

16.1.2023

20

Sc

CRR 91 OF 2008

In Re: - An application under Section 401 read with Section 482 of the Code of Criminal Procedure.

And

In the matter of: **Dibakar Nag**

....Petitioner

Mr. Debjit Sahani

...For the Petitioner

Mr. Narayan Prasad Agarwala

Mr. Pratik Bose.

...For the State

Heard Mr. Debjit Sahani, learned counsel for the petitioner who has challenged the order of conviction passed by the learned Chief Judicial Magistrate and affirmed by the learned Additional Sessions Judge, 2nd Court, Nadia on 17th December, 2007.

It is contended by Mr. Sahani, learned counsel that the petitioner being a retailer procured the lozenges from the manufacturer against a receipt. This fact is sufficient to protect the petitioner from the clutches of law.

Learned trial Court did not consider this aspect as laid down under Section 14 of the Prevention of Adulteration Act, 1954 (hereafter the PFA Act).

Upon perusal of records I do not find any such document was tendered in course of trial from the side of the accused person who discharged his obligation as laid down under Section 14 of the PFA Act.

Mr. Sahani with all fairness submits that the original receipt was given to the Food Inspector but he has no document to

substantiate such claim. It further transpires that no attempt was made on behalf of the accused persons to challenge the Chemical Examination Report. practically the accused persons have waived the statutory right and thereby accepted the fact that the product sold by him was adulterated and thereby he has made himself culpable for committing offence and he has been rightly punished by the learned trial court to serve out sentence of Simple Imprisonment for a terms of six months and also to pay a fine of Rs.1000/-(Rupees one thousand only) with a default clause in the order of the trial court, as have already indicated, has been affirmed by the learned appellate court.

However, considering the age of the proceeding and the anxiety of the petitioner for the last twenty-six years, though I do not find any reason to interfere with the order of conviction, however, I am inclined to interfere with the sentencing part of the judgment.

In my opinion, ends of justice would be made if the petitioner is directed to pay a fine of **Rs.25,000/-**(Rupees twenty-five thousand only) out of which **Rs.15,000/-**(Rupees fifteen thousand only) to be paid to the **District Legal Services Authority, Nadia** within two weeks from the date and **Rs.10,000/-**(Rupees ten thousand only) to the **State of West Bengal** failing which, learned trial court shall have the liberty to take all necessary steps to make the petitioner serve out sentence as imposed by the learned trial court.

Let a copy of the judgment be sent down to the learned trial court for information.

Accordingly, this revisional application stands disposed of.

With the disposal of this revisional application pending application, if any, also stands disposed of.

Photostat certified copy of this order, if applied for , be furnished expeditiously.

(Siddhartha Roy Chowdhury, J.)