Court No. - 69

Case :- CRIMINAL REVISION No. - 2240 of 2013

Revisionist :- Nem Singh
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- B.P. Verma
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri B.P. Verma, learned counsel for the revisionist and Sri Bade Lal Bind, learned counsel for the State and perused the records.

3. This criminal revision is preferred against the judgment and order dated 16.08.2013 passed by Additional Sessions Judge, Court No.6, Mathura in Criminal Appeal No.1/2004 (Nem Singh Vs. State and another) arising out of judgment and order dated 20.12.2003 passed by Additional Chief Judicial Magistrate, Court No.1, Mathura in Case No.581/1997 under Section 7/16 of Prevention of Food Adulteration Act for six months imprisonment along with fine Rs. 1,000/-.

4. At the outset, learned counsel for the revisionist does not challenge his conviction, but submits that he is ready and willing to apply for commutation of sentence on the condition of further deposit, if any, in lieu of awarded sentence. He further submits that the milk was stored for Glaxo company and the revisionist was a servant.

5. Learned A.G.A. submits that the sentence is proportionate to the charge established. He also submits that no useful purpose would be served by keeping this revision pending and it be disposed of by giving appropriate directions.

6. It is not disputed that the alleged offence took place on 09.05.1997, when the alleged sample of milk was purchased from the revisionist which is found to be less of 18 percent fatty. However, the Court cannot be oblivious that an offence under the P.F.A. Act has serious ramifications in the society, which cannot be lightly ignored, but at the same time to direct him after 20 years to serve out his remainder sentence is the other extreme. Learned A.G.A. is right in his submission that this Court cannot tinker, where minimum sentence is provided under a statute like the P.F.A. Act, 1954.

7. The Apex Court in the case of **State of Rajasthan Vs. Jagdish Prasad : (2009) 12 SCC 646** held in paras-4 and 5 thereof as under:

> *"4. In Dayal Singh v. State of Rajasthan it was inter alia observed as follows: (SCC pp. 728-29, para 15)*
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> > *"15. In the instant case it was not disputed that for the offence charged a minimum sentence of 6 months' rigorous imprisonment is prescribed by law. The appellant has been sentenced to undergo 6 months' rigorous imprisonment which is the minimum sentence. We are not inclined to modify the sentence by passing an order of the nature passed in N. Sukumaran Nair where this Court in exercise of its extraordinary jurisdiction imposed only a sentence of fine and directed that State to exercise its powers under Section 433 of the Code of Criminal Procedure to commute the sentence of simple imprisonment for fine. In the instant case the appellant has been sentence to undergo 6 months' rigorous imprisonment. Moreover, we are firmly of the view that strict adherence to the Prevention of Food Adulteration Act and the Rules framed thereunder is essential for safeguarding the interest of consumers of articles of food. Stringent laws will have no meaning if offenders could get away with mere fine. We, therefore, find no reason to interfere with the sentence imposed against the appellant."*
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> *"5. In the circumstances, the appeal is allowed. The sentence as imposed by the trial court is restored. However, since the occurrence took place nearly three decades back if the respondent-accused moves the appropriate Government to commute the sentence of imprisonment, the same shall be considered in the proper perspective. For a period of three months the accused need not surrender to undergo sentence during which period it shall be open to him to move the appropriate Government for commutation. If no order in the matter of commutation is passed by the appropriate Government the accused shall surrender to custody to serve the remainder of sentence."*

8. The position which emerges from the aforesaid discussion is that the allegations against the revisionist was selling milk with less fatty of 18 percent. Learned A.G.A. could not point out any distinguishing feature, which would make the ratio laid in the case of Jagdish Prasad (supra) inapplicable on the facts of the present case. Learned counsel for the revisionist has also expressed his willingness that the revisionist is prepared to apply for commutation of sentence under Section 433 of the Code and is also willing to deposit additional fine, if any coupled with the fact that revisionist has also remained in custody since the date of judgment i.e, 20.12.2003.

9. The revision is disposed of subject to the following conditions:-

(i) Order of conviction is maintained;

(ii) In case, the revisionist deposits Rs.10,000/- as additional fine before the Trial Court within 6 weeks from today, he shall be released on bail on his furnishing a bond with two sureties of the like amount, each to the satisfaction of the court concerned, and simultaneously he would apply before the appropriate government for commutation of his sentence;

(iii) The State government shall be obliged to consider the request for commutation

of sentence in accordance with law and in the light of observations made above, within a further period of three months from the date of production of certified copy of the order along with the request for commutation.

(iv) For a period of 6 months, revisionist need not surrender to undergo remaining sentence. If no orders for commutation in favour of revisionist is passed by the appropriate government, within the aforesaid period (3 months), the revisionist would be obliged to surrender only upon refund of fine deposited by him.

(v) The competent authority would strictly adhere to the time schedule and to the conditions stipulated hereinabove.

(vi) However, in case of default on the part of revisionist in complying with this order, he shall forthwith surrender after 6 weeks to serve out his remainder sentence.

10. Let a copy of this order along with the trial court records be sent to the Trial Court concerned and to the State Government for compliance and necessary action.

Order Date :- 2.11.2023
M. ARIF

(Samit Gopal, J.)

Digitally signed by :-
MOHAMMAD ARIF
High Court of Judicature at Allahabad