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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 153/2010 & CrI.M.A. 3820/2010 (stay)

MANOJ KUMAR Petitioner

Through: Mr. S. Mukerjee with Mr. Avijit
Singh, Advs.

versus

STATE Respondent

Through: Mr. Ashish Dutta, APP.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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03.08.2017

Manoj Kumar was convicted and sentenced for violation of sub-clauses (a) and (j) of Section 2 (i) (a), punishable under Section 16 (1) (1A) read with Section 7 of Prevention of Food Adulteration Act, 1954 and was sentenced to undergo RI for one year, to pay a fine of Rs.3,000/- and in default of payment of fine, to suffer further SI for one month by judgment and order dated 28.05.2009 and 04.06.2009 respectively by ACMM-II, New Delhi in Complaint Case No.127/1994. The aforesaid judgment and order of conviction was upheld by the learned Special Judge - NDPS, Patiala House Court, New Delhi in CA No.36/2009 but with the only modification that the amount of fine was increased to Rs.5,000/- .

The petitioner has assailed both the judgments of the courts below.

A sample of saunf (whole), a food article was purchased on 08.02.1994 by the Food Inspector from Harsham Store at Shalimar Bagh for the purposes of analysis. On analysis, the food item was found to be not

conforming to the standards because of added colouring matter. The petitioner thereafter exercised his option for getting the sample analysed again by the CFL. In the second analysis also, the sample was not found to be conforming to the standards laid down for colouring saunf. Thus, charges were framed under Section 16 (1) (1A) read with Section 7 of the Food Adulteration Act, 1954.

The Trial Court, on examining three witnesses on behalf of the prosecution, came to the conclusion that the offences were made out as against the petitioner. The aforesaid judgment and order of conviction and sentence was appealed against by the petitioner before the Appellate Court on the ground that every green agricultural item which is used as food includes chlorophyll and the report of the CFL also did not disclose that the colour found in the sample was synthetic or natural. No effort, it was argued, was made to identify the source from where the sample of saunf was purchased by the petitioner. It was also urged that from the facts of the case, there was no contravention of Section 7 of Prevention of Food Adulteration Act.

With respect to an offence under Section 2(ia), the punishment provided is imprisonment for a term which shall not be less than 6 months but may extend to 3 years and fine which shall not be less than Rs.1,000/- but if it is not with respect to the article of food being the primary food, the sentence of the imprisonment shall not be less than 3 months and it may extend to two years.

Section 2(ia) and (j) of the Act are as hereunder:

"[(ia)] "adulterated"- an article of food shall be deemed to be adulterated:-

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or represented to be;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;]

The punishment for violation of the aforesaid Sections is provided under Section 16 (1) of the Act:

16. Penalties :- [(1) Subject to the provisions of sub-section (1A),if any person-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of food :-

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or

(b) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any adulterant which is not injurious to health;

(c) prevents a food inspector from taking a sample authorised by this Act; or

(d) prevents a food inspector from exercising any other power conferred on him by or under this Act; or

(e) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or

(f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or

(g) whether by himself or by any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him.

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, 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:

Provided that-

(i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of section 2; or

(ii) if the offence is under sub-clause (ii) of clause (a), but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1A) of section 23 or under clause (b) of sub-section (2) of section 24. the court may, for any adequate and special reasons to be mentioned in the judgement, 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 hundred rupees: Provided further that if the offence is under sub-clause (ii) of clause (a) and is with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1-A) of section 23 or under clause (b) of sub-section (2) of section 24, the court may, for any adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term which may extend to three months and with fine

which may extend to five hundred rupees.]

The report of the Public Analyst is Ex. CW1/E. The report *inter alia* indicates that in the sample food item, unidentified green shade dye which is insoluble in acetone, was found.

Both the Trial Court as well as the Appellate Court found that the samples were properly sealed and sent to the CFL. There was no breakage in the seal and it tallied with the specimen seal impression sent along with the copy of the memo.

Section 10 of the Act defines the powers of the Food Inspector. Sub clause 7 of Section 10 provides that where a Food Inspector takes any action under the Act, he shall call one or more persons to be present at the time when such action is taken and he is required to take his or their signature. Both the courts below agreed with the prosecution version that whoever was requested, he refused to participate in the proceedings. That apart, it was held by both the courts that it was not of utmost necessity that the evidence of a Food Inspector is corroborated by independent witnesses.

Taking into account the aforesaid facts, both the courts below convicted and sentenced the petitioner as indicated above.

From the materials on record, this court does not find it appropriate to interfere with the concurrent judgments of conviction. However, with respect to sentence, this court is of the opinion that a lenient view is required to be taken because the petitioner has participated in the proceedings since 1994 when the occurrence is said to have been committed.

In ***Municipal Corporation of Delhi vs. Tek Chand Bhatia, AIR 1980 Supreme Court 380***, the Supreme Court has held as hereunder:

“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. The offence was committed more than 23 years ago. Accordingly, instead of passing a substantive sentence of imprisonment, the accused could be sentenced to period already undergone and directed to pay a fine.”

Similarly in ***Braham Dass v. State of Himachal Pradesh, 1988 (4) SCC 130***, the 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 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.

The petitioner has remained in jail for more than five months.

Thus, taking into account the mitigating circumstances, namely, the petitioner having undergone the agony of a protracted trial and proceedings thereafter for last so many years and his having remained in jail for more than 5 months, this court is of the view that interest of justice would be subserved by reducing the sentence to the period which has already been undergone by him.

For the foregoing reasons, the substantive sentence of the petitioner is reduced to the period which he has already undergone. The sentence of fine, if not paid, shall also be not given effect to.

The revision petition is partially allowed and disposed of.

ASHUTOSH KUMAR, J

AUGUST 03, 2017

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