

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

CRR-3080-2009 (O&M)
Judgment reserved on: 22.07.2022
Judgment pronounced on: 08.08.2022

VIKAS MEHTA

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Manoj Kumar Pundir, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ. J.

1. The present petition has been preferred against the impugned judgment dated 18.11.2009 passed by the Sessions Judge, Yamuna Nagar and the judgment of conviction dated 29.03.2007 as well as the order of sentence dated 30.03.2007 passed by the Chief Judicial Magistrate, Jagadhari in Criminal Complaint bearing No. 634/2 of 1996 filed under the Prevention of Food Adulteration Act, 1954.

2. Briefly summarized the facts of the case are reproduced hereinbelow :

“2.1 The complainant Govt. Food Inspector, Yamunanagar, brought the present complaint alleging that on 27.09.1996 at about 4-30 p.m., he inspected the premises

of the accused, who was found having in his possession about 5/15 Kg. of "mustard oil" for public sale contained in one iron tin, out of which, the complainant after serving notice in writing on Form VI upon the accused, purchased 375 ml. of "mustard oil", against 14-65 Paise for the purpose of analysis. The sample was divided into three equal parts in three empty, clean and dry bottles, which were properly stoppered, labeled and then wrapped in a strong thick paper and a paperslip duly signed and issued by the Local Health Authority, Yamunanagar, was affixed on each packet from top to bottom with gum, which was secured by means by strong twine and sealed with the seal of complainant and of the Medical officer, Signatures of the accused were also obtained on each bottle in such a manner that both the paperslip and wrapper of the sample carry a part of the signature. Spot memo was prepared and got signed from the witnesses. One sealed part of the sample alongwith copy of Form VI was sent to the Public Analyst, Haryana, Chandigarh for analysis and the remaining sealed parts of the sample alongwith copy of Form VII were deposited with the Local Health Authority, Yamunanagar.

2.2. The Public Analyst, Haryana, vide his report dated 22.10.1996 opined that "the sample given acid value 8.96 against the maximum prescribed standard of 6.0" and, therefore, the Govt. Good Inspector instituted the present complaint against the accused in the Court. Hence this complaint.

2.3 Upon appearance, when the accused appeared in the Court, he was granted bail and the application moved by him under Section 13(2) of the Prevention of Food Adulteration Act, 1954, was allowed and the second part of the sample was sent to the Director, for re-analysis to the Central Good Laboratory, Pune, who vide his report dated 01.01.1997, opined that "the sample does not conform to the standards of "mustard oil" as per P.F.A. Rules, 1955".

2.4 On the basis of the pre-charge evidence adduced by the complainant and there being a prima facie case, the accused was charge-sheeted for commission of the offence punishable under Section 7 read with Section 16(1)(a) (i) of the Prevention of Food Adulteration Act, 1954, vide order dated 26.03.1998, to which the accused abjured and claimed trial.

2.5 The prosecution/complainant, to substantiate the charge-sheet against the accused, examined the following witnesses and also exhibited the documents:

PW1	R.D. Goel, Govt. Good Inspector
PW2	Dr. Ramesh Kumar
PW3	Bal Ram

EXHIBITED DOCUMENTS

Ex. PA	Notice.
Ex. PB	Receipt
Ex. PC	Spot memo
EX.PD	Report of Public Analyst
Ex. PE	Complaint.
Ex.PF	Report of Director, Central Good Lab., Pune.
Ex.PX	Affidavit of Mam Chand
Ex.PW/A	Postal receipt
Mark-A	Copy of forwarding letter.

2.6. Statement of accused as envisaged under Section 313 Cr.P.C. was recorded, wherein he denied the allegations leveled by the complainant/prosecution and pleaded that he is innocent and falsely implicated into this case. However, the accused did not adduce any evidence in his defence despite of availing several opportunities

including three last opportunities and closed the same on. 29.03.2007.

3. After consideration of the entire evidence, the Judicial Magistrate, Jagadhari held that the charge against the petitioner-accused stands proved and held him guilty for commission of the offence and vide order dated 30.03.2007, sentenced the petitioner for rigorous imprisonment for a period of 06 months along with fine of Rs. 500/- for commission of offence under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

4. The appeal preferred by the petitioner against the said judgment and order passed by the Chief Judicial Magistrate, Jagadhari was dismissed by Sessions Judge, Yamuna Nagar vide judgment dated 18.11.2009.

5. During the course of arguments, learned counsel appearing on behalf of the petitioner contends that he does not intend to press the instant petition on merits and would restrict his submissions to the quantum of sentence only. The aforesaid submission is accepted and the petitioner has been heard on the quantum of sentence only.

6. Learned counsel appearing on behalf of the petitioner submits that the following mitigating circumstances exist in the present case :

- (i) The incident in question relates to the year 1996 and as such the petitioner has already faced agony of protracted criminal proceedings for a period of nearly 26 years.

- (ii) That at the time of commission of offence the petitioner was about 17 years of age and is currently in his mid forties. He has his family to support.
- (iii) That the petitioner is not a previous convict and has not been involved in any other criminal case during the aforesaid period of 26 years. That the petitioner is the sole bread winner of his family and that the family shall suffer grave financial hardship in the event the petitioner is required to undergo the remaining sentence.
- (iv) That the petitioner was only a shopkeeper and was selling the mustard oil manufactured by some other company. There is no allegation that the petitioner had carried out any change in the product and that the petitioner cannot be held accountable for the quality of the product that he had no participation in the process of manufacturing.
- (v) The adulteration in question could not be attributed to the petitioner.
- vi) That the petitioner has already undergone an actual custody of 01 month and 22 days out of the total sentence awarded for a period of 06 months as per custody certificate dated 29.10.2019.

7. Per contra, learned counsel representing the State of Haryana submits that the petitioner has been held guilty of selling adulterated and substandard mustard oil and that the charge in question has been duly established. He further submits that no leniency should be

extended in favour of a convict against whom the offence of food adulteration stands duly established.

8. I have heard learned counsel appearing on behalf of the respective parties and gone through the entire record.

9. In relation to the offences pertaining to the Prevention of Food Adulteration Act, 1954, this Court had granted the benefit of probation to an accused who had faced trial for a period of 15 years in the matter of **“Jog Dhian versus State of Haryana”** reported as **2001 (2) R.C.R. (Criminal) 331**, despite minimum sentence having been prescribed under the Act. The relevant extract of the said judgment read as thus:

*“3. Learned counsel representing petitioner contends that the occurrence pertains to the year 1985 and, therefore, the petitioner has undergone protracted trial spanned over a period of mere than 15 years as also that the petitioner was the first offender and 32 years of age at the time of incident and that in view of the facts, as mentioned above, he should be let off by giving the benefit of provisions contained in the Probation of Offenders Act, 1961. In his endeavour to show that even in cases where minimum sentence has been prescribed, the benefit of provisions contained in the Probation of Offenders Act, 1961, can still be granted, learned counsel relies on a judgment of this Court in **Narain Dass v. State of Haryana, 1997 (3) Recent Criminal Cases 300 : 1997 (3) RCR (Crl.) 311 (P&H) 300** as also Full Bench judgment of this Court in **Joginder Singh v. State of Punjab, 1980 Criminal Law Journal 1218**.*

4. After hearing learned counsel representing the parties and examining the record, this Court is of the view that ends of justice would be met if petitioner is let off on

probation. While, therefore, maintaining the order of conviction against him, he is sentenced in a way that he will fill up the requisite bonds to show good conduct for a period of one year before the Trial Magistrate within a period of one month from the date he receives certified copy of this order.”

10. However, where an accused was less than 80 years at the time of taking of the sample and had suffered protracted trial for a period of 12 years, the concession of probation was extended by this Court in the matter of “**Om Parkash versus State of Haryana**” reported as **2002 (1) CrLJ 560**, the same reads as thus:

“2. Learned counsel for the petitioner has not contested the revision on merits, he contended that the petitioner had been facing the agony of protracted trial for the last about 12 years. He was aged less than 16 years at the time of taking the sample and as such was entitled to probation under Section 20(AA) of the Act. In support of his age, the petitioner has filed the certified copy of the school leaving certificate which shows his date of birth as 10.12.1973. Thus, he was about 16 years of age at the time of taking the sample. Section 20(AA) of the Act states that Probation of Offenders Act shall be applicable to a person convicted of an offence under this Act, who is less than 18 years of age. Since the petitioner was less than 18 years of age at the time of taking the sample and had suffered protracted trial for the last about 12 years, so I think it is a fit case where the concession of probation should be given to him. Fine has already been paid. Consequently, the sentence awarded to the petitioner is set aside. Instead of sentencing him to any imprisonment, he is released on probation if he furnished a personal bond in the sum of Rs. 10,000/- with one surety in the like amount to keep peace and be of good behaviour for a period of two years and to

receive sentence as and when called upon to do so during the said period of two years.”

11. In the matter of **“Balbir versus State of Haryana”** reported as **2006 (1) R.C.R. (Criminal) 723**, this Court released an accused who had faced protracted agony of criminal proceedings for a period of 22 years keeping in view the reformatory principles by observing as under:-

“9. Coming to the second contention, it is an undisputed fact that the occurrence had taken place on 9.7.1983. The petitioner faced the trial for a long period of more than seven years before he was convicted and sentenced to undergo RI for a period of nine months on 27.11.1990. After the dismissal of his appeal, this Court released the petitioner on bail on 13.3.1992 i.e. more than 13 years ago. As per the affidavit of the petitioner filed today, his family had discontinued the business of selling milk in the year 1987 and he was working as a daily wager to earn his livelihood and except the case in hand, he holds a clean slated record as no case either under the Act or under any other penal law has been registered against him. Having regard to the aforesaid mitigating circumstances, I am of the view that it will be totally in the teeth of the reformatory principles if the petitioner is subjected to undergo the actual sentence of nine months at this belated stage. The interest of administration of criminal justice will be fully protected if instead of undergoing the remainder of the sentence or imprisonment, the petitioner is released on probation for a period of one year but the fine, as imposed by the Courts below, is enhanced from Rs. 1,000/- to Rs. 5,000/-.”

12. The matter was considered yet again in the case of **“Krishan Kumar versus State of Haryana”** reported as **2008 (3) R.C.R. 338** wherein an accused sentenced to 06 months was released on probation

by reducing the sentence to the period already undergone i.e. 15 days.

The relevant extract of the said judgment read as under :-

*“6. Opening line of the trial Court judgment reveals that the petitioner was 30 years old when he was prosecuted. It has been stated that in the last 20 years, the petitioner has fastened many liabilities of the family and his children are in marriageable age and he has not committed any offence in the last 20 years. It has further been stated that the appeal of the petitioner was dismissed on 05.07.1996 and he was taken into custody on the same day. His sentence was suspended by this Court vide order dated 16.07.1996 and he was released three/four days later from the Jail and he has undergone 15 days of his actual sentence. Petitioner has already suffered a protracted trial and he has undergone about 15 days of his actual sentence and that sentence may be reduced to already undergone taking into consideration the fact that in the last 20 years he has been in the corridors of the Court and much misery has been inflicted upon him. He has relied upon a single Bench judgment of this Court in **Mahavir v. State through Govt. Food Inspector, 2000 (4) RCR (Criminal) 208 (P&H)**, wherein it was held as under:*

*“6. Learned counsel for the petitioner, however, further contends that the occurrence in this case pertains to the year 1984, to be precise, February 17, 1984 and a period of 16 years has already gone by. Petitioner has already suffered the agony of protracted trial, spanning over a period of one and half decades. Petitioner was 40 years of age at the time of occurrence and further that he was already undergone sentence for a period of 25 days. For the contention that petitioner should be dealt with leniently in these circumstances his counsel relies upon **Manoj Kumar v. State of Haryana, 1998 (1)***

RCR (CrL) 563 (P&H). Learned State counsel has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the petitioner is concerned.

7. *In totality of the facts and circumstances of this case, the Court is of the view that ends of justice would be met if sentence imposed upon the petitioner is reduced to the one already undergone by him. So ordered. Order of payment of fine and so also consequences in default thereof are, however, maintained. Learned counsel for the petitioner informs the Court that fine has already been paid.”*

*He has also placed reliance upon another single Bench judgment **Des Raj v. State of Haryana, 1996 (1) RCR (Criminal) 689 : 1995 (XXII) Criminal Law Times (482)**, which reads as under:*

“9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the courts shall understand this right; and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and

circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.

10. An identical question had arisen before the apex Court in Braham Dass's case (supra), wherein their lordship were pleased to observe as under:

‘Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the Court should take strict view of such matter.’

*This view was followed by this Court in **Nand Lal v. State of Haryana, and Ishwar Singh's** case (supra). The present case is fully covered by the view*

expressed by the apex Court and by this Court in the judgments cited above and I have no reason to differ therewith.

11. For the reasons mentioned above, the conviction of the petitioner for an offence under Section 16(1)(a)(i) read with Section 7 of the Act is hereby maintained. However, keeping in view the facts and circumstances of the case and the fact that the petitioner has already faced the agony of the protracted prosecution and suffered mental harassment for a long period of eight years, his sentence is reduced to the period of sentence already undergone. Sentence of fine is, however maintained along with its default clause.”

13. Furthermore, the agony of protracted criminal proceedings for a period of 19 years weighed upon the Court also in the matter of **“Mathura Dass versus State of Haryana”** reported as **2010 (22) R.C.R. (Criminal) 658**, wherein the benefit of probation was extended when the incident in question was 19 years old. The relevant extract of the judgment above is reproduced hereinafter below:

“ Having heard the rival contentions, the petitioner is stated to be 65 years of age at the time of taking the sample i.e. on 30.5.1991. Now he must be about 84 years old. He has not misused the concession of bail. He has also remained in custody for some time. He has already suffered a lot due to protracted proceedings pending in the court for the last 19 years. In the similar circumstances of the case, this Court in case Sarwan Singh v. State of Punjab (supra) was pleased to extend benefit of probation to the accused.

14. Moreover, noticing that the incident was more than 09 years old and against a sentence of 06 months, the accused had undergone a

sentence of 01 month and 27 days as a first time offender, benefit of probation was extended in the matter of “**Balwinder versus State of Haryana**” reported as **2014 (12) R.C.R. (Criminal) 2822**. The relevant extract of the said judgment reads thus:

“5. *Learned counsel for the petitioner, however, further contends that the occurrence in this case pertains to the year 2003 and a period of 9 years have already gone by. Petitioner has already suffered the agony of protracted trial, spinning over a period of more than one decade. Petitioner has already undergone the sentence for 01 month and 27 days, as per custody certificate dated 26.04.2012. No other case is pending against him.*

Learned counsel for the petitioner restricts his prayer for the grant of Probation to the petitioner under the Probation of Offenders Act. The petitioner has not committed any offence for the last 09 years. The petitioner is a first time offender and even now he has left the business of selling the ghee. The petitioner has huge responsibility of his own family members and also of his old aged parents.

6. *In **Ramesh Chand alias Ramesh Kumar v. State of Haryana** 2005 Criminal Law Journal (1569), it has been held as under:-*

“19. No doubt, the cases under the Prevention of Food Adulteration Act should be seen with strictness, yet in view of the judgments of this Court in *Narain Dass v. State of Haryana*, 1997 (3) RCR (Crl.) 311 (P&H) and *Jog Dhian v. State of Haryana*, 2001 (2) RCR (Criminal) 331 and keeping in view the facts and circumstances of this case i.e. The petitioner has already faced the protracted trial of more than 16 years, he is first offender, was a petty shop keeper in rural area and was selling the

branded non-iodised salt; which was prohibited vide notification just one year prior to the taking of sample and the fact that his case is covered by the second proviso of Section 16 of the Act, I am of the opinion that ends of justice will be met if the petitioner is let off on probation. The judgment of conviction is therefore maintained and the order of sentence is modified to the extent that the petitioner will be released on probation on his furnishing requisite bonds to show good conduct for a period of one year before the trial Magistrate within a period of one month from the date he received certified copy of this judgment.”

*Similar view has been taken by a Coordinate Bench of this Court in the cases of **Satish Kumar v. Union Territory, Chandigarh, 2009 (3) R.C.R (Criminal) 325** and **Jai Bhagwan v. State of Haryana, 2008 (4) AICLR 539**.*

7. Taking totality of circumstances into consideration, it will be just to release the petitioner on probation under Probation of Offenders Act. He will furnish bail bonds to the satisfaction of Chief Judicial Magistrate, Kaithal. However, sentence of fine is enhanced to Rs. 5000/- and the same shall be converted as cost of litigation. Non payment of fine will render the present revision petition as dismissed. With these observations, present revision petition is disposed of.”

15. Taking into consideration the precedent judgments noticed above, the total sentence awarded, the mitigating circumstances pointed out by the counsel representing the petitioner as well as the fact that in an incident which is nearly 26 years old, the petitioner has already undergone an actual custody of 01 month and 22 days out of a total sentence of 06 months, I deem it appropriate to partly allow the

present petition. While upholding the conviction of the petitioner for commission of offence under the Prevention of Food Adulteration Act, 1954 vide order dated 30.03.2007 and as affirmed by the Sessions Judge, Yamuna Nagar vide judgment dated 18.11.2009, the order of sentence dated 30.03.2007 is modified and the sentence is reduced to the period already undergone by the petitioner. However, the sentence of fine imposed upon the petitioner is increased from Rs. 500/- to Rs. 5,000/- which is required to be deposited within a period of 06 weeks from the date of receipt of the copy of instant judgment. It is made clear that in case that the enhanced fine is not deposited within the aforesaid period of 06 weeks from the date of receipt of copy of the order, the present judgment reducing the sentence of the petitioner to the period already undergone shall automatically stand vacated and the petitioner shall be required to undergo the actual sentence of 06 months, apart from the sentence for default imposed by the Chief Judicial Magistrate, Jagadhari.

The present petition is partly allowed.

AUGUST 08, 2022
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No