

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 15 of 2004

Order reserved on 29.03.2019

Order pronounced on 19.12.2019

Madan Lal Sharma, S/o Durga Prasad Sharma, aged about 51 years, Wipro Ltd., Rajgarh Kothi, Indore, MP (Now CG)

--Applicant

Versus

1. State of Chhattisgarh, through District Magistrate, Raigarh, District Raigarh (CG).
2. Ramesh Kumar, S/o Shanker Lal Agrawal, Gayatri Traders, Station Road, Raigarh, District Raigarh (CG)
3. Hajitar Mohammad Isha, Pro Mohammad Haniff, S/o Hajitar Mohammad, R/o Gandhi Ganj, Raigarh, District Raigarh (CG)

--- Respondents

For Applicant	:	Shri Abhishek Sinha, Advocate.
For Respondent No.1	:	Shri Aman Kesharwani, PL
For Respondents No.2 &3	:	None

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

This revision arises out of the judgment dated 09.01.2004 passed by Sessions Judge (FTC) Raigarh in Criminal Appeal No.04/2003 affirming the judgment dated 16.12.2003 passed by JMFC, Raigarh in Criminal Case No.214/2002 convicting the accused/applicant under Section 16(1) 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 of the prosecution in brief is that on 31.12.1989 a sample of “Sunflower Vegetable Oil” was taken by the Food Inspector A. Pasa (PW-1) from Gayatri Traders, Station Road, Raigarh, and after being sealed it was sent to the Public Analyst under postal receipt Ex.P-6. The remaining 2 packets along with seal and impression were handed over to Local Health Authority, Raigarh under acknowledgement Ex. P-10. On 31.7.1989 a notice under Form 6 was sent to the manufacturer WIPRO

Ltd., Nariman Point, Mumbai vide Ex.P-11 and to the distributor Haji Tar Mohd. Isha in Form 6 vide Ex.P-12. Reply to the said notice given by Haji Tar Mohd Isha is that he had purchased the sample product from WIPRO Ltd. vide receipt Ex.P-13 dated 15.12.1989. The Public Analyst, Bhopal intimated to the Local Health Authority about the test report vide communication Ex.P-15 and the report of the Public Analyst is Ex.P-16. As the Public Analyst found the sample to be adulterated and not conforming with the standards and norms prescribed under the relevant rules, a complaint was filed before the JMFC, Raigarh by the Food Inspector.

3. Learned Magistrate vide its order dated 16.12.2003 found the accused/applicant guilty under Section 16(1) 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 09.01.2004. It is relevant to mention here that accused Ramesh was already discharged on 01.08.1991 whereas accused Hajitar Mohammad Isha was though held guilty yet was sentenced till rising of the Court by learned Magistrate.

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 also.

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. It has also been informed by the State counsel that though the proceedings have been initiated by the State Government of Chhattisgarh with respect to enlisting the pending matters of like nature yet no proposal has been finalized with regard to imposition of sentence of fine alone and, therefore, the matter may be disposed of by this Court by imposing fine according to its own discretion.

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-16), the sample was found to be adulterated not conforming with the standards and norms prescribed under the Act and rules made thereunder, and the defence did not succeed in rebutting the said report by leading any cogent and clinching evidence. In this view of the matter, 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.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

Jyotishi|Ajay