

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL REVISION APPLICATION NO. 27 OF 2005

Badrinarayan s/o. Dashrathrao Pawal,
Age: 47 years, Occ: Business,
R/o. Dhandegalli, Beed,
Taluka and District Beed.

... Applicant
(orig.Accused)

versus

The State of Maharashtra
at the instance of S. V. Patil,
Food Inspector, Food and Drugs
Administration, Beed.

... Respondent

.....
Advocate for Applicant : Mr. M. V. Salunke h/f Mr.V. D. Salunke
APP for Respondents: Mr. B. V. Virdhe

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CORAM : V. K. JADHAV, J.
DATED : 06th SEPTEMBER, 2018

ORAL JUDGMENT :-

1. By this criminal revision application, the applicant/original accused has challenged the judgment and order of conviction dated 03.07.2001 passed Chief Judicial Magistrate, Beed in Reg. Criminal Case No. 254 of 1997 thereby convicting applicant/accused under Section 7(iii) of the Prevention of Food Adulteration Act, 1954 (for short, "the Act of 1954") read with Rule 50(1) of the Prevention of Food Adulteration Rules, 1955 (for short, "the Rules of 1955") and

Sec.16(i)(a)(ii) of the Act of 1954, sentencing thereby to suffer simple imprisonment for three months and to pay fine of Rs.500/-, in default to undergo simple imprisonment for one month. Further, the Additional Sessions Judge, Beed has confirmed the said order in Criminal Appeal no. 22 of 2001.

2. Brief facts giving rise to the present criminal revision application are as follows;

The applicant/accused is a proprietor of Sanjay Medical and General Stores, Beed and on 31.01.1997, Food Inspector Mr. Patil alongwith one Mr. Kamble had been to his shop for purchasing a tin of Farex Fruits. It was noticed that the applicant/accused was not having due licence to sell the same. Thus, after obtaining necessary permission from the Joint Commissioner, Food and Drugs Administration, Aurangabad, the applicant was prosecuted as aforesaid and convicted by the trial court and the said order of conviction was confirmed in appeal by the Additional Sessions Judge.

3. Learned counsel for the applicant/accused submits that the sample was sent for analysis but found not adulterated. Thus, the

applicant/accused was prosecuted mainly for non renewal of licence. The defence of the applicant/accused was that he renewed licence till December 1995 but later on, due to his personal difficulties and illness of his child, he could not renew the same. Learned counsel submits that in terms of the provisions of Section 16(1)(a)(ii) of the Act of 1954, the penalty for which the applicant/accused liable is 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. Learned counsel submits that in terms of the proviso, the court may, for any adequate and special reasons to be mentioned in the judgment, impose 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. Learned counsel submits that if the provisions of penalty as detailed in Section 16 are minutely perused, then, Sub-section (1) clause (a)(i) speaks about the adulterated sample or the sell of which is prohibited under any provisions of the Act of 1954 or any rule made thereunder or by an order of Food (Health) Authority and so far as clause (ii) of Section 16(1)(a) is concerned, it speaks about 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. Learned counsel submits that in the instant case, since there is contravention of Rule 50 of the Rules of 1955, the aforesaid clause (ii) only attracts. Learned counsel submits that the applicant/accused is the owner of a small medical shop and he has almost admitted the charge levelled against him by raising a defence to the effect that he was prevented by his personal difficulties to renew the licence within time. The applicant/accused has given a reason of illness of his child which prevented him from applying for renewal of licence in time. Learned counsel submits that the same may be considered and the sentence which is awarded by the trial court and confirmed by the Sessions Court in appeal may be reduced till rising of the court with fine.

4. Learned counsel for the applicant/accused, in order to substantiate his contention, placed reliance on the following two cases:

1. ***Shankarrao s/o Maruti Patil vs Food Inspector, Food & Drugs Administration, Latur and another*** (Criminal Revision No. 302 of 1993) decided by this Court (Coram : P.B. Gaikwad, J.) on 16.04.2003 and

2. ***Gurmukh Singh and others vs State of Punjab,***
reported in ***Supreme Court on Food Adulteration***
Cases 1948-1997 page 51.

5. Learned APP submits that in terms of the provisions of Rule 50 of the Rules of 1955, no person shall manufacture, sell, stock, distribute or exhibit for sale any article of food, including prepared food or ready to serve food or irradiated food except under a license. Learned APP submits that if there is contravention of the provisions of Rule 50, the same is required to be dealt with severely. The learned Judge of the trial court has rightly convicted the applicant/accused and sentenced him to suffer simple imprisonment for three months and to pay fine of Rs.500/-. No interference is required.

6. In the facts of the instance case, it appears that the applicant/accused has not at all disputed the charge levelled against him. On the other hand, he has raised specific defence to the effect that he was prevented from sufficient cause to renew the licence within time. It thus appears that the applicant has almost pleaded guilty to the charge levelled against him. It is not disputed that the applicant is owner of a small medical shop.

7. In the case of ***Shankarrao s/o Maruti Patil*** (supra), in identical facts wherein the accused was also charged under the provisions of the Act of 1954 and the Rules made thereunder for non renewal of licence, this Court (Coram: P.B. Gaikwad, J.) in para 8 of the judgment has made the following observations:

"8. In the present case it is not in dispute that, to manufacture sunflower seeds oil the licence is required. It is also not in dispute that the licence issued in favour of the present petitioner in respect of M/s. Balaji Oil Mill was renewed upto 31.3.1988. Even it is not in dispute that, the present petitioner has not filed any application for renewal of the licence after 1st April, 1988 and that the petitioner was not having licence on 26.09.1988 when Food Inspector has visited disputed premises i.e. M/s Balaji Oil Mill. Even this fact is also admitted by the petitioner in his statement under Section 313 of Cr.P.C. It is true that an attempt has been made on behalf of the petitioner that, he has filed an application for renewal and the authority has refused to renew the licence, however there is nothing on record to conclude that the application is filed on behalf of the petitioner for renewal and that the authority concerned has refused to renew the licence. It is also necessary to make it clear that, according to the petitioner, the authority concerned used to collect the licence fee and thereafter used to renew the licence. As in fact, when a duty is casted upon present petitioner to get renewed licence and when he failed to do the same, I find that the conclusion arrived at by both the courts below that there is breach of rule 50 of Prevention of Food Adulteration Rules, 1955

is proper and justified. It is true that, the sample taken by the Food Inspector found unadulterated and the offence alleged to be committed is only of technical nature as he failed to renew the licence. I find that, so far as conviction of present petitioner for the offence under Section 7(iii) read with Rule 50 of Prevention of Food Adulteration Rules, punishable under Section 16 needs to be maintained. I do not find any infirmity in the conclusion arrived at by the courts below convicting the petitioner for the said offence. So far as sentence is concerned on perusal of Section 16 the punishment for the breach is not less than 6 months and may extend for 3 years however, for reasons to be recorded separately the punishment may not be less than 3 months. However, I find in the present case that, the petitioner was not held guilty for sale, stock or distribution of any adulterated food, however, he being held guilty that he failed to get renewed the licence, same may be due to inadvertence and, therefore, it will be not desirable to maintain the order of sentence awarded by the court below. I find that, considering the date as offence taken place some 15 years back purpose will be served if fine amount is imposed and sentence is reduced. Considering the factual aspect in the present case I find that, the punishment till raising of court and fine amount of Rs.3,000/- will meet ends of justice."

8. In the case of **Gurmukh Singh and others** (supra) in identical facts, the Supreme Court in para 9 of the judgment has made the following observations:

"9. On the question of the sentence, it is not denied that the offence with which each of the appellants was charged was committed after the amendment of sub-clause (1) of Section 16 of the Act under which the sentence has to be a minimum of six months rigorous imprisonment and a fine of Rs.1000/- unless it is covered by the proviso to that sub-section in which case a lesser sentence can be given for adequate and special reason to be mentioned in the judgment. The appellants were charged for an offence under section 16(1)(a)(ii) where "any person whether by himself or by any other person on this behalfmanufactures for sale, or stores, sells or distributes any article of food (i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) Authority in the "interests of public health"; (ii) other than an article of food referred to in sub-clause (i) in contravention of any of the provisions of the Act or of any rule made thereunder. It is not the case of the prosecution that the appellants sold or stored any adulterated or misbranded or prohibited articles of food. Even in such cases if the offence is with respect to an article of food which is adulterated under sub-clause (ix) of clause (i) of Section 2 or misbranded under sub-clause (ix) of Section 2 a lesser sentence under the proviso can be awarded. As pointed out in **Jagdish Prasad alias Jagdish Prasad Gupta vs. State of West Bengal** Cr. Appeal No.50 of 1969 decided on December 13, 1971 reported in **1972 FAC 109 : 1948-1997 FAC (SC) 55** the offence under the Act being anti-social crimes affecting the health and well-being of our people, the legislature having regard to the trend of courts to impose in most cases only fines or where a sentence of imprisonment was passed a light sentence was awarded even in cases where a severe sentence was called for, a more drastic step was taken by it in prescribing a minimum sentence and a minimum fine to be imposed even for a first

offence. The reason for the Legislature to make the exception is not that the offences specified are not considered to be serious but the gravity of the offence having regard to its nature can be less if there are any special or adequate reasons. In our view, though offences for adulteration of food must be severely dealt with, no doubt depending on the facts of each case which cannot be considered as precedents in other cases, in this case having regard to the fact that the offence is only one for non-renewal of a licence within a reasonable time, and the appellants as pointed out by the trying Magistrate were only petty traders, a mitigation in the sentence is justified. No doubt as the High Court points out, the reason given by the Trial Court that the accused pleaded guilty and were repentant may not be adequate. But in the special circumstances pointed out by us a lesser sentence is called for. In view of the fact that all the appellants have already served one week's sentence, we think interests of justice would be served if the sentence of six months' imprisonment and fine of Rs.1000/- is reduced to a period of imprisonment already undergone by each of them, and to pay a fine of Rs.250/- and in default of which they are directed to undergo a further period of imprisonment for one month. In each of these appeals this sentence is substituted for the sentence awarded by the High Court and the appeals are accordingly allowed to this extent."

9. In both the cases, it is observed that the reason to make the exception is not that the offences specified are not considered to be serious but the gravity of the offence having regard to its nature can be less if there are any special or adequate reasons. In both the

cases, it has been considered that the offences for adulteration of food must be severely dealt with. However, in other cases, particularly the case wherein the offence is only one for non renewal of licence within a reasonable time, a mitigation in the sentence is justified.

10. In the instant case, considering the defence raised by the accused and the fact that the applicant/accused is the owner of a small medical shop, I am inclined to reduce the sentence till rising of the court with fine of Rs.3,000/-.

11. In view of the above discussion, the order of conviction is maintained. However, the order of sentence is modified. The applicant Badrinarayan s/o Dashrathrao Pawal is hereby sentenced to suffer simple imprisonment till rising of the court and to pay fine of Rs.3,000/- (Rupees three thousand only), in default simple imprisonment for three months. The applicant/accused Badrinarayan s/o Dashrathrao Pawal is hereby directed to surrender before the lower court to undergo the sentence.

12. Rule is made absolute in the above terms. The criminal revision application is accordingly disposed of.

13. The Record and Proceedings be sent to the lower court, forthwith.

14. Office to issue authenticated copy of this judgment to the requesting party.

(V. K. JADHAV, J.)

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