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

+ **CRL. A. 772/2017 & CRL. M. A. 12622/2017**

FOOD INSPECTOR

..... Appellant

Through Mr. Amit Gupta, APP for the
State.

Mr. C. Krishna, DLA, Food
Safety, GNCTD.

versus

PUSHOTTAM KUMAR

..... Respondent

Through Mr. Sanjeev Narang, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.12.2019

VIBHU BAKHRU, J

1. The present appeal has been preferred by the State against a judgment passed by the ASJ-01, New Delhi District, Patiala House Courts on 16.11.2016 (the Appellate Court), whereby the respondent was directed to undergo imprisonment till rising of the Court and a fine of ₹35,000/-. It was further directed that in default of payment of the fine, he would have to undergo simple imprisonment for a period of fifteen days.

2. The judgment dated 16.11.2016 was passed in an appeal filed by the respondent under Section 374 of the CrPC impugning a judgment dated 17.05.2014 and the order on sentence dated 24.05.2015 passed by

the ACMM-II, Patiala House Courts, Delhi. By the said orders, the learned ACMM had convicted the respondent for an offence under Section 2(1a), (a), (b), (j) and (m) of the Prevention of Food Adulteration Act, 1954 (hereafter the 'PFA Act') read with Rule 23, 28 and 29 of the Prevention of Food Adulteration Rules, 1955 and sentenced him to undergo simple imprisonment for a period of eighteen months. In addition, the learned ACMM also imposed a fine of ₹10,000/- and directed that in default of payment of the said fine, the respondent would undergo simple imprisonment for a further period of sixty days.

3. The State has assailed the judgment dated 16.11.2016 (hereafter 'the impugned judgment') on the ground that there were no special circumstances that warranted reduction in the sentence awarded to the respondent. The Appellate Court has held that an offence of adding colour in food articles, which was earlier punishable under Section 16 (1A) of the PFA Act is to be considered as an offence under Section 59(i) of the Food Safety and Standards Act, 2006 (hereafter the 'FSS Act') for the purpose of awarding punishment. It is contended on behalf of the State that the Appellate Court has erred in sentencing the respondent with imprisonment till rising of the Court, as the maximum punishment under Section 59 (i) of the FSS Act is imprisonment which may extend up to six months and a fine which may extend to ₹1,00,000/-. Therefore, the sentence of imprisonment of eighteen months could have been reduced to six months but ought not to have been reduced further.

4. Briefly stated, the prosecution's case before the Trial Court was that on 23.08.2004 at about 06:30 pm, Food Inspector DV Singh and Field Assistant Ranjeet Singh under the directions of SDM/LHA Sushil Yadav visited M/s Shri Shyam Baba Store, 1506/21, Health Centre Road, Najafgarh, Delhi-110043. The accused (respondent herein) is the vendor-cum-proprietor of the said store. He was found selling various food articles including *Dal Arhar*. The aforesaid Food Inspector collected/purchased a sample of *Dal Arhar* and the same was sent to a Public Analyst. The analysis report indicated that the sample was adulterated as it was "coloured with synthetic colour matter viz. Tartrazine".

5. Thereafter, necessary sanction under Section 20 of the PFA Act was obtained and a complaint was filed for the violation of the provisions of Section 2(ia), (a), (b), (j) and (m) of the PFA Act and Rule 23 read with Rules 28 and 29 of the Prevention of Food Adulteration Rules, 1955. The said offence was punishable under Section 16 (1A) read with Section 7 of the PFA Act.

6. The accused was summoned vide an order dated 01.03.2005. Thereafter, the accused moved an application under Section 13(2) of the PFA Act to get a second part of the sample analyzed from the Central Food Laboratory. The Director, CFL (Pune) also reported, by a certificate dated 03.05.2005, that "*sample bearing No. 82/LHA/6446 does not conform to the standards of split pulse (Dal) Arhar as per PFA Rules 1955*". It was opined that the sample contained synthetic food colouring material, Tartrazine and the same was in contravention of the

said Rules, which proscribed the use of any colouring material.

7. The accused was then charged for the violation of the provisions of Section 2(ia), (a), (b), (j) and (m) of the PF Act and Rule 23 read with Rules 28 and 29 of the Prevention of Food Adulteration Rules, 1955, punishable under Section 16 (1A) read with Section 7 of the PFA Act by an order dated 02.01.2010. The accused pleaded not guilty and claimed trial. During trial, the prosecution examined three witnesses. The defence did not lead any evidence.

8. By the judgment dated 17.05.2014, the Trial Court found the accused guilty of the offences for which he was charged. By the order dated 24.05.2014, the accused (respondent) was sentenced to undergo simple imprisonment for a period of eighteen months and to pay a fine of ₹10,000/-. In default of payment of fine, the respondent was directed to undergo simple imprisonment of a further period of sixty days.

9. Aggrieved by the same, the respondent preferred an appeal against the judgment dated 17.05.2014 on, essentially, four grounds: (a) that Section 10 (7) of the PFA Act and the Rules made thereunder were not complied with inasmuch as, no independent witnesses were joined; (b) that the paper chromatography test, which was employed is not a reliable test; (c) that Rule 14 of the Prevention of Food Adulteration Rules, 1955 was not complied with inasmuch as, the bottles and *jhaba* were not cleaned and dried at the spot by the inspecting official; and (d) that after the punishment ought to be awarded under the FSS Act.

10. The Appellate Court rejected the respondent's appeal against

conviction and upheld the finding of the Trial Court. The Appellate Court examined the relevant provisions of the PFA Act and the FSS Act and concluded that the offence of adding colour to food articles, which was punishable under Section 16 (1A) of the PFA Act, is similar to the offence under Section 59(i) of the FSS Act. And, therefore, the provisions of the FSS Act would apply while considering the quantum of punishment. In view of the foregoing, the Appellate Court reduced the sentence awarded to the respondent from simple imprisonment for a period of eighteen months to imprisonment till rising of the court. But, the court enhanced the fine from ₹10,000/- (as ordered by the Trial Court) to a fine of ₹35,000/-. The court further directed that in default of payment of the fine, the respondent would undergo simple imprisonment for a further period of fifteen days.

11. Aggrieved by the decision of the Appellate Court, the State has preferred the current appeal.

12. Mr Amit Gupta, learned APP does not dispute that the offence of adding synthetic colour “tartrazine” to *Dal Arhar* would constitute an offence punishable under Section 59(i) of FSSA.

13. The controversy involved in the present case is squarely covered by the decision of the Supreme Court in ***Nemi Chand v. State of Rajasthan: (2018) 17 SCC 448***. In that case, the Supreme Court had relied upon an earlier decision in ***T. Barai v. Henry Ah Hoe: (1983) 1 SCC 177***, wherein it was held that if a Central Amendment Act reduces a punishment, there is no reason why accused should not have the

benefit of such punishment. The Court held that the rule of beneficial construction requires that even *ex post facto* law should be applied to mitigate the rigors of the law. The relevant extract of the decision of the Supreme Court in **T. Barai** (*supra*) is set out below:-

“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 *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.”

14. In ***Nemi Chand*** (*supra*), the Supreme Court followed the aforesaid decision and had reduced the sentence imposed on the appellant.

15. In ***State Government of NCT of Delhi v. Satish Kumar: CRL.A. 666/2017, decided on 24.09.2018***, a Coordinate Bench of this Court has, following the aforesaid decisions, dismissed the appeal against an order of the learned ASJ reducing the sentence awarded to the respondent therein. The facts of that case are similar to the facts in the present case in all material aspects.

16. Mr Gupta fairly concedes that the decision of this Court in ***State Government of NCT of Delhi*** (*supra*), squarely covers the controversy involved in the present petition.

17. Accordingly, the present appeal is dismissed.

DECEMBER 11, 2019
DR/RK

VIBHU BAKHRU, J

