

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237

CRR-1940-2011 (O&M)
Date of Decision: 20.02.2024

Deepak Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.P. Singh, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 24.08.2011 passed by learned Additional Sessions Judge, Gurgaon vide which judgment of conviction dated 02.12.2009 passed by learned Chief Judicial Magistrate, Gurgaon in criminal complaint dated 09.12.2000 filed under Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter ‘PFA Act’) punishable under Section 16(1)(a)(i) of the PFA Act was upheld. The petitioner was sentenced vide order of sentence dated 05.12.2009 as under:-

Offence	Sentence
Section 16(1)(a)(i) of PFA Act	Rigorous imprisonment for 6 months and fine of Rs.1000/-, in default of which simple imprisonment of 1 month.

FACTUAL BACKGROUND

2. The facts, in brief, are that on 21.08.2000, the Government Food Inspector inspected the premises of the petitioner and found him to be in possession of 4 kgs of *dal urd chilka* for public sale. Thereafter, the Government Food Inspector drew a 600 gms. sample of the said dal. According to the report of the Public Analyst, Haryana, the sample was found to be infested with 90 living and 10 dead insects and declared unfit for human consumption. The sample was also found to be containing 20% weeviled grains and 60% damaged grains while the maximum limit as per the PFA Rules, 1955 is 3% and 5% respectively.

3. Upon finding a prima facie case, notice of accusation was served upon the accused, to which he pleaded not guilty and claimed trial. The prosecution examined 3 witnesses to prove its case. All incriminating evidence was put to the petitioner-accused, his statement recorded under Section 313 of the Cr.P.C. wherein he pleaded false implication and examined 1 witness in his defence.

4. On assessing all the material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 02.12.2009. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 24.08.2011. The sentence of the petitioner was suspended by this Court during the pendency of the present revision vide order dated 17.10.2011.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 02.12.2009 on merits

and restricts his prayer to modification of the order of quantum of sentence

to that of the sentence already undergone by the petitioner as has already undergone a period of 1 month 25 days of custody and is not involved in any other criminal activity.

6. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower Appellate Court and as such, he does not deserve any leniency.

OBSERVATIONS AND ANALYSIS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

8. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a

deterrent by making the accused realise the damage caused not only to the

victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under:-

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	24.08.2011 to 18.10.2011	1 month 25 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	24.08.2011 to 18.10.2011	1 month 25 days
5.	Actual undergone period	24.08.2011 to 18.10.2011	1 month 25 days
6.	Earned remission		5 days
7.	Total sentence including remission		2 months

10. A perusal of the judgment of conviction passed by the learned trial Court and the learned lower Appellate Court indicates no perversity in their findings and the same are based on correct appreciation of evidence available on record. Moreover, learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

11. The complaint in the present case was lodged on 09.12.2000 and the petitioner has been suffering the agony of protracted trial since the last about 23 years. Since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, he is not involved in any other case and out of the total sentence of 6 months in this case, he has undergone actual sentence of 1 month 25 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 6 months awarded to the petitioner is reduced to the period already undergone by him.

12. Consequently, the present revision is disposed of in the following terms:-

- (i) The judgment dated 24.08.2011 passed by learned Additional Sessions Judge, Gurgaon confirming the conviction of the petitioner is upheld, however, the order of sentence dated 05.12.2009 is modified to the extent that the sentence of rigorous imprisonment for 6 months along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him.
- (ii) The sentence of fine of an amount of Rs.1000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the increased amount of fine in the trial Court within one month from the date of receipt of certified

copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

20.02.2024

Rajeev (rvs)

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>No</i>