

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

% *Judgment reserved on :11.8.2015*
Judgment delivered on :18.8.2015

+ CRL.A. 1416/2013

STATE

..... Appellant

Through Ms. Kusum Dhalla, APP for the
State.

versus

AMAR SINGH

..... Respondent

Through Mr. Arjun Singh Bhalla,
Advocate

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal has been filed by the State questioning the judgment dated 16.01.2013 passed by the learned ACMM who while upholding the conviction of the respondent under Section 2(ix)(e)(g)&(k) of the Prevention of Food Adulteration Act (hereinafter referred to as the PFA Act) and for violation of Rule 32(b)&(e), Rule 37 and Rule 42 (zzz)(16) of the PFA Rules 1955 punishable under Section 16(1)(a) read with Section 7 of the PFA Act sentenced the respondent to undergo SI for 1 day i.e. till the rising of the Court. He had also imposed a fine of

Rs.35,000/- upon the respondent.

2 The State is aggrieved by this order of sentence. Submission is that the sentence awarded to the respondent is inadequate. There is a minimum sentence which is prescribed for this offence which is for a period of 3 months and no special reason having been accorded for imposing a sentence lesser than the minimum (minimum having been engrafted by the Legislature), the impugned order is liable to be set aside.

3 The respondent has put an appearance. He has made submissions orally. His submission is that he does not wish to file any reply.

4 Arguments have been heard.

5 The first submission of the learned counsel for the respondent is that under Section 377 of the Cr.P.C. under which this appeal has been filed, the State should have approached the Sessions Court and not the High Court as has been done so in the instant case as against an order passed by the Magistrate, the appeal lies to the Sessions Judge and not to the High Court.

6 A query has been put to the learned counsel for the State by this Court. Her submission is that the petition has been drafted in the

Department and has been straight away marked to her. She does not have any specific answer to this query.

7 Be that as it may, this Court notes that the power of the Sessions Court and the High Court are concurrent. Section 377 (1)(a)&(b) states that the State Govt. in a case of conviction on a trial held by any court can direct the Public Prosecutor to present the appeal against the sentence on the ground of its inadequacy to the Court of Sessions (a) if the sentence is passed by any other Court. Sub clause (1) (b) encompasses the powers of the High Court to answer an appeal if the order has been passed by any Court.

8 In view of the aforementioned position, this Court is inclined to entertain this appeal.

9 Even otherwise, no useful purpose would be served in remanding the matter back to the Sessions Court as the pleadings are complete and the arguments have already been addressed.

10 On merits, it has been submitted that this is a case of mis-branding. It is not as if any health hazard has been suffered by any party. The respondent had pleaded guilty hoping for a lesser sentence and if the Court is inclined to interfere in the sentence it would cause grave

prejudice to the respondent. To support this submission, learned counsel for the respondent has placed reliance on a judgment of the Apex Court in 2013(1)ACR353 Jeetu @ Jitendera and Ors. Vs. State of Chhattisgarh. Submission being that in a case of plea bargaining where the accused has been promised that he would be let off on fine and would not be imprisoned, it was only then that he had agreed to plead guilty and if the sentence is now modified, it would be clearly violative of Article 21 of the Constitution of India. Reliance has also been placed upon 1996(20)ACR 717(SC) Krishan Gopal Sharma and Anr. Vs. Govt. of NCT of Delhi to support a submission that in appropriate cases the Court has power to reduce the sentence and in this case also where the offence was punishable under Section 16(1) of the PFA Act, for adequate and special reason the Court had granted relief. Reliance has also been placed upon a judgment of this Court in 2012(2)JCC871 Food Inspector Vs Vinod Kumar to support the same submission.

11 Needless to state that these arguments have been refuted.

12 This appeal is on a limited compass. Admittedly this is a case of mis-branding. The version of the prosecution is that on 04.10.2005 at about 4.30pm, the Food Inspector had purchased a sample of “Choco

Pie”, a food article for analysis from the respondent from his premises of M/s Breed “D” Bites. The food item was stored for sale. The respondent was conducting business. The Food Inspector collected three sealed packet of “Choco Pie” bearing identical label declaration. The Food Inspector divided the sample into three equal parts and each counterpart was separately packed, fastened and sealed according to the PFA Act and Rules. The public analyst vide its report dated 11.10.2005 had opined as under:

“Label: - Ingredients are declared at 2 places on the label at one place it declares “beef Gelatin” at other place there is declaration “Gelatin” without declaration of “Gelatin Animal Origin”. At one of the Ingredients a small sticker was pasted above the word Gelatin. The label has vegetarian symbol. Further Batch No is not declared on label.

Opinion: - The sample is Misbranded because it does not declare “Gelatin Animal Origin. It uses vegetarian symbol although beef Gelatin used under ingredients is non vegetarian. There is also violation of Rules 32e.

13 The sample was misbranded. It did not declare “Gelatin Animal Origin”; a vegetarian symbol had in fact been used; the words “gelatin Animal origin” did not find any mention therein.

14 The trial Judge had noted that there was no adulteration in the sample. This being only a case of misbranding and on the plea of guilt having been recorded of the respondent, he was convicted and sentenced as aforementioned. The second respondent had stood acquitted.

15 Rule 32(e) of the PFA Rules reads herein as under:

“(e) A distinctive batch number or lot number or code number, either in numerals or alphabets or in combination, representing the batch number or lot number or code number being preceded by the words 'Batch No'. or "Batch"or Lot No".or, Lot or any distinguishing prefix.

Provided, that in case of canned food, the batch number may be given at the bottom, or on the lid of the container, but the words "Batch No", given at the bottom or on the lid, shall appear on the body of the container”

16 Rule 32(e) lays down the manner in which the Food item has to be labelled.

17 Rule 42 (zzz)(16) postulates as under:

“Every package of Non-Vegetarian Food shall bear the following symbol in red colour on the principal display panel just close in proximity to the name or brand name of food namely :-

18 This Rule has been inserted by the GSR 245 (E) dt 4.4.2001 (w.e.f. 4.10.2001). It postulates that every package of non vegetarian food shall

bear the following symbol on the principal display panel just close to the place where the name of the food is mentioned.

19 In the instant case which is a case of misbranding, no health hazard was either suffered and or would have been suffered as it was not a case of consumption of any harmful substance.

20 The respondent was held guilty of the offence because the words “gelatin-animal origin” did not find any mention in the food article. A vegetarian sticker had been put which was indicative of the fact that it was a vegetarian product; the article was however non-vegetarian.

21 The Food Safety and Standards Act, 2006 (hereinafter referred to as the “FSSA”) was promulgated on 23.8.2006. In the preamble of the act, the objects of the Act have been defined as under:

“An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.”

The word “hazard” has been defined under Section 2(u) of the FSSA; it reads as under:

(u) “hazard” means a biological, chemical or physical agent in ,

or condition of, food with the potential to cause an adverse health effect;

“Misbranded food” has been defined under Section 2(zf); it reads as under:

(zf) “misbranded food” means an article of food-

(A) If it is purported, or it represented to be, or is being –

(i) Offered or promoted for sale with false, misleading or deceptive claims either:

(a) Upon the label of the package, or

(b) Through advertisement, or

(ii) sold by a name which belongs to another article of food, or

(i) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package containing the article or the label on such package; or”

Clause (B) and (C) are not relevant as they relate to packaged articles; in this case the article of food which was purported to be misbranded is a ‘Chocopie’ which was sold in an unpackaged form.

Section 89 of the Act contains overriding effect of this Act over all other food related laws and reads as under:

*“89. Overriding effect of this Act over all other food related laws.
– The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

The Food Safety and Standards (Packaging and Labeling) Rules, 2011 have been promulgated and have come into effect with effect from 01.8.2011 in the exercise of powers conferred under Section 92(2) (k) read with Section 23 of the FSSA.

Rule 2.2 clearly prescribes that vegetarian and non-vegetarian foods will bear a declaration to this effect made by a symbol and a colour code.

22 The Apex court in Writ Petition (Civil) No.681 of 2004 Centre for Public Interest Litigation Vs. Union of India and Ors. had an occasion to examine the aforementioned legislation i.e. FSSA and in this context the prayer made in that petition for constitution of an Independent Expert/Technical Committee to evaluate the harmful effects of soft drinks on human health, particularly on the health of the children. The stand of the Union of India is that the FSS Act along with Rules and Regulations framed thereunder constitute a vigorous

regulatory regime, which takes care of all the above mentioned situations. After examining the various aspects of the FSS Act in relation to its effect on soft drinks and its particular impact on children it was noted that a Food Authority has to be constituted by the Central Government under Section 4 of the FSS Act. The Food Authority in exercise of its power conferred under Section 92(2)(e) was intended to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. The Apex Court had noted that adequate provisions in the FSS Act and the Rules and Regulations have been made and all requirements dealing with the labeling etc. have been detailed in Rules 32 to 44 of the PFA Rules, 1955. In this judgment the Court had noted the following observations which are relevant in the context of the instant case:

“Considerable responsibility is cast on the Authorities as well as the other officers functioning is cast on the Authorities as well as the other officers functioning under the above mentioned Acts to achieve the desired results. Authorities are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other monitoring

activities covering all stages of food business.”

23 A Bench of the Allahabad High Court while dealing with the case of misbranding in 2011(2) Crimes 250 M/s Pepsico India Holdings (Pvt) ltd. and Anothers Vs. State of U.P. and Others had noted that in view of the provisions of the FSS Act cases on adulteration of food/misbranding after coming into force of the provisions of FSS Act vide notification dated 29.7.2010, the authorities can take action only under the FSSA as it postulates an overriding effect over all other food related law including the PFA Act.

24 In a case of misbranding the penalty is contained in Section 52 of the FSSA. It reads as under:

52. Penalty for misbranded food. – (1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of foods for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.

(2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.”

25 This Section provides a penalty for misbranded food and any

person who by himself or by other person manufactures for sale, stores or sells, distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.

26 Noting the factual matrix of the instant case and the offence for which the appellant has been convicted which is for misbranding this Court is of the view that the sentence imposed upon the respondent which was in the discretion of the Court, on the plea of guilt having been recorded of the respondent is a sentence which calls for no interference. This Court also notes the dicta of the Apex Court in Jeetu @ Jitender wherein in a case of a plea bargaining where the plea of guilt has been accepted by the respondent and he had been sentenced to fine but later on the Court deciding to modify the sentence and sentencing him to jail, the Court was of the view that this is a violation of the right of the accused Article 21 of the Constitution as a promise/assurance had been given to him that he would be let off lightly.

27 In this context the following observations of the Apex Court would be relevant and are noted herein as under:

“It would be clearly violative of Article 21 of the

Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. of course when we say this, we do not for a moment wish to suggest that the Court of appeal or revision should not interfere where a disproportionately low sentence is imposed on the accused as a result of plea-bargaining. But in such a case, it would not be reasonable, fair just to act on the plea of guilty for the purpose of enhancing the sentence. The Court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed against him”.

28 The discretion exercised by the Trial Judge was reasoned, fair and in no manner arbitrary; it does not call for any interference. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

AUGUST 18, 2015

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