

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

Crl. Revision 656 of 2014

Date of Decision : June 02, 2016

Vinay Kumar

.....Petitioner

VERSUS

Government Food Inspector and another

.....Respondents

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

Present : Mr. V.K.Jindal, Senior Advocate with
Mr. Arun Yadav, Advocate

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

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

The petitioner was charged under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as '**the Act**') with the allegations that the sample of mineral water which was kept by him for public sale was found to be adulterated as it gave 156 aerobic microbial count against the maximum specified limit of 20 as laid down for packaged drinking water under item number A.33 of the Prevention of Food Adulteration Rules, 1955 and the Bureau of Indian Standards certification mark was not mentioned/printed on the label which was contravention of Sub-Rule 28 of Rule 49. Vide judgment and order dated 9/11.2.2010, learned Chief Judicial Magistrate, Rewari convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/-. In default of payment of fine, he was sentenced to undergo rigorous imprisonment for one month. The fine imposed was deposited by him there and then.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 21.2.2014, learned Additional Sessions Judge, Rewari found no merit in the appeal and dismissed the same. Still not satisfied, the petitioner preferred the present revision in which he was granted the concession of bail vide order dated 26.2.2014.

Learned counsel for the petitioner has not challenged the conviction of the petitioner. However, it is submitted that the petitioner is facing the agony of criminal prosecution for the last about fifteen years. The petitioner is not a previous convict. He is a poor person and having two children. He is the sole bread winner of his family. He has already undergone a period of about ten days out of the sentence of six months imposed upon him. Prayer has, accordingly, been made for granting leniency to the petitioner in the matter of sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that the petitioner has already been dealt with leniently in the matter of sentence and the punishment of imprisonment for six months is minimum prescribed by law. Learned State counsel has, however, produced the custody certificate as per which the petitioner has undergone an actual sentence of nine days. He is also not shown to be involved or convicted in any other criminal 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. The proviso 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 vs 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 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 vs 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 reasons 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 vs 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 judgement 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 in 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."

Resultantly, the conviction of the petitioner under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 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. 15,000/- which shall be deposited by the petitioner 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.

June 02, 2016
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(T.P.S. MANN)
JUDGE