

Gurmukh Singh and Others

Vs

The State of Punjab

Criminal Appeal Nos. 51 to 58 of 1969

(P. Jagmohan Reddy, D.G. Palekar JJ)

14.12.1971

JUDGMENT

P. JAGANMOHAN REDDY, J. -

1. These appeals are by special leave against the judgment of the High Court in a taken-up case under Section 439 of the Code of Criminal Procedure by which the sentence of fine imposed by the Judicial Magistrate, First Class, Patiala for an offence under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (hereinafter called 'the Act') was enhanced to six months' rigorous imprisonment and a fine of Rs. 1000, in default the respective appellants were ordered to further undergo simple imprisonment of 11/2 months. In all these cases the appellants were charged under Section 16(1)(a) of the Act for selling without licence articles of food, such as, milk, sweetmeats, tea, curd, biscuits, chappati, ice-cream, dal, bhajji. A separate charge was framed against each of the appellants on respective dates and on the same day they pleaded guilty to the charge and were forthwith sentenced to pay a fine. In Appeals 51 of 1969 the appellants were fined Rs. 30 each on August 10, 1967; in Appeals 52 and 55 and 59 of 1969 they were sentenced to pay a fine of Rs. 50 each on August 19, 1967, and in Appeal 57 of 1969 a sentence of Rs. 40 was imposed on June 26, 1967. In default of payment of fine in all these cases the appellants were directed to further undergo one month's rigorous imprisonment. The reason for imposing the light sentences in all these cases except in Appeal 57 of 1969 was that the appellants had made "voluntary confessions" while in Appeal 57 of 1969 the reason given was firstly the spontaneous nature of the confession which showed that the accused was in repentant frame of mind and secondly that he was a petty shop-keeper and a heavy punishment may prove harsh.

2. The High Court enhanced the sentence because under Section 16(1) of the Act the appellants were punishable with imprisonment for a term which may not be less than six months but which may extend to six years and with a fine which may not be less than Rs. 1000, and though a discretion was given to the Court of impose a lesser sentence under the proviso to the said subsection if it is satisfied that there is "any adequate and special reasons", the Magistrate had failed to give valid reasons for giving lenient sentences. The high Court further observed that whether there existed some adequate or special reasons is a question of fact in each case, but in the cases before it not reasons much less any adequate and special reasons had been mentioned in the judgment of the trial Court for imposing a lesser sentence as required by the proviso. In this view the orders of the trial Court were held not to have complied with requirements of the proviso for imposing a lesser sentence.

3. It was contended on behalf of the appellants before the High Court that the appellants were found selling articles of food without a licence and not adulterated articles of food and, therefore, a lesser

sentence may be imposed on them. This contention was rejected because in the view of the learned Judge selling of articles of food without a licence as required under sub-rule (5) of Rule 50 of the Prevention of Food Adulteration Rules, 1955, is no less serious than selling adulterated articles of food. It is so because before granting a licence for manufacture, stock or exhibition of any of the articles of food in respect of which a licence as required, the licensing authority shall inspect the premises and satisfy itself that it is free from sanitary defects, and the applicant for the licence has to make such alterations in the premises as may be required by the licensing authority for the grant of a licence. When a licence is granted the licensee must observe the conditions of the licence such as preparing articles of food under hygienic conditions and keeping them covered in clean containers protected against dust, disease-bearing flies and other noxious elements.

4. Before the High Court the appellants had questioned the legality of the conviction and urged that they could do so under Section 439(6) of the Code of Criminal Procedure. While admitting that such a right existed, it was observed that since the appellants had pleaded guilty to the charge they were rightly convicted. The submission that under the provisions of Sections 251A, 252 and 253 of the Code of Criminal Procedure the procedure to be followed was that prescribed for warrant cases. If so, that procedure has not been followed because the magistrate did not examine the witnesses for the prosecution before framing the charge and therefore the trial was vitiated. This submission also was rejected on the ground that the procedure prescribed under Section 254 of the Code of Criminal Procedure was applicable under which the Court can at any previous stage of a case, if it is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XXI, which such magistrate is competent to try, frame the charge. Even otherwise it was observed that at the most the omission to examine the accused before framing a charge, is an irregularity which is curable under Section 537 of the Code of Criminal Procedure and since no prejudice has been caused to them the conviction is not vitiated.

5. Before us one of the grounds urged is that the High Court had not taken into consideration the prejudice caused to the accused in not giving them an opportunity to plead that their case was not a case where they had not obtained a licence at all, but had not renewed their licence which under the law they could renew on a date subsequent to the expiry of the licence. The learned Advocate for the State contested this allegation firstly because the appellants had not while pleading guilty mentioned these facts, and secondly that under Rule 4(b)(iii) of the Prevention of Food Adulteration (Punjab) Rules, 1958, even if the appellant had taken licences those would expire on March 31 of the succeeding year and since on the date they were charged the appellants had not admittedly renewed the licence they were guilty of the offence of selling articles of food without a licence, as such there is no warrant for the submission that the convictions are bad or that the sentences imposed are illegal. Apart from the legality of the convictions which is challenged, it is contended by the appellants that the enhancement of the sentence was not justified.

6. It is alleged in the special leave petition that the appellants were carrying on business of selling articles of food under a licence since a long time and that they were renewing their licences each year and had intended to do so even after the financial year 1967-68, but for the fact that the Licence Inspector which used to visit the appellants' shops annually and renew the licences had not that year renewed them in time because there was a proposal to increase the licence fee. For this reason they could not renew their licence in time. It is therefore urged that this plea could have been taken if the witnesses had been examined before a charge was framed, but when in fact a charge was framed and they were asked to plead immediately there was no opportunity for them to put forward the reason for not renewing their licence in time.

7. The learned Advocate for the appellants has placed before us certified copies of the licences in each of these case which are in Form B issued under Rule 4(c) and in which it is categorically state that the licence shall be in force for the financial year and subsequently for the financial year in which it is renewed. It may also be mentioned that the renewal each year is endorsed on the licence itself so that there is no question of any fresh licence being granted every year or the licensees submitting plans of altering their premises every year. There is ample power under the Act when a licence is granted to a dealer, by rules under Section 23(1)(c) of the Act to maintain control over the production, distribution and sale of any article or class of food which the Central Government may by notification specify in this behalf including the registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such articles or class of articles : (see Rule 9 of the Prevention of Food Adulteration Rules, 1955). Rule 4 of the Punjab Rules, which is relevant for the purpose of this submission is as follows :

a) The local authority or any officer authorised by it by order in writing in this behalf shall be the licensing authority in its local area for the purposes of issuing licences for the manufacture for sale, for storage, for the sale or for the distribution of the articles of food in respect of which a licence is necessary under the prevention of food Adulteration rules, 1955.

b) (i) An application for licence to manufacture for sale or store, sell or distribute any article of food for which licence is required shall be made in Form A to the licensing authority and shall be accompanied by a fee of Rs. 5 in the case of a wholesaler and Rs. 2 in the case of a retailer.

(ii) The fee shall be credited to the local authority within whose jurisdiction the premises are situated.

(iii) The validity of every licence shall terminate on the 31st day of March immediately succeeding the date of issue.

(iv) Any person whose application for a licence has been rejected shall have a right of appeal to the District Magistrate.

(C) A licence shall be issued in form B."

8. It is contended that the rules nowhere specifically provide for the time within which the licence once granted has to be renewed each year after the date of its expiry, nor is there anything in the Punjab Rules which provides for a renewal before the expiry of the licence, as such it is quite likely that the authorities concerned may not entertain an application for renewal if presented before the expiry of the licence and may direct him to apply on the expiry of the licence, leaving him only an option to renew it on April 1 every year, which may in most cases not be possible either due to the volume of applications or some other cause for which the licensee may not be responsible. This contention, in our view, is not valid, because under Rule 51 of the Central rules "A licence shall, unless sooner suspended or cancelled, will be in force for such period as the State government may prescribe : Provided that if application for a fresh licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application." Reading this rule with Rule 4 of the Punjab rules the plea of the appellants that because they have not been given an opportunity to put forward their respective pleas, they were prejudiced and hence their conviction is illegal will not avail them because firstly not only did they not renew their licence before the expiry of the licence but they had not even applied for a renewal

by the time they were charged, which in one case is three months and in other cases is five months. The conviction of the appellants for selling, storing or preparing articles of food without a licence cannot therefore be assailed.

9. On the question of the sentence, it is not denied that the offence with which each of the appellants was charged was committed after the amendment of sub-section (1) of Section 16 of the Act under which the sentence has to be a minimum of six months' rigorous imprisonment and a fine of Rs. 1000, unless it is covered by the proviso to that sub-section in which case a lesser sentence can be given for adequate and special reasons to be mentioned in the judgment. The appellants were charged for an offence under Section 16(1)(a)(ii) where "any person whether by himself or by any other person on his behalf ..... manufactures for sale, or stores, sells, or distributes any article of food (i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) Authority in the interests of public health; (ii) other than an article of food referred to in sub-clause (i) in contravention of any of the provisions of the Act or of any rule made thereunder." It is not the case of the prosecutions that the appellants sold or stored any adulterated or misbranded or prohibited articles of food. Even in such cases if the offence is with respect to an article of food which is adulterated under sub-clause (i) of clause (1) of Section 2 or misbranded under sub-clause (ix) of Section 2 a lesser sentence under the proviso can be awarded. As pointed out in Jagdish Prasad alias Jagdish Prasad Gupta v. State of West Bengal ((1972) 1 SCC 326 : 1972 SCC (Cri) 63) the, offenses under the Act being anti-social crimes affecting the health and well-being of our people, the Legislature having regard to the trend of courts to impose in most cases only fines or where a server sentence was called for, a more drastic step was taken by it in prescribing a minimum sentence and a minimum fine to be imposed even for a first offence. The reason for the Legislature to make the exception is not that the offences specified are not considered serious but the gravity of the offence having regard to its nature can be less if there are any special or adequate reasons. In our view, though Offence for adulteration of food must be severely dealt with, no doubt depending on the facts of each case which cannot be considered as precedents in other cases, in this case having regard to the fact that the offence is only one for non-renewal of a licence within a reasonable time, and the appellants as pointed out by the trying Magistrate were only party traders, a mitigation in the sentence is justified. No doubt, as the High Court points out, the reason given by the trial Court that the accused pleaded guilty and were repentant may not be adequate. But in the special circumstances pointed out by us a lesser sentence is called for. In view of the fact that all the appellants have already served one week's sentence, we think interests of justice would be served if the sentence of six months' imprisonment and fine of Rs. 1000 is reduced to a period of imprisonment already undergone by each of them, and to pay a fine of Rs. 250 and in default of which they are directed to undergo a further period of imprisonment for one month. In each of these appeals this sentence is substituted for the sentence awarded by the High Court and the appeals are accordingly allowed to this extent.

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