

Ishar Das

Vs

The State of Punjab

Criminal Appeal No. 64 of 1969

(J. M. Shelat, H. R. Khanna JJ)

31.01.1972

JUDGMENT

KHANNA, J. -

1. Ishar Das appellant was convicted by the judicial magistrate, 1st class, Patiala for an offence under Section 7(1) of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954) read with Section 16(1)(a)(i) of that Act and was ordered to furnish bond under Section 4 of the Probation of Offenders Act. Bedi, J., of the Punjab and Haryana High Court during the course of the inspection of the Court of trial magistrate, took the view that an improper order had been made in the above case by the magistrate. The High Court thereupon of its own motion directed that a notice be issued to the appellant. The case was thereafter posted before Bedi, J. The learned judge referred to the fact that a minimum sentence of imprisonment for a period of six months and a fine of Rs. 1,000 had been prescribed by Section 16 of the Prevention of Food Adulteration Act. It was also observed that offences under the Prevention of Food Adulteration Act were against the public and called for deterrent punishment. Order was consequently made that the appellant instead of being released on his furnishing a bond, should be sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 1,000. In default of payment of fine, the appellant was ordered to undergo simple imprisonment for a further period of one and a half month. The appellant thereafter filed this appeal by special leave to this Court. At the time the leave was granted, it was ordered that the appeal would be limited to the question of sentence only.

2. The prosecution case is that on August 1, 1966, the Food Inspector, Patiala took a sample of two cups of ice cream from the appellant from Phul cinema canteen on payment of three rupees. Part of the ice cream was sent for analysis to Public Analyst, Chandigarh. The analyst reported that the ice cream was adulterated, being deficient in milk fat contents to the extent of 77 per cent. and total solid contents to the extent of 7 per cent. The appellant was thereafter prosecuted on the allegation that he had committed an offence under Section 7(1) of the Prevention of Food Adulteration Act read with Section 16(1)(a)(i) of that Act. Charge was framed on that count against the appellant and he pleaded guilty to the same. The trial magistrate took the view that the appellant, who was aged about 20 years, was in a repentant mood. The appellant was, in the circumstances, directed to furnish bond under Section 4 of the Probation of Offenders Act. The bond was thereafter furnished by the appellant. On revision, the sentence was altered by the High Court as mentioned above.

3. In appeal Mr. Kohli on behalf of the appellant has referred to the matriculation certificate which was produced on behalf of the appellant and according to which the date of birth of the appellant was May 8, 1947. It is argued that as the age of the appellant on the date of his conviction by the trial magistrate was less than 20 years, the appellant was rightly given the benefit of the provisions

of the Probation of Offenders Act. The High Court, according to the learned counsel, was in error in awarding the sentence of imprisonment and fine to the appellant. As against that Mr. Mahajan on behalf of the respondent has contended that the provisions of the Probation of Offenders Act cannot be invoked by an accused convicted of an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act. Mr. Mahajan has not disputed that the age of the accused was less than 20 years on the date of his conviction by the trial magistrate, but, according to the learned counsel, that fact could make no difference.

4. There is, in our opinion, considerable force in the stand taken on behalf of the appellant by his learned counsel and we find ourselves unable to accede to the submission made on behalf of the respondent State. The Probation of Offenders Act received the assent of the President on May 16, 1958 and was published in the Gazette of India, dated May 19, 1958. According to sub-section (3) of Section 1 of that Act, it shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different before the sample of ice cream was taken from the appellant has not been disputed before us. Section 3 of the Act gives power to the court to release certain offenders after admonition. According to that section, where any person is found guilty of having committed an offence punishable under Section 379 or section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more that two years, or with fine, or with both under the Indian penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4, release him after due admonition. The relevant part of sub-section (1) of Section 4 and sub-section (1) of Section 6 of the Act read as under :

"4(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour".

"6(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing go".

The Probation of Offenders Act, as observed by Subba, Rao, J. (as he then was) speaking for the majority in the case of Rattan Lal v. State of Punjab is a milestone in the progress of the modern

liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years, an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Section 3 and 4 of the Act.

5. It is manifest from plain reading of sub-section (1) of Section 4 of the Act that it makes no distinction between persons of the age of more than 21 years and those of the age of less than 21 years. On the contrary, the said sub-section is applicable to persons of all ages subject to certain conditions which have been specified therein. Once those conditions are fulfilled and the other formalities which are mentioned in Section 4 are complied with, power is given to the court to release the accused on probation of good conduct. Section 6 of the act deals specifically with persons under twenty-one years of age convicted by a court for an offence punishable with imprisonment other than imprisonment for life. In such a case an injunction is issued to the court not to sentence the young offender to imprisonment. Unless the court is of the view that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to release him after admonition under Section 3 or on probation of good conduct under Section 4 of the Act.

6. Sub-section (1) of Section 16 of the Prevention of Food Adulteration Act provides the punishment which may be awarded to a person found guilty of the various offences under that Act. According to the above sub-section, such a person, in addition to a penalty to which he may be liable under Section 6, with which we are not concerned, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years and with fine which shall not be less than one thousand Rupees. There follows a proviso, according to which the court may, in case of some of the offences under the act, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.

7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of Rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of Section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in law for the time being in force". The above non obstante clause points to the conclusion that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are : (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon

during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behaviour. Sub-section (1) of Section 6 of the above-mentioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or 4 of the act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life. He shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.

8. According to Section 18 of the Probation of Offenders Act, the aforesaid Act shall not affect the provision of sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (Act 2 of 1947). The last mentioned provision, namely, sub-section (2) of section 5 of the Prevention of Corruption Act, prescribes, in the absence of special reasons, a minimum sentence of imprisonment for a term of not less than one year for those convicted under Section 5 of that Act. If the object of the legislature was that the provisions of the Probation of Offenders Act should not apply to all cases where a minimum sentence of imprisonment is prescribed by the statute, there was no reason to specify sub-section (2) of section 5 of the Prevention of Corruption Act in Section 18 of the Probation of Offenders Act. The fact that out of the various offences for which the minimum sentence is prescribed, only the offence under sub-section (2) of Section 5 of the Prevention of Corruption Act has been mentioned in Section 18 of the Probation of Offenders Act and not the other offences for which the minimum sentence is prescribed, shows that in case of such other offences the provisions of Probation of Offenders Act can be invoked.

9. The provisions of Probation of Offenders Act, in our opinion point to the conclusion that their operation is not excluded in the case of persons found guilty of offences under the Prevention of Food Adulteration Act. Assuming that there was reasonable doubt or ambiguity, the principle to be applied in construing a penal act is that such doubt or ambiguity should be resolved in favour of the person who would be liable to the penalty (see Maxwell on Interpretation of Statutes, P. 239, 12th Edition). It has also to be borne in mind that the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act. As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of the provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz., Prevention of Food Adulteration Act. Indeed, as mentioned earlier, the non obstante clause in Section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force. We may also in this context refer to the decision of this Court in the case of *Ramji Missir v. State of Bihar* (1963 Supp 2 SCR 745 : AIR 1963 SC 1088 : (1963) 2 Cri LJ 173.), wherein this Court while dealing with the Probation of Offenders Act observed that its beneficial provisions should receive wide interpretation and should not be read in a restricted sense.

10. Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed. The courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act. As regards persons under 21 years of age, however, the policy of the law appears to be that such a person in spite of his conviction under the Prevention of Food Adulteration Act, should not be deprived of the advantage of Probation of Offenders Act which is a beneficent measure and reflects and incorporates the modern approach and latest trend in penology.

11. Mr. Mahajan has argued that if the trial magistrate took the view that the accused-appellant in view of his age should not be sentenced to undergo imprisonment, the learned magistrate should still have imposed the sentence of fine as prescribed by sub-section (1) of Section 16 of the Act. In this respect we are of the opinion that a sentence of fine also carries with it the consequence of imprisonment in case the accused fails to pay the fine. As the object of Probation of Offenders Act is to avoid imprisonment of the person covered by the provisions of that Act, the said object cannot be set at naught by imposing a sentence of fine which would necessarily entail imprisonment in case there is a default in payment of fine.

12. The High Court in the present case did not consider the provisions of the Probation of Offenders Act and its attention does not appear to have been invited to the mandatory provisions of Section 6 of that Act. In view of the fact that the accused was less than 20 years of age and appeared to be in a repentant mood, the trial court took action under Section 4 of the Probation of Offenders Act. The High Court, in our view, was in error in interfering with the above order of the trial magistrate. We, therefore, accept the appeal, set aside the order of the High Court and restore that of the trial magistrate.

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