

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 881 of 2008

Date of Decision : September 28, 2016

Ram Avtar

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Rajesh Arora, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Addl. Advocate General, Haryana

T.P.S. MANN, J. (Oral)

The petitioner, a shopkeeper, was tried for contravening the provisions of Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") making him liable for punishment under Section 16(1)(a)(i) of the Act with the allegations that he was found in possession of 18 kgs. of besan meant for public sale and the sample drawn therefrom revealed the presence of three rat droppings. Vide judgment and order dated 4/7.4.2006, learned Chief Judicial Magistrate, Rewari convicted him for the offence under Section 16(1)(a)(i) of the Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal but remained unsuccessful as the same came to be dismissed by learned Sessions Judge, Rewari vide judgment dated 6.5.2008. Still not satisfied, he filed the present revision, which

was admitted on 12.5.2008. Subsequently, vide order dated 22.5.2008, the Court had suspended his sentence of imprisonment.

According to the prosecution, on 30.8.1996 at 4.30 p.m. in village Nandrampur Bass, District Rewari, Shri Shiv Dayal, Government Food Inspector and Dr. Vinod Kumar Yadav, Medical Officer, General Hospital, Rewari inspected the premises of the petitioner and found him in possession of 18 kgs. of besan for public sale in a gunny bag. The Government Food Inspector purchased 600 grams of said besan, which was, later on, divided into three equal parts and kept in three dry, clean and empty bottles. The bottles were duly stoppered and sealed. One sealed bottle was sent to the Public Analyst, Haryana for analysis. As per the report of the Public Analyst, the sample contained three rat droppings.

Learned counsel for the petitioner submits that he does not challenge the conviction of the petitioner for the aforementioned offence. He, however, submits that he is facing the agony of criminal prosecution for the last about twenty years. He is not a previous convict. He has to support a large family consisting of wife and four children. Besides he is also required to look-after his aged mother. It is also submitted that he is an old diagnosed case of metaphase carcinoma left lung in 2013 and required to receive chemotherapy. It is also submitted that he has already undergone a period of about three weeks, out of the sentence of one year imposed upon him. He is now on bail since May, 2008. There is no allegation that he has

misused the concession. Therefore, his remaining sentence of imprisonment be set aside.

Learned State counsel has vehemently opposed the prayer by submitting that the sentence awarded to the petitioner is commensurate with the crime committed by him. Further for the offence for which the petitioner stands convicted, he is required to undergo minimum sentence of six months.

As per the custody certificate already brought on record by the learned State counsel, the petitioner has undergone an actual sentence of eighteen days. He is not shown to be involved or convicted in any other case.

Section 16 of the Act provides that the person found guilty of the offence shall be punishable 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 one thousand rupees. Proviso thereto further provides 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 to two years and with fine which shall not be less than five thousand rupees.

Fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a right in the accused to be tried speedily. It is now well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights

guaranteed under the Constitution. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

In **Chander Bhan v. State of Haryana**, 1996 (1) *Recent Criminal Reports* 125, it has been held by this Court 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.”

In **Municipal Corporation of Delhi v. Tek Chand Bhatia**, *AIR 1980 Supreme Court 380*, the Hon'ble Supreme Court held as under:-

“Though adulteration of an article of food is a serious anti-social offence which must be visited with exemplary punishment, it will be rather harsh to pass a sentence of imprisonment in the facts and circumstances of the instant case. Under Section 16 as in force at the material time, the Court had the discretion for special and adequate reason under proviso to sub-section (1) of Section 16 not to pass a sentence of imprisonment. In the instant case, the accused is a man aged 75 years. The offence was committed more than 11 years ago. The order of acquittal was based on the decision of

the High Court. The samples were taken from sealed tins. These are mitigating circumstances. Accordingly, instead of passing a substantive sentence of imprisonment, the accused could be sentenced to period already undergone and directed to pay a fine.”

In **Braham Dass** v. **State of Himachal Pradesh**, (1988)

4 SCC 130, the Hon'ble Supreme Court 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 along with the default sentence.”

Having heard learned counsel for the parties, this Court finds that no useful purpose will be served by sending the petitioner behind the bars, once again, for undergoing his remaining substantive sentence of imprisonment. Ends of justice would be suitably met if the same is reduced to the one already undergone by him.

Resultantly, the conviction of the petitioner for the offence under Section 16(1)(a)(i) of the Food Adulteration Act, 1954 is upheld. The substantive sentence of imprisonment is reduced to the one already undergone by him. However, the fine of Rs.1,000/- imposed by the trial Court and upheld by the lower appellate Court is enhanced to Rs.15,000/-. The enhanced amount of fine be deposited by the petitioner with the trial Court within three months from today, failing which he shall be required to undergo simple imprisonment for six months.

The revision is, accordingly, disposed of.

September 28, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO