



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 12.12.2025

+ **CRL.A. 1398/2019**

FOOD INSPECTOR

.....Appellant

Through: Mr. Pradeep Gahalot, APP for State
with Mr.Devvrat Sharma and Mr.
Japneet Singh, Advocates

versus

ARUN KUMAR & ANR

.....Respondents

Through: Mr.Jatin Kumar and Mr.Manish
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal filed under Section 377 CrPC, the State (through Food Inspector) seeks setting aside of the order on sentence dated 02.04.2019 passed by the learned JMFC, Delhi in the proceedings arising in the context of trial held under Section 16(1)(a) read with Section 7 of Prevention of Food Adulteration Act, 1954 ("PFA Act") whereby the respondents were sentenced to undergo imprisonment till the rising of the court and further sentenced to pay a fine of Rs.25,000/- each in default whereof they were directed to undergo SI for a period of 15 days. Concededly, the respondents have not challenged the conviction.

2. Learned APP for the State while assailing the impugned order, contends that the trial court committed grave illegality in not sentencing the respondent to the minimum punishment as provided under Section 16 PFA



Act, 1954 and rather sentenced the respondents while taking recourse to the equivalent provision being Section 52 of the Food Safety and Standards Act, 2006.

3. Learned counsel for the respondents, while defending the impugned order, states that under the Food Safety and Standards Act, 2006, (“FSS Act”) there is no minimum and noting the facts therein, the trial court has rightly sentenced the respondents till the rising of the court. He further submits that the trial proceeded against the four accused persons. While accused No.1 stood acquitted and accused No.4 is a company. He also submits that the sentence of fine has already been complied with and the entire fine amount already stands paid which finds mentioned in the impugned order itself.

4. The sole issue arising in the present appeal is whether the trial court, while sentencing the respondents, could have taken recourse to the provisions of the Food Safety and Standards Act, 2006, when the proceedings before it arose out of a complaint under the PFA Act.

5. The offence of ‘misbranding’ under the PFA Act was punishable under Section 16(1)(a) of the PFA Act. The same prescribed for a minimum imprisonment period. The new FSS Act came into force on 29.07.2010 and it repealed the old act. Section 52 prescribes penalty for manufacture for sale or storing or selling or distributing or importing misbranded food for human consumption. Pertinently, no imprisonment has been prescribed, only a monetary penalty.

6. It is settled law that when an amendment creates new offences or enhances punishment for a particular type of offence, the prohibition of *ex-post facto* law under Article 20(1) is attracted. However, when the



punishment is reduced, the rule of beneficial construction requires that the benefit of the same be extended to the accused.

7. In Nemi Chand v. State of Rajasthan in **Criminal Appeal No.214-215/2016**, the Supreme Court held that the trial court shall be within its right to extend the benefit of reduced punishment under the subsequent act. The relevant observations are as under:-

“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.”

8. The decision is reiterated in A.K. Sarkar and Company and Another v. State of West Bengal and Others reported as **(2024) 10 SCC 727**.
9. As per the decisions noted hereinabove, this Court finds that the trial court was justified in granting the benefit of a lesser punishment under the Food Safety and Standards Act, 2006. The respondents have already complied with the sentence by paying the fine and have not challenged their conviction.
10. In view of the above, I find no ground on merit in the present appeal. Accordingly, the same is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 12, 2025

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