

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.195 OF 2005

JUDGMENT:

The present Criminal Revision Case is filed by the revision petitioner - accused viz., Pachigolla Sarveswara Rao, aggrieved over the conviction recorded under Section 255 (2) of the Code of Criminal Procedure, 1973, for the offence punishable under Section 16(1)(a)(ii) and 7(i)(v) read with Section 2(ia)(b) of The Prevention of Food Adulteration Act, 1954, inflicting a sentence of rigorous imprisonment for a period of six (6) months and to pay a fine of Rs.1,000/- with default sentence to undergo simple imprisonment for a further period of two (2) months by the learned Judicial Magistrate of First Class, Salur, by the judgment dated 31.12.2003 in S.T.C. No.2 of 2002, as affirmed by the learned II Additional Sessions Judge (Fast Track Court), Parvatipuram, by the judgment dated 03.02.2005 in Criminal Appeal No.8 of 2004.

2. Thus, against concurrent findings recorded by the Courts below, the present Criminal Revision Case is preferred. The relevant facts are that the revision petitioner runs a retail kirana shop at Door No.1-177, Jeegiram Village, Vizianagaram District. When the Food Inspector, Division - II, Vizianagaram District, inspected the said shop on 13.03.2001 at about 12.30 p.m., he found the revision petitioner transacting business. He secured a mediator and on his acceptance to

act as a mediator, suspecting that Red-gram *dall*, seven (7) Kilograms, kept in a tin for sale of human consumption along with other food articles, was adulterated, purchased 750 grams of Red-gram *dall* and paid Rs.13-50 paise and obtained a cash receipt and then served Form - VI notice informing him that the so purchased Red-gram *dall* would be sent for public analyst for analyzing which was acknowledged by the revision petitioner and, therefore, PWs.2 and 3 have also signed on Form-VI notice. The said purchased Red-gram *dall* sample was divided into three equal parts and placed into three clean dry and empty plastic jars and the caps were closed tightly and tied with twine and sealed. Labels were also affixed as required by the relevant rules and all formalities have been completed and relevant precautions taken by him have been written in the complaint. The public analyst report was received in Report No.209/2001 dated 31.03.2001, which he opined that the sample does not conform to the standards of weevilled grains and uric acid content and it contains added synthetic colour tartrazine and is, therefore, adulterated. Hence, having obtained written consent from the authority, prosecution was launched.

3. The learned Magistrate examined the revision petitioner under Section 251 of the Code of Criminal Procedure, 1973, on the substance of accusation and the same was denied by him. Relevant point for consideration is framed, which reads thus:

“Now the point for consideration is whether the prosecution established the guilt of the accused for the offence u/Sec.16(1)(a)(ii) 7(i)(v) read with 2(ia)(b)(f) of Prevention of Food Adulteration act, 1954 and Rules 23, 29, and 50 of Prevention of Food Adulteration Rules, 1955 beyond all reasonable doubt?”

4. Having examined PWs.1 to 3 and marking Exs.P-1 to P-22 on behalf of the prosecution, and, of course, on behalf of the revision petitioner, no witness was examined and no documents were filed, the learned Magistrate relying on the evidence of PWs.1 to 3 and the aforesaid documents, having found that there was no infractions at all and referring to the rulings, arrived at the conclusion that the complainant proved the offences alleged against the revision petitioner. However, relying on the evidence of PW.1 as the mediator turned hostile and mostly based on the analyst report Ex.P-17 supporting the case of the prosecution, recorded conviction and inflicted the aforesaid sentence of imprisonment and fine. When the revision petitioner preferred appeal, the learned lower appellate Judge, on his independent appreciation of evidence on record and referring to the relevant rules such as Rule 15 of the Prevention of Food Adulteration Rules and the burden of proof and relying on the decisions referred to in the judgment, arrived at the view that the complainant could prove the offence alleged against the revision petitioner beyond all reasonable doubt and, therefore,

confirmed the conviction as well sentence of imprisonment and fine imposed by the learned Magistrate. Questioning the same, the present revision is preferred.

5. Heard Ms. T.V. Sridevi, learned counsel for the revision petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh, and perused the material on record.

6. The learned counsel for the revision petitioner, of course, mainly relying on an unreported decision of the Hon'ble Supreme Court in **Nemi Chand v. State of Rajasthan** Criminal Appeal No.214 of 2016 arising out of SLP (Criminal) No.2148 of 2013] and [Criminal Appeal No.215 of 2016 arising out of SLP CrI.M.P. No.883 of 2015}, would plead that the Food Adulteration Act, 1954 has been replaced with Food Safety and Standards Act, 2006, and the maximum penalty is only fine for sub-standard food or misbranding, and, thus, only in regard to sentence inflicted by the Courts below sought to modify on the lines of the modification of sentence made by the Hon'ble Supreme Court. Instead of referring to the facts therein, it would be appropriate if the relevant paragraphs are extracted. The Hon'ble Supreme Court in an alike situation, for the offence punishable under Section 16(1)(a) of the un-amended Prevention of Food Adulteration Act, 1954, in the context of the Food Safety and Standards Act, 2006, held thus:

“It is not in dispute that the charge against the appellant was only of sub-standardization of goods, Mr. Sushil Kumar Jain, learned senior counsel appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below. He has, in this behalf, argued that there has been an amendment in the Act by the Central Amendment Act 34 of 1976 whereby Section 16A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in ‘T. Barai v. Henry Ah Hoe and Another’ [1983 (1) SCC 177] wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. In the said judgment, the Court held as under:

“22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment At reduces the punishment for an offence punishable under Section 16(1)(a)

of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp.388-89:

A retrospective statute is different from an ex post facto statute. "Every ex post facto law...." Said Chase, J., in the American case of *Calder v. Bull* "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

From the facts of the present case, we have no doubt in mind that the aforesaid judgment squarely applies thereon. This appeal is, therefore, partly allowed and the sentence imposed upon the appellant is modified by imposing fine of Rs.50,000/- which shall be deposited within two months with the trial court. On deposit of the

aforesaid amount, the bail bonds furnished by the appellant shall be discharged.”

7. In the afore-referred decision also, the trial Court inflicted sentence of Rigorous Imprisonment for a period of six (6) months and fine of Rs.1,000/- with default sentence to undergo rigorous imprisonment for one month.

8. Therefore, the Criminal Revision Case is dismissed confirming the conviction imposed by the Courts below, however, having regard to the ruling relied on by the learned counsel for the revision petitioner, the sentence of imprisonment imposed on the revision petitioner is modified by imposing a fine of Rs.10,000/- (Rupees ten thousand only) which shall be deposited within two (2) months from today with the trial Court and on such deposit, the bail bond furnished by the revision petitioner shall be discharged.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision stand closed.

A. SHANKAR NARAYANA, J

November 22, 2017.
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