Cases 707* in support of his submission.

15. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

16. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand, (2025) 5 SCC 433: 2025 SCC OnLine SC 176* that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed at page 438:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers



from patent perversity; that the same is based on a mis-reading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

17. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC OnLine SC 1743, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

18. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. It is undisputed that the Rice Bran Oil was put in a jar before taking the sample. Complainant specifically stated this fact in his examination-in-chief. Charan Dass (PW1) stated in his cross-examination that the jug belonged to the accused. The



complainant, L D Thakur, stated that the jug and the bottles were not cleaned on the spot, but were already clean. The bottles for taking samples were issued by the office of the LHA. Sanjeev Goswami (PW5) stated that the bottles were cleaned with the help of a cloth on the spot. As per Charan Dass, the jug was taken from the accused; hence, specific evidence was required to be led that the jug was cleaned and dried on the spot. In *R.N. Tyagi v. State of Haryana, 1999 SCC OnLine P&H 72*, the bottles were opened and poured into a tub. It was held that in the absence of evidence that the tub was cleaned and dried before pouring the contents into it, the accused cannot be held liable. It was observed:

“8...There is a force in the argument of the learned counsel for the petitioner that the lack of evidence of the tub being cleaned before the contents of the bottles were emptied in the tub creates a doubt. If such a doubt is created, the benefit of it has to go to the petitioner.”

20. It was laid down by the Kerala High Court in *Koyakutty v. Food Inspector, 2000 SCC OnLine Ker 481: (2000) 3 KLT 693* that the accused cannot be held liable in the absence of evidence that the intermediate vessel was clean and dry. It was observed at page 696:



“6. The first question that arises for consideration is whether there is a violation of R. 14 of the Prevention of Food Adulteration Rules in this case. The Rule requires the Food Inspector to take samples of food “in clean dry bottles or jars or in other suitable containers”. In this case, admittedly, the Food Inspector used an intermediary vessel for the purpose of purchasing the sample of coconut oil. There is absolutely no evidence in the case to show that the said vessel in which the Food Inspector took the sample was made clean and dry as required under R. 14. Even P.W. 1, the Food Inspector, who took the sample, was not prepared to swear before the court that the intermediary vessel was clean and dry. There is also nothing on record to indicate that before using the vessel, the Food Inspector had cleaned and dried it. Merely because the intermediary vessel was in use in the provision shop, it cannot be said that it was clean and dry. There is no reliable material on record to show that the intermediary vessel used by P.W. 1 was being used only for the purpose of taking coconut oil. When a sample of food is taken in a container that was formerly used for containing another item of food, there is a possibility of both items of food getting mixed. (See *Jagdish v. State*, 1981 FAJ 509). In this connection, it is relevant to note the following observations in *Sitaram Thirani v. State of Orissa* (1977 Crl. LJ. 681):

“The fact that the offence was serious and the consequences disastrous will not relieve the prosecution of proving its case beyond a reasonable doubt”

7. In the decision reported in *Varghese v. Food Inspector* (1989 (2) KLT 672), it was held by this Court that, as far as possible, the Food Inspector should sample the article in hygienic conditions. According to the learned Sessions Judge, there is nothing in this case to show that the sample was not taken in hygienic conditions. According to me, there is nothing on record to show that the sample was taken in hygienic conditions. Since there is no material on record to show that the



coconut oil was taken in a clean or dry intermediary vessel, there is a glaring violation of R. 14 of the Prevention of Food Adulteration Rules. It is a settled position that the provisions of R. 14 are mandatory and violation thereof would vitiate the conviction.

21. A similar view was taken by the Gujarat High Court in *Mansinh Chhajuram Yadav v. State of Gujarat, 1985 SCC OnLine Guj 33: 1985 GLH 728*, wherein it was observed at page 734:

“7. The Food Inspector has, as I stated earlier, described the procedure followed by him at the time of collecting the sample in minute details and has not stated as to in which pot he collected the sample. He has not stated that he ascertained that the pot in which he collected the sample was dry and clean. This circumstance also goes against the prosecution.

22. Madhya Pradesh High Court also took a similar view in *Satya Narain Gupta v. Keshav Deo, 1983 SCC OnLine MP 242: (1984) 1 FAC 370* and observed at page 372:

“5. The evidence of the Food Inspector Satyanarayan (P.W. I) though is that he after mixing the bought milk and after dividing it into three parts had put it in three dry clean and empty bottles' which he had sealed, he does not say that the jug which he had taken along with him and in which the bought milk had first been poured before mixing it well and putting in three clean dry and empty bottles was without any contents. He had, therefore, not shown that the milk was not contaminated with something which might have influenced the increase in the fat contents and slight decrease (to the extent of 0.6 per cent in solids not fat).”



23. A similar view was taken by the Allahabad High Court in *Shashi Kant v. State of U.P., 1982 SCC OnLine All 1376: (1983) 1 FAC 19* and observed at page 20:

“6. There was evidence that the sample was taken out in a *bhagona* and then weighed, and no evidence was examined to show whose *bhagona* it was and whether it was clean and dry. The oil may have, therefore, been adulterated when kept in this *bhagona*.”

24. The sample was taken on 04.03.2002, and the report of analysis was issued on 11.04.2002. It was held in *Nebh Raj v. State (Delhi Admn.), (1980) 4 SCC 552: 1980 SCC OnLine SC 29* that the delay in analysis can lead to an increase in the fatty acid. It was observed at page 553:

“That oxidation due to exposure to air has the effect of increasing the free fatty acid content of edible fats, and oil cannot be disputed. *Woodman* in his *Food Analysis*, 4th Edn., p. 170, points out:

"When acted on by the oxygen of the air, especially in the presence of light and moisture, free fatty acids are liberated and altered with the accompanying production of various aldehydes and acids of lower molecular weight having a disagreeable odour and acrid taste, the fat, or oil then being turned 'rancid'".

David Pearson, in his *Chemical Analysis of Foods - 7th Edition*, page 494, says :

Fats undergo changes during storage, which result in the production of an unpleasant taste and odour, which is commonly referred to as rancidity. Rancidity is brought about by the action of air or by



microorganisms. Oxidative rancidity is accelerated by exposure to heat and light, by moisture and by the presence of traces of certain metals (e. g., copper, nickel, iron) .....With most oils and fats, the free acidity increases during storage....."

25. Therefore, the possibility of an increase in the acid content due to the passage of time cannot be ruled out.

26. Learned Appellate Court held that the learned Magistrate should have conducted the proceedings *de novo* after assuming the charge. This finding cannot be sustained. The record shows that the proceedings in the present case were conducted as a summons case and not as a summary case. The notice of accusation was put, and the complete statements of the witnesses were recorded. Therefore, there was no necessity of conducting the proceedings *de novo*. It was laid down by the Hon'ble Division Bench of the Andhra Pradesh High Court in *Food Inspector, Cir. V.M.C.H. v. Y. Babji, 2001 SCC OnLine AP 799: (2001) 3 AP LJ 45*, that Section 326 (3) of CrPC does not apply where the complete record of the evidence was maintained. It was observed at page 48:

"6. It is not in dispute, in the instant case, that the summary of deposition of the witnesses had not been recorded, and the entire depositions of the witnesses



were recorded. The witnesses had also been cross-examined. Section 16A of the Act provides for a trial in a summary way. In a case where the second proviso is appended to Sec. 16A of the act applies, summons trial may be taken recourse to.

7. Even in a summary trial, in terms of Section 262 of the Code, the procedure specified in the Code for the trial of summons cases would be followed. In the event, the procedure specified under sub-sec. (1) of Sec. 262 had been followed, we are of the opinion that sub-section (3) of Sec. 326 will have no application.”

27. In *Chhaju Ram vs State of HP 2002 (2) Shim. LC 155*, this Court had specifically found that the case was being tried in a summary way. Hence, the cited judgment does not apply to the present case.

28. No other point was urged.

29. In view of the above, the learned Appellate Court had taken a reasonable view while acquitting the accused, and no interference is required with the judgment passed by the learned Appellate Court.

30. Consequently, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

31. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of *Bhartiya Nagarik Suraksha*



Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

32. Records be sent back to the learned Courts below forthwith, along with a copy of the judgment.

**(Rakesh Kainthla)**  
**Judge**

**1<sup>st</sup> April, 2026**  
**(Nikita)**