

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Revision Application No. 21 of 2003

Sayagaud s/o. Kindagaud,
Age : 60 years,
Occupation : Business,
R/o. Main Road, Shivaji Chowk,
Bhokar, Taluka : Bhokar,
District : Nanded.

.. Revision Applicant
(Original accused no.2)

versus

The State of Maharashtra,
Through - Mr. V.R. Waghmode,
Inspector, Food & Drugs
Administration Department,
R/o. Saptagiri, Shrinagar,
Nanded.

.. Respondent.

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*Mr. A.S. Gandhi, Advocate, holding for
Mr. P.V. Mandlik, Senior Advocate, for the
revision applicant.*

*Mr. U.S. Mote, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 10TH APRIL 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. A.S. Gandhi h/f. Sr. Adv. Mr. P.V. Mandlik for

the revision applicant, and learned APP Mr. U.S. Mote for the respondent - State.

2. The applicant herein is convicted for offence punishable under Section 7(i) read with Section 2(ia)(a), read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 [**For the purpose of brevity, hereinafter referred to as “1954 Act”**], and sentenced to suffer simple imprisonment for one year and to pay fine of Rs. 1000/-, in default, to suffer further simple imprisonment for one month, vide judgment and order dated 11th December 2000, passed by the Judicial Magistrate (F.C.), Bhokar, in Regular Criminal Case No. 217/1995. He was also convicted for offence punishable under Section 7(i), read with Section 2(ia)(m), read with Section 16(1)(a)(i) of the 1954 Act, and sentenced to suffer simple imprisonment for one year and to pay fine of Rs. 1000/-, in default, to suffer further simple imprisonment for one month. He was also convicted for offence punishable under Section 7(v), read with Rule 44(e), read with Section 16(1)(a)(ii) of the 1954 Act, and sentenced to suffer simple imprisonment for six months and to pay fine of Rs. 500/-, in default, to suffer further simple imprisonment for 15 days. The substantive sentences were to run concurrently.

3. Being aggrieved by the said judgment and order, the applicant herein had filed Criminal Appeal No. 76 of 2000 before the Sessions Court at Nanded. The learned Sessions Judge, Nanded, vide judgment and order dated 10th January 2003, was pleased to allow the appeal partly. The applicant has been acquitted of the offence punishable under Section 2(ia) (a) read with Section 7(i), read with Section 16(1)(a)(i) of the 1954 Act.

The rest of the conviction was confirmed. However, the substantive sentence for offence punishable under Section 7(i) read with Section 2(ia) (m) read with Section 16(1)(a)(i) of the 1954 Act was modified and instead of simple imprisonment for one year, the same was reduced to simple imprisonment for six months. The sentence of fine was maintained. The remaining part of the sentence for offence punishable under Section 7(v), read with Rule 44(e), read with Section 16(1)(a)(ii) of the 1954 Act was maintained. Hence, the present revision application.

4. The learned Counsel for the applicant submits that, in fact, the applicant herein was the owner of Hotel Kanaka Bhuwan, Bhokar. However, the hotel was being run by the son of the applicant, who has expired during the pendency of the proceedings before the trial court. It is the case of the prosecution, that on 25th April 1995, the Food Inspector had taken sample of groundnut oil from an open unlabelled aluminum kettle from the hotel of the present applicant. At that time, the applicant was not present in the hotel. His son was present. The Food Inspector had given notice to the son. The Food Inspector had purchased the said groundnut oil, but details of purchase were not disclosed. Thereafter, the said sample was sent for analysis. It was found that the said groundnut oil was adulterated. The son of the applicant had also disclosed identity of the grocer from whom said groundnut oil was purchased by the son of the applicant. However, in the present case, the said grocer has not been arraigned as an accused.

5. The learned Judicial Magistrate (F.C.), after taking into consideration the evidence adduced by the prosecution, was pleased to

convict the applicant. The learned Magistrate has considered that although there was no evidence put forth by the prosecution, that the applicant happens to be the owner of the hotel, the applicant had admitted in his statement under Section 313 of the Code of Criminal Procedure, 1973, that he happens to be owner of the hotel and the same was being run by his son Ramesh. Being aggrieved by the said judgment and order, the applicant had preferred Criminal Appeal before the Court of Sessions. The appellate court has partly allowed the appeal and convicted and sentenced the applicant as aforesaid.

6. The learned Counsel for the applicant submits that, both the courts below have not taken into consideration the defence put forth by the applicant, contending therein that the said oil was not purchased for the purpose of storage or sale, but was purchased for the purpose of utilizing it in the hotel. That, the applicant was not in receipt of any notice as contemplated under Section 11 of the 1954 Act. In the absence of taking the defence into consideration, the learned Counsel submits, that the said conviction of the applicant has resulted in grave miscarriage of justice.

7. The learned Counsel for the applicant has drawn attention of this Court, to the fact that the applicant was, in no way, concerned with the adulteration of the said oil. He was not a manufacturer. He was not running the business and the same was being run by his son. That, the son has been held vicariously liable only for accepting ownership of the said hotel. The learned Counsel further submits that the applicant is more than 70 years old. He has undergone 46 days' substantive sentence. The revision has come up for hearing practically after 12 years of filing the

revision. The incident is of the year 1995 and, therefore, the applicant be sentenced to the period already undergone.

8. The learned Counsel for the applicant has placed implicit reliance upon judgment of the Hon'ble Apex Court, in the case of ***Nand Lal Vs. State of uttarakhand & another***, reported in ***2010(4) SCC 562***, wherein the said issue had fallen for consideration before the Hon'ble Apex Court. The Hon'ble Apex Court has held that the incident had taken place almost 24 years ago and the appellant was more than 70 years of age, suffering from several medical ailments and, therefore, accepted the submissions on behalf of the appellant and sentenced the accused to the period already undergone.

9. In the present case, the incident is of the year 1995 and the matter is being considered in revision practically after 20 years of the alleged incident. Taking into consideration the evidence on record and the submissions advanced across the Bar, more particularly, the age of the applicant, this Court is inclined to sentence the applicant to the period already undergone.

10. In the result, the Revision Application is partly allowed.

(A) The conviction of the applicant for offence punishable under Section 7(i) read with Section 2(ia)(m), read with Section 16(1)(a)(i), so also, for offence punishable under Section 7(v) read with Rule 44(e) read with Section 16(1)(a)(ii) of the 1954 Act, is maintained. The sentence of fine is maintained.

(B) However, the substantive sentence for the aforesaid offences is reduced to the period already undergone. Bail bonds of the applicant stand cancelled.

11. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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