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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A.No.1209/2011**

% *Judgment delivered on: 28th February, 2012*

FOOD INSPECTOR Appellant
Through: Ms. Rajdipa Behura, APP

versus

VINOD KUMAR Respondent
Through: Mr M.K. Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Ld. counsel for the State submits that vide judgment dated 27.07.2010 ld. ACMM held the respondent guilty for violation of sub clause (a)(j)(m) of Section 2 (ia) punishable under Section 16(1A) read with Section 7 of the PFA Act and vide order of sentence dated 31.07.2010, he was sentenced to RI for a period of 01 year and fine Rs.5,000/- for violation of sub-clause (a)(j)(m) of Section 2 (ia) punishable under Section 16(1A) read with Section 7 of the PFA Act.

2. Being aggrieved the petitioner challenged the abovesaid order before the Sessions Court. Vide judgment dated 27.04.2011, ld ASJ has modified the order passed by ld. MM to the extent of

sentencing him to pay fine of ₹ 50,000/- or in default SI of 03 months by keeping in view his responsibility towards his wife and three minor children and that he had no criminal antecedents.

3. Ld. APP has pointed out that ld. Special Judge/NDPS has also not differed with the finding recorded by the ld. trial court, holding the appellant guilty for offences punishable under Section 16(1A) read with Section 7 of the PFA Act for violation of (a)(j)(m) of Section 2(ia) of the PFA Act, and has recorded in its Impugned Judgment para 15 as under:

“Both the reports indicated the presence of synthetic yellow oil soluble colour. As per the standards laid down for the mustard oil, it should be free from added colouring matter. Thus the sample commodity as sold by the appellant was not of the nature and quality which it represented to be as it was having unpermitted synthetic colouring matter. In view of the above, I do not differ with the findings given by the trial court qua holding the appellant guilty of the offence punishable u/s 16(1A) r.w.s. 7 of the PFA Act for violation of (a) (j) (m) of section 2(ia) of the PFA Act.”

4. Ld. APP has also pointed out that ld. appellate court has gone totally wrong as under Section 16(1A) read with Section 7 of the PFA Act, minimum sentence is 01 year extensible upto 06 years, whereas reduced to only to the tune of ₹ 50,000/-.

5. The similar issues have been settled in a case of ***State Govt of NCT Vs. Amar Singh 2005 (10) SCC 279***, wherein it is held that

under Section 16(1-A) of the Act minimum sentence of one year imprisonment has been prescribed and no discretion has been given to the court to reduce the same. This being the position, the High Court has committed an error in reducing the imprisonment from less than the minimum period prescribed under the statute.

6. On the other hand, learned counsel for the respondent has submitted that in catena of cases, a lenient view has been taken by the Subordinate courts, High Court and the Supreme Court. In the said case also, the Ld. Additional Judge has recorded as under:

“On going through the standards for the mustard oil I find that before 2004 use of synthetic tocopherols as food additives in edible oils and fats was prohibited. By the notification 2004 natural and synthetic tocopherols are permitted to be used in edible oils and fats. The CFL report indicated the colour as yellow oil soluble colour in the sample commodity. Thus, the possibility of synthetic tocopherol in the sample commodity cannot be ruled out. In the present case the sample was taken in the year 2003 before the notification came into force.

In the present case also both the reports did not indicate that the added synthetic colouring matter was injurious to health. Rather by amendment w.e.f. 2004, use of tocopherol in natural and synthetic form as antioxidants agents is permitted.

Taking support of the case supra I am of the view that the appellant deserves leniency. The appellant has faced the rigour of trial since 2003. He is a small shopkeeper with no criminal antecedents. After this incident he is not involved in

any other case. He has responsibility of his wife and three minor children. Keeping in view all these facts I sentence him to pay fine of Rs.50,000/- in default thereof to undergo simple imprisonment for a period of three months. The fine already paid be adjusted from the said fine.”

7. Learned counsel has further submitted that one fact has not been recorded that the father of the respondent now has gone blind and the respondent is the only bread earner of the family. Therefore, in the interest of justice and on humanitarian grounds, the view taken by the Learned Additional Sessions Judge may not be altered.

8. Learned counsel has relied upon three judgments of this court as ***109(2004) DLT 913, Rajesh Kumar Vs. State; 112(2004) DLT 98, Subhash Chand Vs. State; and 109(2004) DLT 887, Sita Ram Vs. State*** and has further relied upon two judgments of the Apex Court in ***2010[3] JCC 2088, Nand Lal Vs. State of Uttarakhand & Anr.; and Criminal Appeal Nos.630-31 & 32 of 1996, Sri Krishan Gopal Sharma and another Vs. Government of N.C.T. of Delhi***, wherein it is held as under:

“It, however, appears to us that even if the complaint is accepted to be correct, the only offence committed by the appellants amounts to technical violation of the mandate of Rule 47 for adding saccharin to the extent of 2000 and 2450 ppm in the Chutki Pan Masala and Mouth freshner. Such addition of saccharin cannot be held to be injurious to health because, considering later findings on research and analysis on the effect of saccharin on human system, addition of saccharin to the extent

8000 ppm in Pan Masala has been allowed by amending Rule 47. The articles sold are not alleged to be injurious to health and such allegations, even if made, cannot be accepted. There is no allegation that any other injurious substance was added to the articles sold making them potentially health hazards. It is also not the case that Pan Masala and Mouth Freshner were of inferior quality and sub-standard. In a case like this, the offence committed is on account of technical violation of Rule 47. It should be emphasized that strict adherence to Prevention of food Adulteration Act and Rules framed thereunder should be insisted and enforced for safeguarding the interest of consumers of articles of food. In the Constitution Bench decision in Tejani's case (supra) it has been indicated that in order to prevent unmerited leniency in the matter of awarding sentence for an offence under the Prevention of food Adulteration Act, the legislature by amendment has incorporated the provision of minimum sentence. But it was also been indicated that the court, for adequate and special reasons, may bring down the minimum sentence. The Constitution Bench has also observed that all violations of provisions of the Act and Rules need not be treated alike because "there are violations. In the special facts of these cases, it appears to us that a different punishment of imprisonment is not called for and imposition of fine of will meet the ends of justice. The criminal cases were initiated on the basis of samples taken in 1967. The accused appellants have already faced the ordeal of criminal trials for a number of years. In the aforesaid circumstances, further agony of criminal trial need not be prolonged. Conclusion of the criminal cases will also save time and expenditure of the respondent.

In that view of the matter, we direct for

quashing the criminal cases in question on payment of costs at Rs.7500/- in each of these appeals as in our view, on conviction of the appellants in the criminal cases initiated against them, such fine would have met the ends of justice. The appeals are accordingly disposed of.”

9. In the standards for the mustard oil before 2004, use of synthetic tocopherols as food additives in edible oils and fats was prohibited. However, by Notification 2004, natural and synthetic tocopherols were permitted to be used in edible oils and fats. The CFL Report indicated the colour as yellow oil soluble colour in the sample commodity. Thus, the possibility of synthetic tocopherols in the sample commodity cannot be ruled out. In the present case also, both the Reports did not indicate that the added synthetic colouring matter was injurious to health. Rather, by amendment with effect from 2004, use of tocopherol in natural and synthetic form as antioxidants agents was permitted.

10. The respondent faced the rigor of Trial since 2003. He is a small shopkeeper with no criminal antecedents. After this incident, he is not involved in any other case. He has the responsibility of his wife and three minor children.

11. Due to the reasons stated above, the learned ASJ has brought down the minimum sentence. Therefore, I find no infirmity in the impugned order dated 27.4.2011 passed by learned ASJ and concur with the same.

12. Accordingly, Criminal Appeal No.1209/2011 is dismissed.

13. No order as to cost.

SURESH KAIT, J

February 28, 2012
AC/T