

CRR-1564-2005

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1564-2005

Date of decision:30.8.2016

Jagdish Chander

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Surinder Gaur, Advocate for the petitioner

Mr.Ashok Muthreja, Deputy Advocate General, Haryana

SNEH PRASHAR, J.

By virtue of this revision petition, the petitioner has challenged the judgment dated 2.8.2005 passed by learned Sessions Judge, Kaithal whereby the judgment of conviction dated 26.3.2001 and order of sentence dated 27.3.2001 passed by learned Chief Judicial Magistrate, Kaithal in complaint under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') was affirmed. The petitioner was sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.2000/- and in default of payment of fine to further undergo simple imprisonment for one month.

The facts in brief are that on 27.11.1991 at about 9.00

AM, the petitioner was intercepted by J.S. Chauhan, Govt. Food Inspector, who was accompanied by Dr.J.P. Sharma and they found him in possession of 60 liters cow milk for public sale. After purchasing 750 Mls milk for Rs.4.20 paise, it was put in three bottles in equal quantity. Thereafter, the bottles were sealed as per rules and one sample was sent for analysis at Chemical Analyst Chandigarh and remaining two were deposited with the Local Health Authority.

After receipt of the report of Analyst, according to which the milk was found to be adulterated, the petitioner was charged under Section 7/16 of the Act, to which he pleaded not guilty and claimed trial. To substantiate its case, the prosecution examined three witnesses in all. Thereafter, statement of petitioner under Section 313 of the Code of Criminal Procedure was recorded wherein he pleaded his false implication.

On evaluating the evidence led by the parties and the submissions made by Govt. Food Inspector and the defence counsel, learned trial Court finding that the prosecution has successfully proved the guilt of the petitioner, convicted and sentenced him vide judgment / order dated 26/27.3.20011 as noticed above. Feeling aggrieved, the petitioner filed an appeal, which was dismissed by learned Sessions Judge, Kaithal vide judgment dated 2.8.2005.

Being dissatisfied by the judgment of conviction and order of sentence, the petitioner preferred the instant criminal revision.

The submissions made by Mr.Surinder Gaur, Advocate representing the petitioner and Mr.Ashok Muthreja, Deputy Advocate General, Haryana have been heard and perused the record.

At the very outset, it is submitted by learned counsel for the petitioner that he does not want to challenge the judgment of conviction dated 26.3.2001 recorded by learned Chief Judicial Magistrate, Kaithal, which was upheld by learned Sessions Judge, Kaithal vide judgment dated 2.8.2005, however, he submitted that the petitioner is facing agony of criminal prosecution for the last more than 25 years. The petitioner is not a previous convict and is presently aged about 60 years. Out of the total substantive sentence of two years, he has already undergone four months and twelve days of actual sentence. As such, the substantive sentence of imprisonment awarded to the petitioner be reduced to the one already undergone by him.

Learned counsel for the State opposes the above prayer of learned counsel for the petitioner and submits that the adulteration is a social evil and deserves to be curbed with heavy hand. Section 16 of the Act provides that the person found guilty of the offence shall be punished with imprisonment for a term which

shall not be less than six months but which may extend to three years and with fine which shall not be less than Rs.1000/-. There being minimum sentence provided, the petitioner is not entitled to reduction in the substantive sentence awarded to him.

Since, learned counsel for the petitioner does not challenge the judgment of conviction passed by learned trial Court and upheld by learned first appellate court, this Court is not inclined to go into the details with regard to the factual aspects of the case. However, on scrutinizing the impugned judgments as well as evidence led by the parties before the trial Court, apparently there is no scope for any interference in the concurrent findings recorded by both the courts below. As such, the conviction of the petitioner is maintained.

As regards quantum of sentence, the proviso to Section 16 of the Act postulates that in cases covered by Clauses (i) and (ii) to Section 16(1) of the Act for adequate and special reasons to be mentioned in the judgment, the Court may impose a sentence of imprisonment for a term which shall not be less than three months but which may extend two years and with fine, which shall not be less than Rs.500/-.

Fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a right to the accused to be

tried speedily. The said right is one of the most valuable and cherished right guaranteed under the Constitution, whereas in the instant case, the petitioner is facing a protracted trial for the last 25 years.

In Chander Bhan vs. State of Haryana 1996(1)

Recent Criminal Reports 125, this Court has held as under:-

“It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of a protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.

The Hon'ble Supreme Court in **Braham Dass vs. State of Himachal Pradesh 1988 (2) RCR (Crl.) 184**, has held as under:-

“Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and the High Court while reversing the judgment

of acquittal made by the appellate Judge has not made clear reference to clauses (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served by sending the appellant to jail at this point of time for undergoing period of the sentence, though ordinarily in an anti- social offence punishable under the Prevention of Food Adulteration Act, the Court should take strict view of such matter. While dismissing the appeal, we would, however, limit the sentence of imprisonment to the period already undergone and sustain the fine alongwith the default sentence.”

Reverting to the case in hand and taking into account the age of the petitioner, the exceptionally long period of protracted trial faced by him, in my considered opinion, no useful purpose will be served by sending the petitioner behind the bars once again for undergoing his remaining sentence of imprisonment. The ends of justice would be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Consequently, the conviction of the petitioner for the

offence punishable under Section 16(1)(a)(i) of the Act is upheld.

His substantive sentence of imprisonment is reduced to the one already undergone by him but the fine of Rs.2000/-, imposed by learned trial Court, which has already been deposited by the petitioner, shall remain the same.

The revision petition stands disposed of accordingly.

30.8.2016
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking/ reasoned?

Yes

Whether reportable?

Yes