

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

**Criminal Revision 2689 of 2011
Date of Decision : May 30, 2016**

Shankar	Versus	Petitioner
State of Haryana and another		 Respondents

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

Present : Mr. Sandeep Kotla, Advocate.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

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

The petitioner was tried for committing the offence punishable under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act 1954 (hereinafter referred as 'the Act'). Vide judgment and order dated 12/13.6.2009, learned Additional Chief Judicial Magistrate, Fatehabad, convicted him for the aforementioned charge and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in case of non payment of fine, to further undergo rigorous imprisonment for a period of one month. The fine imposed was paid by him there and then.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 15.10.2011, learned Sessions Judge Fatehabad found no illegality in the conviction of the petitioner. However, his substantive sentence of imprisonment was reduced from one year to six months. The sentence of fine along with its default clause was maintained. With the modification, the appeal was dismissed. Still not satisfied, the petitioner preferred the present revision, in which, he is currently on bail pursuant to order passed by this Court on 9.1.2012.

The case of the prosecution, in brief, is that on 27.11.2002 at about 11.15 a.m. Sh. O.D.Sanwal, Government Food Inspector inspected the premises of the petitioner, who was found in possession of 600 grams of chilli powder kept for sale in a container. The Government Food Inspector demanded a sample of chilly powder by giving a notice in writing on Form VI. Subsequent thereto, 450 grams of chilli powder was purchased against payment of Rs.45/- for the purpose of analysis. After mixing the whole contents properly and making it uniform, it was divided into three equal parts. One sealed sample was sent to the Public Analyst, Haryana for analysis whereas other two were deposited with the Local Health Authority. The Public Analyst opined that sample of chilli powder contravened sub-rule 24 of

Rule 49 of the Prevention of Food Adulteration Rules, 1955.

Accordingly, complaint was submitted against the petitioner .

Learned counsel for the petitioner submits that he does not challenge the conviction of the petitioner. It is, however, submitted that the petitioner is facing the agony of criminal prosecution for the last thirteen years. He is a poor person and sole bread winner of his family. He is not a previous convict and has already undergone a period of about three months out of the sentence of six months imposed upon him. Prayer has, accordingly, been made for taking lenient view in the matter of his sentence of imprisonment.

Learned State counsel has opposed the prayer by submitting that the law prescribes minimum sentence of six months under Section 16(1)(a)(i) of the Act, which has been imposed upon the petitioner. Therefore, no ground is made out for reducing the same.

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.”

Taking into consideration the totality of the circumstances, this Court is of the view that ends of justice would be suitably met, if the substantive sentence of imprisonment of the petitioner is reduced to the one already undergone by him. At the same time, fine of Rs.1,000/- can be enhanced to Rs.10,000/-.

Resultantly, the conviction of the petitioner, as recorded by the trial Court, is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.1,000/- is, however, enhanced to Rs.10,000/-. The enhanced amount of fine be deposited with the trial Court within three months from today, failing which, he shall be required to undergo rigorous imprisonment for three months.

But for the modification in the quantum of sentence of imprisonment and fine, as indicated above, the revision fails and is, therefore, dismissed.

May 30, 2016
amit rana

(T.P.S. MANN)
JUDGE