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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2440-2015 [O&M]

Date of Decision : Sept. 21st , 2015

Kewal Kishore

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. G.S.Sandhu, Advocate,
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana
for the respondent-State.

SHEKHER DHAWAN, J.

Present revision petition against judgment of conviction dated 31.10.2011 and order of sentence dated 9.11.2011 passed by Chief Judicial Magistrate, Karnal vide which the petitioner was convicted under Section 16 of the Prevention of Food Adulteration Act, 1954 [for short, "the Act"] and sentenced to undergo RI for 6 months and judgment dated 2.6.2015 passed by Additional Sessions Judge, Karnal vide which the appeal filed by the petitioner was dismissed.

Relevant facts of the case, that the petitioner was found to be in possession of 24 bottles of sweetened carbonated water without any label, for public sale contained in a crate. Sample was drawn. After giving notice on Form VI under the Prevention of Food Adulteration Rules, 1955 and after receipt of the report from Chemical Examiner, complaint was filed. Learned trial Magistrate completed the proceedings of trial and considering the prosecution case and defence version, held the present petitioner guilty and convicted and sentenced him. Appeal filed by the revisionist was

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dismissed by first Appellate Court and as such the present revision petition is before this Court.

At the outset of his arguments, learned counsel for the revisionist urged that he does not challenge the judgment of conviction and the appeal against judgment of conviction of the petitioner be dismissed as having been withdrawn. Otherwise also, the judgment of conviction recorded by Chief Judicial Magistrate affirmed by learned Additional Sessions Judge, Karnal is based on oral as well as documentary evidence and there are no grounds to interfere in the said findings by way of present revision petition. Hence, the present revision petition against the judgment of conviction dated 31.10.2011 of trial Court and the order passed by first Appellate Court dated 2.6.2015 is dismissed.

Learned counsel for the revisionist mainly contended that a lenient view on the point of sentence may be taken as the petitioner has already undergone actual sentence of 4 months as on 31.8.2015 and the revisionist be released while extending the benefit of probation or in the alternative, he be released while reducing his sentence to the period which he has already undergone while in custody/post-conviction period. In support of his arguments, learned counsel for the revisionist placed reliance upon the view taken by Co-ordinate Benches of this Court in **Kuldip Chand Vs. State of Punjab, 2013 R.C.R. [Criminal] 636; Krishan Kumar Vs. State of Haryana, 2008 [3] R.C.R. [Criminal] 338 and Shamsher Singh Vs. State of Haryana 2006[2] R.C.R. [Criminal] 210.**

Learned State counsel, on the other hand, contended that minimum sentence has been awarded by the Courts below and there are no grounds to award sentence lesser than that as the same is not

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permissible as per law. So, present revision petition against award of sentence be also dismissed.

Having considered the submissions made by learned counsel for the parties and the fact that the Courts below have already awarded minimum sentence to the revisionist as per law, which is 6 months R.I., no interference is called for in the order of sentence awarded to the revisionists by the Courts below. Identical matter was before Hon`ble Supreme Court in **Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and othes, 1974 AIR [SC] 228** and the Apex Court observed that even Probation of Offenders Act, 1958 is not applicable to the offence under 'the Act' and there are no grounds to award sentence lesser than the minimum prescribed under the statute. Similar view has been taken by Hon`ble Supreme Court in **Mahendrakumar G. Patel and another Vs. State of Gujarat and another 2006[2] R.C.R. [Criminal] 84** and **Dayal Singh Vs. State of Rajasthan, 2004[2] R.C.R. [Criminal] 609** that if minimum sentence is provided under the Act, there is no ground to reduce the sentence further.

In view of the above, there are no grounds for interference by this Court in the judgment of conviction and order of sentence recorded by Chief Judicial Magistrate, Karnal and affirmed by learned Additional Sessions Judge, Karnal, impugned in this revision petition. The revision petition is dismissed.

(SHEKHER DHAWAN)
JUDGE

Sept. 21st, 2015
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