

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

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Reserved on: 15th March, 2018
Decided on: 24th September, 2018

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CRL.A. 666/2017

STATE GOVT OF NCT OF DELHI

..... Appellant

Represented by: Ms. Meenakshi Chauhan, APP
for the State.

versus

SATISH KUMAR

..... Respondent

Represented by: Mr. D.K. Mathur, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, State seeks setting aside of order dated 4th November, 2016 passed by the learned Additional Sessions Judge whereby the conviction for the offences punishable under Section 2(ia) (a) (b) (j) and (m) of Prevention of Food Adulteration Act, 1954 (in short 'PFA Act') read with Rules 23, 28 and 29 of Prevention of Food Adulteration Rules, 1955 (in short 'PFA Rules') punishable under Section 16(1A) of PFA Act was upheld. However, the sentence was reduced to the period till the rising of the Court and he was directed a fine of ₹35,000/- in default whereof to undergo simple imprisonment for a period of 15 days.

2. Brief facts of the present case are that the respondent was running an establishment namely M/s. Satish Store at H.No. 37, Nangli Rajapur, Near Sarai Kale Khan Bus Stand, New Delhi. On 24th July, 2006 at around 5:30 P.M., Food Inspector C.B. Bhoora visited the said shop and purchased 1500 grams of "Dal Arhar" for the purpose of analysis under the PFA Act. Sample was sent to Public Analyst and as per the report, the sample was adulterated with synthetic colouring matter viz. tartrazine. Charge was

framed. After trial, the respondent was convicted for the offences defined under Section 2(ia) (a) (b) (j) and (m) of PFA Act read with Rules 23, 28 and 29 of PFA Rules and punishable under Section 16(1A) of PFA Act vide judgment dated 10th August, 2015. Vide order on sentence dated 22nd August, 2015, he was directed to undergo simple imprisonment for a period of 18 months and to pay a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of 30 days for the offence punishable under Section 16(1A) of PFA Act. Assailing the conviction, appeal was filed which was disposed of vide impugned order dated 4th November, 2016. Hence, the present appeal.

3. Learned APP for the State contends that the date of offence committed by the respondent was 24th July, 2006. The respondent has been convicted for offence punishable under Section 16(1A) of the PFA Act. Even on appeal the conviction of the appellant has been set aside. However, he has been awarded sentence of imprisonment till the rising of the Court instead of 18 months as awarded by the learned Trial Court and to pay a fine of ₹35,000/- and in default whereof to undergo simple imprisonment for 15 days. Learned APP for the State contends that on the date when the alleged offence was committed the PFA Act prescribed a minimum sentence of one year imprisonment and hence the Appellate Court could not have granted the sentence less than the minimum prescribed.

4. Section 16 (1A) of the PFA Act reads as under:

“⁷³[(1A) If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,—

⁷³ Inserted by Act 34 of 1976, S.12 (W.e.f.1-4-1976)

(i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (l) (both inclusive) of clause (ia) of section 2; or

(ii) any adulterant which is injurious to health, 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 one year but which may extend to six years and with fine which shall not be less than two thousand rupees:

Provided that if such article of food or adulterant when consumed by any person is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees.]”

5. The appellant was convicted and sentenced on 10th August, 2015 and 22nd August, 2015, when the PFA Act stood repealed and Food Safety and Standards Act (in short ‘FSSA Act’) was into force. Section 59 (i) of FSSA Act is similar to Section 16 (1A) PFA Act and reads as under:

“59. Punishment for unsafe food.-Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,-

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees”

6. Supreme Court in the decision reported as (2004) 5 SCC 721 Dayal Singh v. State of Rajasthan, while clarifying the position laid down in the decision AIR 1965 SC 444 Rattan Lal Vs. State of Punjab noted as under:

11. The decision approves of the principle that ex post facto law which only mollifies the rigour of the criminal law, though retrospective in operation, will be valid. After enunciating this principle the Court interpreted Section 11 of the Probation of Offenders Act and came to the conclusion that on a true interpretation of the provision the High Court had jurisdiction to exercise the power at the appellate stage, and this power was not confined to a case where the trial court could have made that order. The phraseology of the section was wide enough to enable the appellate court or the High Court when the case came before it, to make such an order. We, therefore, do not find that Rattan Lal [AIR 1965 SC 444 : (1965) 1 Cri LJ 360] made a departure from the well-settled principle that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than with which he might have been inflicted under the law in force at the time of the commission of the offence. This Court only laid down the principle that an ex post facto law which only mollifies the rigour of a criminal law did not fall within the said prohibition, and if a particular law made a provision to that effect, though retrospective in operation, it will be valid. Rattan Lal [AIR 1965 SC 444 : (1965) 1 Cri LJ 360] was, therefore, decided on an interpretation of Section 11 of the Probation of Offenders Act which was not a penal statute in the sense that it did not create an offence and provide for punishment thereof. We, therefore, do not find that principles laid down in Rattan Lal [AIR 1965 SC 444 : (1965) 1 Cri LJ 360] depart from the well-settled principles that a penal statute which creates new offences is always prospective and a person can be punished for an offence committed by him in accordance with law as it existed on the date on which an offence was committed.

7. Supreme Court in the decision reported as MANU/SC/0506/2016 Nemi Chand v. State of Rajasthan while relying on the decision of three judge bench of Supreme Court in T. Barai v. v. Henry Ah Hoe and Anr. reported as 1983 (1) SCC 177 while deciding on the sentence to be awarded

for an offence committed under PFA Act and PFA Rules as at the time of awarding sentence FSSA Act had come into force, further held as under:

2. *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 Anr. MANU/SC/0123/1982 : 1982 (SLT Soft) 84 : 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 Act 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 Colder 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.

3. *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 ₹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."*

8. From the decisions of the Supreme Court in Dayal Singh (supra) and Nemi Chand (supra) it is clarified that though no accused can be convicted for an ex-post facto law, however, the benefit of a reduced punishment can be granted to the accused. The Appellate Court in the present case though maintaining the conviction for offence punishable as on the date when offence was committed modified the sentence prescribed as per the new Act i.e. FSSA Act. The Sessions Court being an Appellate Court in an appeal filed by an accused was competent to grant the said benefit in terms of the decision of the Supreme Court in Rattan Lal (supra).

9. Thus, this Court finds no infirmity in the impugned judgment. Appeal is accordingly dismissed.

10. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 24, 2018

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