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

% *Date of Decision: October 11, 2017*

+ **CRL.A. 753/2017**

STATE GOVT OF NCT OF DELHI Appellant

Through: Ms.Kusum Dhalla, APP for the State

versus

JAGDISH TYAGI Respondent

Through: M.K.K.Manan, Senior Advocate
instructed by Mr.Ankush Narang &
Mr.Manveen Dhanjal, Advocates

PRATIBHA RANI, J. (Oral)

CrI.M.A. No.12229/2017

1. For the reasons stated in the application, 90 days' delay in filing the appeal is condoned.

2. Application is disposed of.

CrI.A. No.753/2017

1. State is in appeal feeling aggrieved by the judgment dated 24th November, 2016 and the sentence awarded to the respondent by learned ASJ-01 while disposing of Criminal Appeal No.8550/2016. Vide impugned judgment, the sentence awarded to the respondent by the learned ACMM in CC No.193/2012 has been reduced by the learned ASJ-01 as under:

Sentence awarded by ACMM In CC No.193/2002	<u>Under Section 16(1A) r/w Section 7 of PFA Act, 1954</u> - to undergo SI for 18 months and fine of ₹10,000/-. In default SI for 60 days.
Sentence reduced by ASJ-01, New Delhi in CA No.8550/2016	<u>Under Section 59(i) of FSSA</u> - to undergo imprisonment till the rising of the Court and to pay a fine of

	₹35,000/-. In default to undergo SI for 15 days.
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2. The respondent/accused has not challenged his conviction or the order on sentence. The State is aggrieved to the limited extent that the respondent/accused could not have been awarded the sentence 'till rising of the Court' as the minimum sentence prescribed in the law is three months. The grounds of challenge in appeal are as under:

"A. Because the impugned order is manifestly wrong, illegal and against the facts on record.

B. Because the order of Ld. Appellate Court is against the judgment of Hon'ble Supreme Court in Criminal Appeal No.1570/2010 titled as Mithlesh Vs. State of NCT of Delhi wherein it was held that "no further benevolence can be shown to the appellant, more so, when it is a case of food adulteration. There is no special circumstance which may warrant reducing the sentence below the minimum"

C. Because the Ld. Appellate Court failed to appreciate that the offence committed by the accused was serious in nature and hence the Ld.Trial Court had awarded him the sentence of 18 months.

D. Because the Ld.Appellate Court erred in reducing the sentence from 18 months, awarded by the Ld.Trial Court, to till the rising of the Court, as the minimum sentence prescribed in the law is three months.

E. Because the Ld.Appellate Court did not appreciate the legal position correctly.

F. That the petitioner craves leave to this Hon'ble Court to add, amend or drop any of the grounds.

G. That no such similar or other petition has been filed either before this Hon'ble Court or before the Hon'ble Supreme Court of India."

3. Learned APP for the State submitted that in decision reported as Mithlesh vs. State of NCT of Delhi (2014) 123 SCC 423, the Apex Court refused to further reduce the sentence observing that it was a case of food adulteration and there was no special circumstance warranting reducing the sentence below the minimum, especially when the High Court had already shown benevolence by reducing the sentence from one year to three months.

4. Mr.K.K.Manan, Learned Senior Counsel appearing on behalf of the respondent has submitted that the case of the respondent is squarely covered by this recent decision of the Supreme Court in the case Nemi Chand vs. State of Rajasthan II (2016) CCR 15 (SC). learned ASJ has rightly held it to be an offence punishable under Section 59(i) of FSSA Act for the purpose of awarding the punishment and no minimum sentence is prescribed for the above said offence.

5. Learned APP for the State fairly concedes that in the grounds of appeal there is no challenge to the finding of the learned ASJ that Dal Arhar coloured with synthetic colour “Tartrazine” is termed as “unsafe food” in terms of Sec.3(zz) (vii) of FSSA Act punishable under Section 59(i) of FSSA and no minimum sentence is prescribed there under.

6. Learned ASJ considered that since on the date of judgment and order on sentence in this case, the PFA Act, 1954 stood repealed, the learned Trial Court should have passed the order on sentence as per provisions of Food and Safety Standards Act, 2006 (FSSA) as held in Nemi Chand's case (supra). The reasons given for awarding the sentence till rising of the Court but enhancing the quantum of fine are

as under:-

“14. As far as the objection of Ld.SPP for State is concerned, in the present case, the offence was that the article/food ie. Dal Arhar was found as being coloured with synthetic colour “Tartrazine”. This was violation of Rule 29 of PFA Rules and thus termed as adulteration in view of Section.2(ia)(i) of PFA Act and thus consequently punishable u/sec.16(1) of PFA Act. The charge was framed with these facts. There was no charge in which it is stated that the said colour was injurious to health. Had it been the case, the charge should have been u/sec.16(1-A) (ii) of PFA Act.

15. Now in the FSSA, such adulteration is termed as “unsafe food” in terms of Sec.3(zz) (vii) of FSSA Act punishable u/sec.59(i) of FSSA.

16. Hence, it is held that it is the ingredients which constitute an offence, determines that whether it is the same offence but with new name or an altogether different offence. Here the offence of adding colour in the food article which was punishable u/sec.16(1A) PFA Act is similar to the offence u/sec.59(i) of FSSA Act.”

7. After placing reliance on the decision of the Supreme Court in ***Nemi Chand’s case*** (supra), the learned ASJ arrived at the conclusion that adding colour to the food article i.e. Dal Arhar in the instant case, which was earlier punishable under Section 16(1A) of PFA Act has to be considered an offence punishable under Section 59(i) of FSSA, the sentence may extend to six months and also with fine which may extend to ₹1 lakh.

8. The case of the appellant is squarely covered by the decision of the Supreme Court in ***Nemi Chand’s case*** (supra). Since no minimum sentence is prescribed under Section 59(i) of FSSA, the findings given

by learned ASJ and sentence awarded to the appellant, therefore, cannot be faulted.

9. The order impugned cannot be said to be suffering from any illegality.

10. The appeal consequently fails and the same is dismissed.

PRATIBHA RANI, J.

OCTOBER 11, 2017

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