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

+ **CRL.A. 709/2017**

STATE GOVT OF NCT OF DELHI

..... Appellant

Represented by: Mr. Ashok K. Garg, APP for State.

versus

ARBIND KUMAR

..... Respondent

Represented by: Mr. N.K. Srivastava, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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03.10.2018

Crl. M.A. No.11466/2017 (delay)

For the reasons stated in the application, delay of 107 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.A. 709/2017

1. Admit.
2. Respondent was convicted for violation of offences punishable under Section 2(ia) (j) & (m) of the PFA Act, 1954 read with Rule 23, 28 & 29 of PFA Rules, 1955 read with Section 7/16(1A) PFA Act vide judgment of conviction dated 30th May, 2016 and awarded sentence of simple imprisonment for a period of one year and a fine of ₹20,000/- vide order on sentence dated 9th June, 2016.
3. Challenging the aforesaid judgment of conviction and order on sentence passed by the learned ACMM, respondent filed an appeal before the learned Additional Sessions Judge which was disposed of vide the

impugned judgment dated 10th November, 2016 upholding the conviction and modifying the sentence to ‘till rising of the Court and to pay a fine of ₹45,000/-; in default of payment of fine, to undergo, simple imprisonment for a period of 15 days’.

4. By the present appeal, the appellant seeks enhancement of sentence of the respondent as modified by the Learned Appellate Court vide impugned order dated 10th November, 2016.

5. Learned Additional Sessions Judge while modifying the sentence followed the decision of the Supreme Court reported as MANU/SC/0506/2016 Nemi Chand v. State of Rajasthan 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 wherein 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, it was held:

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.”*

6. From the decision of the Supreme Court in 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 reported as AIR 1965 SC 444 Rattan Lal Vs. State of Punjab.

7. Thus, this Court finds no infirmity in the impugned judgment.

8. Appeal is accordingly dismissed.

MUKTA GUPTA, J.

OCTOBER 03, 2018

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