

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl. Rev.P.127/2000 and Crl.Rev.P.128/2000

% Date of Decision : 12.02.2008

BANARSI LAL PETITIONER

Through: Mr. Ambar Qamaruddin with Mr. R.P. Singh, Advocates

- V E R S U S -

STATE RESPONDENT

Through: Mr. Pawan Sharma, Advocate

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (ORAL)

1. The petitioner runs a shop under the name and style of M/s Good Luck Salt Company behind Shadipur Depot, New Delhi as a proprietor-cum-manufacturer of food articles. On a visit of the food Inspector at the premises of the petitioner, two samples of iodized salt were taken which

were found to contain low iodine content as also matters soluble in water other than NaCl. The samples were taken of the brand Swastic manufactured by the Gagan Salt Company of which the petitioner was the seller. The complaint was lodged against the petitioner and after framing of charges and recording of evidence, the petitioner was found guilty of violation of provisions of Section 2 (ia)(a)(m) and rule 32 (e)(f) r/w Section 7/16 of the Prevention of Food Adulteration Act, 1954 ('PFA Act' for short) by the order dated 09.01.1992.

2. The order of sentence was pronounced on 15.01.1992 whereby the petitioner was sentenced to undergo RI for six months and to pay a fine of Rs.2,000/- and in default further six months RI.

3. The petitioner aggrieved by the said order, filed an appeal before the learned Addl.Sessions Judge and the said appeal was dismissed by the order dated 22.03.2000. The petitioner now seeks to challenge both the aforesaid orders.

4. Learned counsel for the petitioner confines his submissions to grant of benefit to the petitioner under the Probation of Offenders Act, 1958 ('the said Act' for short) and contends that the petitioner has already undergone sentence of one month and has deposited the fine. It is stated that the petitioner is 67 years old and has undergone protracted trial and further appeals and revisions and is no more in the said business. It is stated that the petitioner

was only a seller of the brand and there is no prior criminal antecedents of the petitioner nor has the petitioner been found to be indulging in any such similar offences after the alleged commission of offence and that the report of the Probation Officer has been called, which is not adverse to the petitioner.

5. Learned counsel in support of his contention has relied upon the judgment of the Supreme Court in Isher Das v. The State of Punjab; AIR 1972 SC 1295 where it has been held that the provisions of the said Act apply to offences under the PFA Act.

6. Learned Addl.P.P. for the State, on the other hand, contends that in case of prosecution under the PFA Act, the benefit cannot be granted under the said Act and in that behalf has relied upon the judgment of the erstwhile Constitutional Bench of the Supreme Court in Pyarali K.Tejani v. Mahadeo Ramchandra Dange and Ors; 1974 SCC (Cri) 87, more specifically, what is observed in para 30, which is as under:

“30. The finale in every criminal trial is sentence. Let us take stock of the social and personal facts, the features of the crime and the culprit. The Prevention of Food Adulteration act, 1954 is meant to save society and Parliament has by repeated amendments emphasized the statutory determination to stamp out food offences by severe sentences. Indeed, dissatisfied with the indulgent exercise of judicial discretion, the Legislature has deprived the Court of its power to be lenient. In the light of escalating food

adulteration this is understandable. Even so, there are violations and violations. Scented supari is neither is a staple diet nor popular with the poor, being an expensive item. Nor is saccharin poisonous but prohibited more as a precaution. That may be the reason for the prosecution not leading evidence of its injurious properties. The circular bearing on saccharin in supari, though irrelevant to nullify the Rule, suggest that it is not so grave a danger and may, perhaps be permitted again. Cyclamate stands on a somewhat different footing, although in a practical sense, the menace to health from it is not too serious except where unusually massive doses are consumed. The accused' non knowledge has been rejected by us but he alleges that he has retired from the firm. He has undergone a week in jail and is not known to be a repeater."

7. A perusal of the aforesaid observations, in my considered view, shows that the Constitution Bench has not taken the view that the provisions of the said Act do not apply to a conviction under the PFA Act, but has taken a larger intent of the PFA Act which is meant to save the society from the menace of adulterated food items. Similarly, it has been observed that there are 'violations and violations' and thus the nature of violation would be material.

8. Learned counsel has also relied upon the judgment of the Apex Court in Delhi Administration v. Manohar Lal; 2002 IV AD (Cr.) S.C.244 where the decision of this Court to commute the sentence by directing the Government to formulize the order was held not to be in accordance with

law since the exercise of power under Section 433 of the Code of Criminal Procedure, 1973 vested with the Government. It was held that a mandatory direction to the government with no discretion or liberty left with it, except to formalize the same, on payment of fine, could not be sustainable.

9. In the present case, as noticed above, the allegation is of lower iodine content and the presence of matters soluble in water other than NaCl in respect of the salt sample sold by the petitioner though not manufactured by him. The petitioner has no prior or past antecedents and otherwise is manufacturing his own products under his brand name. The petitioner has undergone sentence of one month and has further paid the fine.

10. In the given facts and circumstances of the case, I am of the considered view that the benefit under the said Act should be made available to the petitioner in view of the Isher Das v. The State of Punjab's case (supra). The petitioner will furnish a personal bond for good conduct in the sum of Rs.25,000/- for a period of one year with one surety of the like amount to the satisfaction of the Trial Court and the benefit be consequently extended to the petitioner under Sections 3 and 4 of the said Act.

11. The petitions stand disposed of.

FEBRUARY 12, 2008
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SANJAY KISHAN KAUL, J.