

CRR-798-2018

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR-798-2018 (O & M)
Date of decision: 16.09.2021**

Virender Kumar

...Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Vishal Nehra, Advocate,
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARNARESH SINGH GILL, J.

Case was taken up for hearing through video conferencing.

The petitioner was tried in case bearing Criminal Complaint No.701 of 2008, filed by the Govt. Food Inspector, Rohtak, for committing the offence under Section 16 of the Prevention of Food Adulteration Act, 1954 (for brevity, 'the Act'). Learned Chief Judicial Magistrate, Rohtak, vide judgment dated 02.01.2015 and order of sentence dated 03.01.2015, found the petitioner guilty for the offence punishable under Section 16(1) (a) (i) of the Act and sentenced him to undergo simple imprisonment for a period of 06 months and to pay a fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for a period of 05 days.

Aggrieved of the judgment and order passed by the learned Chief Judicial Magistrate, Rohtak, the petitioner preferred an appeal. However, vide impugned judgment dated 22.02.2018,

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the learned Additional Sessions Judge, Rohtak, dismissed the said appeal.

The prosecution case, as noticed by the learned Additional Sessions Judge, Rohtak, are as under:

“2. The criminal prosecution against above named accused was launched with the averments that on 2.8.2008, at 2:00 P.M., Om Kumar, Govt. Food Inspector for District Rohtak had inspected the premises of Virender at Hisar Road, Rohtak. At the time of inspection, the accused was having in his possession about 6kgs of ghee contained in an aluminum drum for public sale. Government Food Inspector demanded a sample of ghee by giving the accused a notice in writing on Form VI prescribed under the Prevention of the Food Adulteration Rules, 1955 and purchased 600 gms. of ghee for analysis from Virender for a sum of Rs.102/-. It is further averred that the samples were divided into three equal parts and each part of sample was wrapped with khaki paper on the neck and sealed with the seal of Medical officer. Each part of the sample was labelled and wrapped with storing thick paper. The ends of the paper were pasted with gum and a paper slip bearing Code No.RT-DH/F1-1/F1-2 1999 was pasted on each part of the sample from top to bottom. It is further averred that the signatures of Local Health Authority were also appended on each part of the sample and each part of the sample was secured by means of a strong twine and sealed with seals of Medical Officer and the Food Inspector. The signatures of accused were also obtained on the samples in such a manner that both the paper slips and the wrapper on each sealed part of the sample carried a part of his signature.

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It is further averred that one sealed part of the sample along with a memorandum in Form VII was sent to the Public Analyst, Haryana, Chandigarh for analysis in a sealed packet vide railway parcel RR No.212148 dated 02.08.2008, while a copy of memorandum in Form VII and a specimen impression of seals used to seal the sample was sent to the Public Analyst, Haryana, Chandigarh separately by registered post. It is further maintained that the other two sealed parts of the sample alongwith two copies of memo in form VII were deposited with the Local Health Authority, Rohtak, vide No.GFI-2008/113 dated 2.8.2008 in a sealed packet. The report of Public Analyst, Haryana, Chandigarh, was subsequently received which showed that the sample gave 53.0 of Bu-tyro-refractometer reading at 40 degree c. against the maximum specified limits of 43.0. It gave 4.73 Reichert value against the minimum specified limit of 28.0 Baudouin test was positive, whereas it should be negative. Hence, the sample was adulterated. Hence, the present complaint was filed.”

On the basis of pre-charge evidence, the petitioner was charge-sheeted under Section 16(1) (a) (i) of the Act, to which he pleaded not guilty and claimed trial.

In after-charge evidence, the State had examined as many as four witnesses. Thereafter, statement of the petitioner under Section 313 Cr.P.C. was recorded, wherein he denied the charge and pleaded innocence. However, he did not lead any evidence in his defence.

On the basis of the evidence led, it stood proved before the learned trial Court that the sample/admixture was found to be

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adulterated and the petitioner had contravened the provisions of the Section 7 of the Act by storing it for sale. Resultantly, the petitioner was convicted under Section 16(1) (a) (i) of the Act. He was, accordingly, sentenced under the aforesaid section, as noticed above.

Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Sessions Judge, Rohtak. However, vide judgment dated 22.02.2018 passed by the learned Additional Sessions Judge, Rohtak, the appeal was dismissed, as noticed above.

Still aggrieved, the petitioner has preferred the present revision petition.

On the statement made by the learned counsel for the petitioner, the revision petition was expressly confined to the issuance of notice qua the sentence only by a Coordinate Bench on 01.03.2018.

Today, while maintaining the said plea, the learned counsel appearing for the petitioner has submitted that the petitioner is a first offender; that he is not involved in any other criminal case and that no useful purpose would be served by sending him behind the bars at this stage, especially when the petitioner has been facing the agony of criminal trial for the last about 12 years. Learned counsel has, thus, prayed that the petitioner deserves to be given the benefit of probation under the Probation of Offenders Act, 1958.

On the other hand, learned State counsel has, while controverting the aforesaid submissions, argued that the learned

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courts below have rightly recorded the concurrent finding the petitioner had contravened the provisions of Section 7 of the Act by storing the adulterated ghee for the sale. He submits that minimum sentence as prescribed under the aforesaid offence, has been awarded to the petitioner and he does not deserve the benefit of probation.

I have heard the learned counsel for the parties and have also gone through the record of the case.

Having heard the learned counsel for the parties and after a lucid examination of the record, this Court does not find any ground to interfere with the findings recorded by the courts below and as such, the same are affirmed.

While dealing with a similar question as involved in the present petition qua the release of the petitioner on probation, the Hon'ble Supreme Court in **Isher Dass vs. The State of Punjab, AIR 1972 Supreme Court 1295(1)** held as under:-

“7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under 317 the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in any other law for the time being in force". The above non-obstante clause points to the conclusion that the provisions of section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other

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conditions prescribed are fulfilled. Those conditions are (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behavior. Sub-section (1) of section 6 of the above mentioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under sections 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a

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person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life, he shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.

8. According to section 18 of the Probation of Offenders Act, the aforesaid Act shall not affect the provision of subsection (2) of section 5 of the Prevention of Corruption Act, 1947 (Act 2 of 1947). The last mentioned provision, namely, sub-section (2) of section 5 of the Prevention of Corruption Act, prescribes, in the absence of special reasons, a minimum sentence of imprisonment for a term of not less than one year for those convicted 318 under section 5 of that Act. If the object of the legislature was that the provisions of the Probation of Offenders Act should not apply to all cases where a minimum sentence of imprisonment is prescribed by the statute, there was no reason to specify subsection (2) of section 5 of the Prevention of Corruption Act in section 18 of the Probation of Offenders Act. The fact that out of the various offences for which the minimum sentence is prescribed, only the offence under sub-section (2) of section 5 of the Prevention of Corruption Act has been mentioned in section 18 of the Probation of Offenders Act and not the other offences for which the minimum sentence is prescribed, shows that in case of such other offences the provisions of Probation of Offenders Act can be invoked.

9. The provisions of Probation of Offenders Act, in our opinion, point to the conclusion that their operation is not excluded in the case of persons found guilty of offences under the Prevention of Food Adulteration Act. Assuming that there was

reasonable doubt or ambiguity, the principle to be applied in Construing a penal act is that such doubt or ambiguity should be resolved in favour of the person who would be liable to the penalty (see Maxwell on Interpretation of Statutes, p. 239, 12th Edition). It had also to be borne in mind that the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act. As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of the provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz. Prevention of Food Adulteration Act. Indeed, as mentioned earlier, the non-obstante clause in section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force. We may also in this context refer to the decision of this Court in the case of ***Ramji Missir v. State of Bihar, 1962 Supp. 2 S.C.R. 745*** wherein this Court while dealing with the Probation of Offenders Act observed that its beneficial provision,, should receive wide interpretation and should not be read in a restricted sense. Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine

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of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above, 21 years of age found guilty of offences under the Prevention of Food Adulteration Act. As regards persons under 21 years of age, however, the policy of the law appears to be that such a person in spite of his conviction under the Prevention of Food Adulteration Act, should not be deprived of the advantage of Probation of Offenders Act which is a beneficent measure and reflects and incorporates the modern approach and latest trend in penology.”

Similar view has been reiterated by the Full Bench of this Court in **Joginder Singh vs. State of Punjab, 1980 Chandigarh Law Reporter (Punjab and Haryana) 196**, wherein this Court observed as under:-

“22. Though as a matter of law, the aforesaid answer has been rendered a note of caution must necessarily be sounded as regards the sentencing policy thereunder. Herein again, the observations of the final Court appear to me as a conclusive with regard to the Prevention of Food Adulteration Act, their Lordships have set their face firmly against any facile application of the Probation of Offenders Act to offence thereunder prior to 1976 when the legislature itself intervened to create a legal bar. Indeed, whilst holding that as a matter of law, probation could be resorted to with regard to offences under the Prevention of Food Adulteration Act, a virtual ban on a resort thereto has been laid in actual practice. In **Isher Das v. The State of Punjab, AIR 1974 Supreme Court 228**, it was observed as follows:-

“Adulteration of food is a menace to public

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health. The Prevention of Food Adulteration Act has been enacted with the air of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by a fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offenders under the Prevention of Food Adulteration Act, 1947.....”

Reiterating the aforesaid view, Krishna Iyer, J, speaking for Constitution Bench in ***Pyarali K. Tejani v. Mahedeo Ramchandra Bange, AIR 1974 Supreme Court 228***, seems to take even a stricter view in the following words :-

“The kindly application of the probation principle is negative by the imperatives of social defence and the improbabilities of moral proselytization. No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white collar Criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive not easily humanized by the peptic probationary measure. It is not without significance that the recent report (47 report) of the Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments.

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“..... In the current Indian conditions the probation movement has not yet attained sufficient strength to correct these

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intractable. May be, under more developed conditions a different approach may have to be made. For the present, we cannot acceded to the invitation to let of the accused on probation.”

The aforesaid view has been reiterated with force again in ***Prem Ballab v. The State of (Delhi Admn), AIR 1977 Supreme Court 256.***

23. It appears to be plain that what has been said above in the context of edible food and economic offences applies with even greater emphasis to the commercial production of illicit liquor illegally by running working skills. The dangers herein are inherent and sometimes more immediately fatal than those under the Prevention of Food Adulteration Act. The pate of deaths resulting from the clandestine imbibing of poisonous illicit liquor, as often reported in the press provides a red-light signal. The legislative trend is again evident in enhancing the minimum sentence under Section 61(1)(c) of the Punjab Excise Act, 1914, to two years' rigorous imprisonment and a fine of Rs. 5000/- by the amendment Act No. 31 of 1976. The following observations of my learned brother S.C. Mittal, J., in ***Harnam Singh v. The State of Punjab, 1976(78) PLR 739***, are most apposite in this context :-

“..... On principle prescribing of the minimum punishment may not deprive the court of its power to release a person on probation, but the fact remains that by so doing the legislature has clearly expressed its intention of punishing the offender with deterrent effect. It is common knowledge that illicit liquor is manufactured not only unscientifically but also under unhygienic conditions. Drinking of such liquor is hazardous to public health. The persons indulging in illicit distillation are motivated by greed of money to such extent they have no regard for human life. The other sordid

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aspect of this trade is that it is carried out by preparing schemes involving active participation of several persons. For the foregoing reasons the release of a person on probation indulging in illicit distillation of liquor has to be for very exceptional reason, which is lacking in this case. In the result is not at all expedient to release Harnam Singh on probation.”

24. It will be plain from the aforesaid catena of authorities that it is only in exceptional circumstances and for specific weighty reasons recorded that the broad policy of declining the benefit of probation to an accused person in these cases can be possibly deviated from.”

Keeping in view the totality of facts and circumstances of the case in hand as well as law laid down by the Hon’ble Supreme Court in the case of **Isher Dass (supra)**, followed by the Full Bench of this Court in **Joginder Singh’s case (supra)**, this Court is of the considered view that fixing a minimum sentence for an offence is no reason for denying benefit under the provisions of 1958 Act. There is no legal impediment in releasing the petitioner on probation.

In the light of aforesaid discussion, the revision petition is partly accepted. While affirming the judgment of conviction passed by both the courts below, order of sentence is modified to the extent that the petitioner-accused is ordered to be released on probation of good conduct on his furnishing probation bonds for a period of two years to the satisfaction of the trial court. During this period of probation, the petitioner shall not commit any offence and be of good behavior. He shall give an undertaking to the trial court that he would undergo the remaining part of his sentence, if called for to do so by a court of competent jurisdiction during the

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period of probation, in case of violation of any condition of the bonds.

16.09.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No