

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 432 of 2004

Order reserved on 29.03.2019

Order pronounced on 19.12.2019

Ramesh Kumar Gupta, S/o Jawahar Prasad Gupta, aged about 34 years, R/o Sitapur (Muljimpura), P.S. Sitapur, District Sarguja (CG)

--- Applicant

Versus

State of Chhattisgarh

--- Respondent

For Applicant	:	Shri Sanjay Agrawal, Advocate
For Respondent	:	Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

This revision arises out of the judgment dated 24.08.2004 passed by Sessions Judge Sarguja, Ambikapur in Criminal Appeal No.133/2003 affirming the judgment dated 24.04.2003 passed by JMFC, Ambikapur in Criminal Case No.16/1999 convicting the accused/applicant under Section 7 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.2000, plus default stipulation.

2. Facts of the case in brief are that on 28.04.1991 food inspector R.S.Namdeo (PW-3) had purchased 3 packets of “Lipton Taza Tea” each containing 250 grams from the shop of the applicant by paying Rs.55.50 vide receipt Ex.P-6. Three sample of said articles were collected and kept in sealed packets. One of the samples was sent for obtaining the report of public analyst, Bhopal and the remaining two were kept in the office of the Local Health Authorities. The Public Analyst vide its report dated 30.05.1991 in form III under rule 7(3) of Prevention of Food Adulteration Rules had opined that the tea so sent for analysis was misbranded as even the proper label and batch number of the product was not superscribed thereon, which is evident from the report Ex-P.15. The same was received by the food inspector on 08.07.1991 and thereafter on

20.02.1992 a complaint case has been filed under section 16(1)(a)(i) of the Act of 1954 before the JMFC, Ambikapur against the applicant.

3. Learned Magistrate vide its order dated 24.04.2003 found the accused/applicant guilty under Section 7 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 24.08.2004.

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-15), the sample was found to be misbranded as even the proper label and batch number of the product was not superscribed on the sample. Even 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 leviability 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.2000 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