

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 93 of 2006

Order reserved on 05.12.2018

Order pronounced on 19.12.2019

Mahendra Kumar Sahu, S/o Kanshiram Sahu, aged about 30 years, R/o Village Dhusera, Post Sivni, Police Thana Abhanpur, District Raipur (CG) --- **Applicant**

Versus

1. State of Chhattisgarh through Collector Raipur (CG)
2. State of Chhattisgarh, through Food Officer, Food & Drugs Department, Raipur (CG) --- **Respondent**

For Applicant	:	Shri Raghvendra Pradhan, Advocate
For Respondent	:	Shri Gary Mukhopadhyay, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

This revision arises out of the judgment dated 31.01.2006 passed by Sessions Judge Raipur in Criminal Appeal No.302/2005 affirming the judgment dated 02.12.2005 passed by Chief Judicial Magistrate, Raipur in Criminal Case No.1034/2002 convicting the accused/applicant under Section 7(1) read with 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for brevity "**Act of 1954**") and sentencing him to undergo RI for six months and pay fine of Rs.1000, plus default stipulation.

2. Case put-forth by the prosecution in brief is that on 22.03.2000 at about 10 AM Food Inspector namely Jagdish Verma (PW-1) inspected the confectionery shop of the applicant. On suspicion, he purchased 700 grams of sweet item by paying Rs.14 towards it and obtained the receipt under Ex.P-3. This was done after giving notice in the prescribed form and the signature of the accused/applicant and other witnesses were also obtained thereon. The samples were taken and sealed in three packets. One of the samples was sent to State Food Laboratory, Bhopal and remaining two were sent to Local Health Authority. The report received from public analyst under Ex.P-11 opines the same to be adulterated.

3. Learned Magistrate vide its order dated 02.12.2005 found the accused/applicant guilty under Section 7(1) read with 16(1)(a)(i) of the Act of 1954 and imposed the sentence on him as referred to above. In appeal also the findings recorded by learned Magistrate have been maintained as a whole vide judgment under challenge in this revision petition dated 31.01.2006.

4. Apart from advancing vehement arguments on merit aspect of the case by bringing to the fore innumerable loopholes and lacunae in the case of the prosecution, learned counsel for the applicant made an alternative prayer for setting aside the jail sentence imposed on the applicant by imposition of adequate sentence of fine only. He further submits that by virtue of amendment in the Act by the Central Amendment Act 34 of 1976, Section 16 A was added making leviability of fine alone. This submission of the counsel for the applicant is made placing reliance on the judgment of the Apex Court in the matter of **Nemi Chand Vs. State of Rajasthan** reported in **2016 (1) FAC 561**, fortified by its earlier judgment passed in the matter of **T. Barai Vs. Henry Ah Hoe and another** reported in **1983 (1) SCC 177**. It has also been argued on behalf of the applicant that Prevention of Food Adulteration Act has been repealed by a new Act known as Food Safety and Standards Act, 2006 in which there is no provision for imprisonment but only a provision of fine is there in it. It has also been contended that the Hon'ble Apex Court had the occasion to look into the matter legally and had arrived at the conclusion that if new enactment prescribes a lesser punishment the same should be applied to all the pending cases under the repealed act.

5. State counsel however supports the judgment impugned and submits that since both the Courts below have assessed the evidence collected by the prosecution very minutely while holding the accused/applicant guilty as described above, no interference therewith in this revision is called for.

6. This Court thinks it apposite to look into the judicial pronouncements of the Apex Court taken support of by the counsel for the accused/applicant as to the feasibility of the sentence of fine alone to the applicant who has been found guilty for the offence related to Food Adulteration Act as is the case here. Relevant portion thereof reads thus.

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, 7 th 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 *Calder 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".

7. After hearing counsel for the parties and going through the evidence on record, this Court approves the finding recorded by both the

Courts below that on the basis of the report of public analyst (Ex.P-11), the sample was found to be adulterated and the defence did not succeed in rebutting the said report by leading any cogent and clinching evidence. The material on record collected by the prosecution and the evidence so adduced which has been made a basis for holding the accused/applicant guilty for the offence punishable under the Act of 1954 also establishes the guilt of the accused/applicant and being so, the conviction of the accused/applicant as described above is hereby maintained.

8. From the aforesaid judicial pronouncements as regards levability of only the fine sentence in the cases of like nature even in the pending cases under the repealed Act, this Court has no doubt in mind that the principle laid down therein squarely applies to the case in hand also, and being so, the sentence of six months rigorous imprisonment imposed on the accused/applicant in the instant case is hereby set aside. At the same time, the accused/applicant is directed to pay fine of Rs.10,000 in place of Rs.1000 as was imposed by both the Courts below. Let this enhanced fine amount be deposited by the applicant in the trial Court as early as possible preferably not later than two months from today.

9. The revision is thus allowed in part to the extent indicated hereinabove.

Sd/-

(Vimla Singh Kapoor)

Judge