

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2639-2011
Date of Decision: 13.09.2019

Birbal Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. P.K.S. Phoolka, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offence punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (for short 'the Act'). Vide judgment and order dated 29.04.2010, learned Judicial Magistrate, Ist Class, Mansa, held the petitioner guilty for the said offence and sentenced him to undergo RI for one year and to pay a fine of Rs.3000/- and, in default of payment of fine, to further undergo RI for three months.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Mansa. Vide judgment dated 26.09.2011, the learned Additional Sessions Judge, Mansa, dismissed the appeal filed by the petitioner, thereby affirming the judgment and order passed by the learned trial Magistrate. Still aggrieved, the petitioner has preferred the present revision petition.

The criminal prosecution in the present case was set in motion on the complaint filed by Dr. Nirmal Singh, Medical Officer, Mini PHC, Karandi, Sardulgarh, an authorized officer under the Act. On 27.6.2006 at about 11.30 a.m., the complainant along with Dr. Rupinder Kumar, SMO CHC Khiala Kalan, District Mansa, inspected the premises of the petitioner, situated in the area of Veer Nagar, Near Kali Mandir, Ward N. 19, Mansa and found the accused-petitioner in possession of two hundred cold drink bottles of 300 mg each, for the sale of human consumption. The complainant purchased six bottles of cold drink of 300 mg each for a sum of Rs.60/- from the accused-petitioner. Said bottles were divided into three parts and each part was labeled and then wrapped in a strong thick paper. The ends of the paper were pasted with gum. Then a slip signed by the local Health Authority, Mansa, was pasted on the wrapper of each bottle. After proper sealing of the sample bottles, signatures of the accused-petitioner were also obtained. One sealed sample packet was sent to the Public Analyst Punjab, Chandigarh by hand through a special messenger. The remaining two sample parts were deposited with the Local Health Authority, Mansa. Efforts were made to join independent witnesses, but in vain. Ultimately, the report of the Public Analyst, Punjab, was received to the effect that the contents of the sample were contaminated with coli-form bacteria and suspended matter and that the sample also contained sugar and sachharin which were not declared on the label in accordance with the provisions of the Rules made under the Act. Therefore,

as per the report, the sample was held to be misbranded and adulterated. Accordingly, on receipt of the report, complaint was filed. The accused was summoned to face the trial.

In the pre-charge evidence, the complainant besides examining himself as PW3, had also examined PW1-Pawan Kumar Pharmacist, Office of Civil Surgeon, Mansa; PW2-Hem Raj, Dispatch Clerk and PW4-Hem Raj, Peon.

Charge under Section 16 of the Act was framed against the accused-petitioner. He denied the charge and claimed trial.

In the post-evidence, no PWs was examined by the complainant as the accused-petitioner did not opt for cross-examination of the prosecution witnesses.

Statement of accused under Section 313 Cr.P.C was recorded, wherein while denying the allegations, the accused-petitioner pleaded innocence.

On the basis of the evidence led, it stood proved before the learned trial Court that the sample bottles purchased from the shop of the accused-petitioner were adulterated and misbranded. The defence set up by the accused-petitioner that he was not owner of the shop and that he was not present at the time of the raid conducted by the complainant, remained unsubstantiated by leading any cogent and convincing evidence in this regard. Accordingly, as noticed above, the petitioner was convicted under Section 16 of the Act and sentenced accordingly. The appeal filed by the accused-petitioner was dismissed by the learned Additional Sessions Judge, Mansa.

At the very outset, learned counsel for the accused-petitioner does not lay any challenge to the conviction of the petitioner under Section 16 of the Act and restricts his prayer to the quantum of sentence only. It is submitted that out of the total sentence of one year imposed upon the accused-petitioner, the petitioner has already undergone 5 months and 23 days. It is further submitted that the minimum sentence for the offence under Section 16 of the Act is six months. Thus, it is prayed that as the petitioner has already undergone nearly a period of six months, the sentence imposed upon the petitioner may be reduced to the period already undergone.

On the other hand, the learned State counsel has, while controverting the aforesaid submissions, argued that though the minimum sentence for the offence under Section 16 of the Act, yet having committed the said offence, the petitioner cannot be heard pleading that his substantive sentence should be reduced to the period already undergone, especially when the guilt of the petitioner stood duly proved before the Courts below. Thus, a prayer is made for dismissal of the revision petition.

I have heard learned counsel for the parties and with their able assistance, have gone through the records of the case.

Both the Courts below after having scrutinized the evidence on record have recorded a finding of guilty. Thus, the conviction of the petitioner under Section 16 of the Act, is upheld.

While coming to the sentence part, taking into consideration that the petitioner has been facing the agony of trial for the last more than 9 years and the fact that out of the total substantive sentence, the petitioner has already undergone 5 months and 23 days, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again to undergo the remaining sentence. This especially so when the minimum sentence for the offence under Section 16 of the Act is 6 months and the petitioner, as noticed above, has nearly undergone the said period. Thus, ends of justice would be suitably met, if the sentence imposed upon the petitioner is reduced to the period already undergone by him.

Reference may be made to the judgment of the Hon'ble Supreme Court in Municipal Corporation of Delhi Vs. Tek Chand Bhatia, AIR 1980 SC 360, wherein while taking into consideration the mitigating circumstances at the end of the accused therein, the Hon'ble Supreme Court reduced the sentence of the accused therein to the period already undergone. The said case also arose out of the proceedings under Section 16 of the Act.

In view of the above, while upholding the conviction of the petitioner under Sections 16 of the Act, the substantive sentence imposed upon the petitioner is reduced to the period already undergone by him, but subject to payment of Rs.5000/- as fine, over and above, the amount of fine imposed by the trial

Court. The fine amount shall be deposited by the petitioner before the learned trial Court, within a period of two months from today.

Revision Petition is disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

13.09.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No