

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R No.765 of 2016

With

CRAN 10 of 2022

M/s. Gujrati Hindu Hotel & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners

: Mr. Sankar Banerjee.

For the K.M.C

: Mr. Goutam Dinda,
: Mr. Anindya Sundar Chatterjee,

For the State

: Ms. Sreyashee Biswas

Hearing concluded on : 01/12/2022

Judgment on : 06/01/2023

Rai Chattopadhyay,J.

- (1) The points for determination in this revision are whether alleged offence under Section 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954, against the accused persons/revisionists are proved beyond all reasonable doubts,

whether the petitioners were actually the bona fide end user of the contaminated product, whether the Trial Court and the First Appellate Court are right and proper to pronounce them as convicts by their respective judgments, whether there has been laches in the procedure undertaken by the authorities under the provisions of the said Act and lastly, whether the sentence earlier granted by the court may be modified in a manner as prayed for by the petitioners.

- (2) The case starts under Sections 16 (1) (a) (i) and Section 7 of the Prevention of Food Adulteration Act, 1954, it would be beneficial to quote both the afore stated provisions which are as below:-

“16. Penalties- (1) Subject to the provisions of sub-section (1A) if any person-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of food-

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;”

“7. Prohibitions of manufacture, sale, etc., of certain articles of food.—No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority [in the interest of public health;]

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; [or]

[(vi) any adulterant.]

[Explanation.—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article

of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.]”

- (3) The petitioners have been found to be guilty by the Trial Court as well as the District and Sessions Judge in an appeal, in which it affirmed the judgment of the Trial Court. Judgment of conviction and order of sentence of the Ld. Additional District and Sessions Judge in appeal No. 26 of 2014 dated 3rd October 2015 is under challenge in this revision.
- (4) The petitioners have challenged the legality, propriety and correctness of both the judgments as stated above on the ground that the factual circumstances which emerged before the Trial Court through the evidence on record have not been considered in its proper prospective by both the courts. Their grievance is also regarding non-consideration of the protections available to them under the provision of the afore stated enactment. It is further submitted that petitioners are only the bona fide purchasers who have purchased the product against proper documents and not the manufacturers or distributors or dealers as regards the contaminated food article. That the statutory protection granted under Section 19 (2) of the said Act shall be available to them in this trial. It is stated that as the Trial Court as well as the First Appellate Court have failed to consider this aspect of the matter and passed the judgment, the same is liable to be set aside being dehors the settled provision of law.

- (5) State has raised strong objection to such contention and prayer of the petitioners. It has heavily relied on the evidence on record to submit that firstly the adulterated and contaminated character of the food article seized from the custody of the petitioners is endorsed in the chemical examination report and secondly, from the evidence it is well deductable that necessary pre-requisites as regards quality of the concerned food article were not followed, maintained and complied with by the present petitioners. As such the state has stressed upon that the impugned judgment may not be interfered with in any way.
- (6) The criminal case against the petitioners started with filing of the FIR by the Food Inspector on 28th September, 2007. Allegedly, at the time of inspection in the hotel run by the present petitioners the complainant found edible 'Banaspati' namely, Prasad Premium Banaspati from the said hotel premises. The said food article was being used by the present petitioners as hotel owners for the preparation of food meant to be sold for human consumption. Sample was collected and examined. The chemical examination of the sample of the food article collected from the hotel owned by the present petitioners revealed its adulterated form and nature. Hence, the case was lodged under the provisions of the Prevention of Food Adulteration Act, 1954, against all the accused persons including the present petitioners.

- (7) Petitioners defence has been that their company, i.e, hotel is the bonafide purchaser of the article against proper receipt/warranty issued by the dealer of the food article. Accordingly they have taken shelter under the defence provided under Section 19 (2) of the said Act, which may be written down as follows:-

“19. Defence which may or may not be allowed in prosecutions under this Act :

(1)

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves—

(a) that he purchased the article of food—

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.”

- (8) It has been contended that even if any adulteration or contamination is done to the concerned food article, the petitioners are no way connected with the same and in accordance with the provisions of the afore stated law, they are entitled to be exonerated from any criminal liability for unknowingly using the alleged adulterated food article.
- (9) In support the following judgments have been referred to on behalf of the petitioners:-

(i) Rupak Kumar vs. State of Bihar & Anr. reported in (2014) 4

SCC 277, this judgment is referred on the proposition that :-

“A conjoint reading of Sections 6, 7, 10 and 16 of the PFA Act shows that the PFA Act is intended to prohibit and penalise the sale of any adulterated article of food. The term “store” shall take colour from the context and the collocation in which it occurs in Sections 7 and 16 of the PFA Act. Hence, “storage” of an adulterated article of food other than for sale does not come within the mischief of Section 16 of the PFA Act. It was not alleged that the appellant had stored haldi and rice for sale. Thus, the allegations made do not constitute any offence and, hence, the prosecution of the appellant for an offence under Section 16(1) (a) of the Act shall be an abuse of process of court.”

(ii) Unnikrishnan vs. Food Inspector, Palghat Municipality, Palghat, Kerala State, reported in **AIR 1995 SC 1983**, in this judgement the Hon’ble Apex Court was pleased to held when the accused discharges necessary burden as to his bonafide usage of the adulterated food, the defence to which he shall be entitled to is under section 19 (2) of the Prevention of Food Adulteration Act, 1954. In that case on the basis of the particular facts therein the Hon’ble court was pleased to hold the accused persons to have duly discharge the burden to the extent necessary under section 19 (2) of the said Act.

(iii) Nemichand vs State of Rajasthan, reported in **(2018) 17 SCC 448**, wherein after considering the facts and circumstances the court has been pleased to hold that the benefits provided under the amended Section 16 (A) of the said Act may be applicable to the accused persons. The court relied on a previous judgment of the same court, i.e, of **T. Barai vs. Henry ah Hoe & Anr. reported in 1983 (1) SCC 177**. The relevant portion of the 1983 judgment as relied on by the Hon’ble Supreme Court may be quoted here too :-

“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.’

(iv) Two unreported judgements of co-ordinate bench of this court have also been referred to in fortifying the argument that the petitioners should be acquitted in the trial or alternatively may be sentenced with fine only in terms of the provision of the afore stated law.

(10) This is petitioner’s second attempt to get the order of conviction reversed by filing the present revision. No doubt contravention of the provision of the afore stated statute, if proved, shall acquire immense seriousness and gravity as it would adversely affect the

public life at large. Under such circumstance the court has to exercised its judicious mind and meticulously scrutinise the evidence on record to see if the charges against the accused persons are actually brought home by the prosecution with adequate evidence to the standard of beyond all reasonable doubts or not.

- (11)** In this trial various other accused person are also involved excepting the present petitioners who are purchasers from the dealers of the concerned food article. The dealers, the distributors and the manufacturers of the said alleged adulterated food article have also been made accused in this criminal proceeding.
- (12)** It is the trite law that the finding of fact unless suffers from gross perversity to the extent capable of nullifying the credibility thereof may not be interfered into, when challenged. After consideration of the records of the courts and going through the judgements thereof, of both the Trial Court and the First Appellate Court, the finding thereof appear not to be suffering from any infirmity or impropriety, illegality or perversity as such. Under circumstances it is found prudent not to enter into the merits of the case to unsettled the finding of the previous two courts in this matter.
- (13)** Therefore after perusal of the evidence on record both oral and documentary and the two judgments of the previous courts, this court concurs with the finding that the guilt of the accused persons is proved. The prosecution by producing sufficient evidence could

bring home the charges levelled against the accused persons. Hence, to this extent the impugned judgement would require no manner of interference by this revision court.

- (14) It is however noted that the present case is a very old one initiated in the year 2008. The first appellate court has disposed of the appeal vide the impugned judgement in the year of 2014. Therefore the revisionists are fighting in the courts of law since years together and about 15 years have already passed. It is also noted that regarding the petitioners this is the maiden incident of its nature during all this long years. Petitioners also possess receipts of their purchase which are exhibited in the trial, though as regards the contents thereof, the petitioners should have been more cautious as to whether the same contains necessary warranty/specifications of the concerned food article, which the petitioners store and use at the eatery they own.
- (15) Considering the facts and circumstances of this case as discussed in the previous paragraphs one may resort to the finding of the Hon'ble Supreme Court in the judgment of **T. Borai** as referred to earlier. Following the ratio and dictum therein, I find the present case to be a fit one wherein the relevant provisions of law can be invoked for reduction of punishment awarded to the petitioners. The said provision is as follows:-

“16A. Power of court to try cases summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of

1974), all offences under sub-section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.”

- (16) The sentence imposed upon the revisionist is modified by imposing fine of Rs. 7000/- each which shall be deposited within the period of 30 days from the date of this order in the trial court. On deposit of the afore stated fine amount, the bail bonds furnished by the petitioners shall be discharged.
- (17) With the afore stated order the revision is disposed of.
- (18) The revision being CRR 765 is allowed in part and the impugned judgment dated 03.10.2015 passed by the Ld. Additional District and Sessions Judge Bench –II, City Sessions Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 26 of 2014 affirming the judgment and order dated 17.01.2014 passed by the Learned Senior Municipal & Metropolitan Magistrate, Calcutta in Case No.1D/08 for commission of offence punishable under Section 16 (1) a (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954, is modified to the extent as directed above.

- (19)** Connected application being CRAN 10 of 2022 is also disposed of.
- (20)** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon usual undertaking.

(Rai Chattopadhyay,J.)