

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 2975 of 2016 (O&M)

Parveen Kapoor

.....Petitioner

versus

State (Food Inspector Chandigarh)

.....Respondent

Criminal Revision No. 2976 of 2016 (O&M)

Parveen Kapoor

.....Petitioner

versus

State (Food Inspector Chandigarh)

.....Respondent

Criminal Revision No. 3025 of 2016 (O&M)

Parveen Kapoor

.....Petitioner

versus

State (Food Inspector Chandigarh)

.....Respondent

Criminal Revision No. 3020 of 2016 (O&M)

Parveen Kapoor

.....Petitioner

versus

State (Food Inspector Chandigarh)

.....Respondent

Date of Decision: August 23, 2018

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present:- Mr. S.P.S. Sidhu, Advocate
for the petitioner

Ms. Ashima Mor, Advocate
for the respondent – U.T. Chandigarh

Sudhir Mittal, J.

This judgment will dispose of CRR Nos. 2975 of 2016, 2976 of 2016, 3025 of 2016 and 3020 of 2016, as common questions of fact and law arise therein.

2. On 28.10.2010, M/s Crystal Creation, SCO No. 1006-1007, Sector 22-B, Chandigarh was inspected by the Food Inspector. He randomly purchased six sealed tins of Kopiko Mini Coffee Candy of 150 gram each for analysis and examination. Three samples were prepared and sent to the Analyst, Punjab, Chandigarh, who found the same to be misbranded as follows:-

“The product has not been labeled in accordance with the provisions of Rule 32 and 32(iii) of the PFA Act, 1954 and Rules, 1955. The product is, therefore, misbranded.”

3. Vide judgment dated 03.11.2015, the petitioner was convicted for offence under Section 42 (zzz)(17) of PFA Rules, 1955 punishable under Section 16(1)(a)(i) of the PFA Act, 1954 and vide order of sentence dated 04.11.2015 he was sentenced to undergo rigorous imprisonment for three months and to pay fine of Rs. 500. His appeal has been rejected vide judgment dated 10.08.2016. Hence, the present revision petition.

4. From the above, it is apparent that the petitioner has been convicted and sentenced under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA Act') and the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the 'PFA Rules'). In the year 2006, the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act') was passed by the legislature for replacing PFA Act. Section 1(3) and Section 97 thereof are reproduced below for ready reference:-

“Section 1. Short title, extent and commencement

(1) xxxx

(2) xxxx

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

97. Repeal and savings. - *(1) With effect from such date as the Central Government may appoint in this behalf, the enactment and Orders specified in the Second Schedule shall stand repealed:*

Provided that such repeal shall not affect:—

(i) the previous operations of the enactment and Orders under repeal or anything duly done or suffered there under; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment,

and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897(10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders, the licences issued under any such enactment or Order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from

the date of the commencement of this Act.

5. The above provisions show that different provisions of the Act could be notified and brought into force on different dates, after the Act was notified by the Central Government. Further, the enactment and orders specified in the second schedule of the Act would stand repealed with effect from the date appointed by the Central Government subject to certain conditions.

6. Section 52 of the Act provides for punishment for misbranding, the maximum being fine of Rs. 3 lacs. This Section was brought into force w.e.f. 29.07.2010 vide Notification of even date published by the Central Government in the Gazette in the Extraordinary. Section 97 of the Act was also notified by the same notification. A separate Notification dated 04.08.2011 was published by the Central Government in the Gazette Extraordinary of even date whereby the enactments and orders mentioned in the second schedule of the Act were repealed w.e.f. 05.08.2011. The PFA Act, 1954 was one of such enactments.

7. Learned counsel for the petitioner argues that Section 52 and Section 97 of the Act had been brought into force w.e.f. 29.07.2010, whereas the shop of the petitioner was inspected on 28.10.2010. Thus, the prosecution of the petitioner under the provisions of the PFA Act is illegal. He further submits that the PFA Act stood repealed w.e.f. 5.08.2011 and, therefore, the petitioner could not have been convicted and sentenced under the provisions of the said Act. In any case, even if it is held that the prosecution under the PFA Act is valid, sentence should have been imposed in accordance with the provisions of the Act because the punishment provided therein is less than that provided under the provisions of the PFA Act and the accused is entitled to the benefit of the later beneficial legislation. Reliance is placed on a judgment of the Supreme Court in *Nemi Chand vs. State of Rajasthan*,

Criminal Appeal No. 214 of 2016 decided on 10.03.2016.

8. Learned State counsel submits that the PFA Act was repealed only w.e.f. 05.08.2011. It was very much in force as on 28.10.2010, the date of the inspection and, therefore, the prosecution of the petitioner under the provisions of the PFA Act and sentence imposed thereunder is legal and valid. Reliance is placed upon judgment dated 20.07.2015 passed in CRM-M-22442-2011 titled as ***Neeraj Chaudhary and another vs. U.T. Chandigarh Administration and another.***

9. Section 1(3) of the Act makes it abundantly clear that different provisions of the Act could be enforced with effect from different dates. Thus, Sections 52 and 97 of the Act were brought into force w.e.f. 29.07.2010. However, the enforcement of Section 97 of the Act w.e.f. 29.07.2010 did not *ipso facto* repeal the PFA Act, as Section 97 of the Act provides that the repeal will take place with effect from the date of Notification of the repeal by the Central Government. Thus, the PFA Act was repealed with effect from 05.08.2011 as provided by Notification dated 04.08.2011 and, therefore, the argument of learned counsel for the petitioner that the prosecution of the petitioner under the provisions of the PFA Act is illegal, can not be accepted. Section 97 of the Act also states that the repeal of enactment and orders specified in the second schedule does not affect the previous operation of the said enactments and orders, nor does it affect any liability or punishment incurred in respect of any offence committed under the repealed enactment. Thus, the provisions of the Act, are prospective in nature and shall apply only to offences committed after repeal of the PFA Act. This is what has been held in the judgment of ***Neeraj Chaudhary's case (supra)*** and I respectfully agree with the same.

10. However, the question that arises for determination is whether despite the prosecution of the petitioner under the provision of the PFA Act being valid, he should be sentenced under the provisions of the Act, which are more beneficial? In this regard reference can be made to the judgment of ***Nemi Chand's case (supra)***.

the criminal liability. In criminal jurisprudence prosecution for, an act which is not an offence on the date of its commission but becomes an offence on account of the legislation enacted later, is prohibited by virtue of Article 20 of the Constitution. However, Article 20 of the Constitution of India does not prohibit the application of a provision of a later enactment which reduces the punishment provided for an offence or is otherwise beneficial in nature. Thus, the petitioner was entitled to the benefit of Section 52 of the Act while being sentenced.

11. In view of the above reasoning, it is held that the petitioner should have been sentenced to punishment of fine only. The judgment of conviction is, accordingly, upheld but the order of sentence dated 04.11.2015 passed by the Chief Judicial Magistrate, Chandigarh, as upheld by the learned Additional Sessions Judge, Chandigarh, is set aside and the matter is remanded to the Court of Chief Judicial Magistrate, Chandigarh, for imposition of sentence afresh, in accordance with the provisions of Section 52 of the Act.

12. I am aware that there appears to be a contradiction in my judgment in as much as I have held that the provisions of the Act are prospective in nature and yet the principle of *ex post facto* law has been invoked for giving benefit to the petitioner. It is clarified that *ex post facto* application of the Act is permissible to reduce the rigor of the criminal liability even though the enactment as such is prospective in nature. My view is fortified by the judgment of Hon'ble Supreme Court, in *T. Barai vs. Henry Ah Hoe and another, 1983(1) SCC 177*.

13. The petition is disposed of accordingly.

(SUDHIR MITTAL)
JUDGE

August 23, 2018
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No