

Ram Parkash

Vs

The State of Himachal Pradesh

Criminal Appeal No. 169 of 1969

(A. N. Grover, M. H. Beg JJ)

14.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Delhi High Court (Himachal Bench).
2. The facts may be briefly stated. By means of a complaint, dated January 16, 1968, made by the Food Inspector, proceedings were initiated against the appellant under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act). It was alleged that on November 30, 1967, the appellant sold to Suresh Chand, Food Inspector, a sample which on analysis was found to be a sample of mixed Cow's and buffaloe's milk. It was sent for report to the Public Analyst, Chandigarh. According to the report of the Public Analyst, the sample contained milk fat 5.4% and milk solids (not fat) were found in the percentage of 3.6. Admittedly that was much lower than is prescribed for a cow's or a buffaloe's milk.
3. At the appropriate stage a charge was framed against the appellant and in the charge-sheet it was stated that the sample taken from the appellant was found adulterated and thereby he had committed an offence punishable under Section 16(1)(a) of the Act. On August 14, 1968, the charge was read out to the appellant and he stated that he heard and understood it and it had been explained to him. On being asked whether he pleaded guilty to the charge the appellant answered in the affirmative. The Magistrate thereupon made an order sentencing the appellant to a term of six months' rigorous imprisonment and a fine of Rs. 200/-; in default of payment of fine he was to suffer rigorous imprisonment for a further period of two months.
4. The appellant filed an appeal before the Court of Sessions Judge. The judgment does not clearly show as to what points were agitated before the Sessions Judge but it seems that it was largely on the question of sentence. The appeal was rejected. The matter was taken in revision before the High Court. It is stated in the judgment of the High Court that the conviction of the appellant was not seriously questioned before it, though a causal suggestion had been thrown by the counsel for the appellant that the plea of guilty was perhaps obtained in dubious circumstances. It was observed that such a suggestion had not been sought to be substantiated from the record. Nor had any serious attempt been made to obtain an acquittal on merits. The only submission which was really pressed before the High Court was that the sentence was too severe and should be reduced. In that connection an alternative argument was raised to persuade the Court to give the benefit of the Probation of Offenders Act of 1958 (hereinafter called the Probation Act) to the appellant. It was observed by the High Court that the provisions of the Act were of such a nature that the matter

could not be treated lightly. As regards the benefit of the Probation Act it was observed that Section 4 thereof was not meant to cover cases of the present nature. Moreover it was for the Trial Court to take action. Without expressing any opinion as to whether Section 4 was applicable the Court unhesitatingly expressed its view that no action should be taken in a case of this kind under the Probation Act. The Revision was dismissed. No notice for enhancement of the sentence relating to fine was issued although the minimum fine that had to be imposed under the Act was Rs. 1,000/-. The reason for not doing so was that the State had not moved for enhancement of the sentence of fine.

5. The learned counsel for the appellant has sought to raise a number of points before us. These points are :

- (1) That Rule 44(k) framed under the Act as amended was not placed before the Parliament in accordance with the provisions of Section 23, sub-section (2) of the Act.
- (2) No offence had been made out for contravention of Rule 44(k) of the Rules.
- (3) The charge as framed was defective and it prejudiced trial of the appellant.
- (4) The report of the Public Analyst was not clear and ought not to have been accepted.

None of these points was either raised or agitated before the courts below and we see no reason or justification in entertaining the same for the first time here in this appeal.

6. The only question which requires consideration is whether the provisions of the Probation Act could be applied to the appellant. The matter is no longer res integra and this Court has in a case (Ishar Das v. The State of Punjab) (Cri. A. No. 64 of 1969, dt. 31-1-72) under the Act laid down that benefit could be given of the provisions of the Probation Act to persons who are found guilty of offences under the Act. Counsel for the appellant agrees that since the age of the appellant was over 21 years, namely, 26 years his case could fall only under Section 4 of the Probation Act. Sub-section (1) of Section 4 of that Act is in the following terms :

"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 :

#Provided###

7. It was, however, observed in that case that adulteration of food is a menace to public health. The 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 Act in the case of persons above 21 years of age found guilty of offences under the

Act. Following that view, we consider that this is not a fit case in which the provisions of Section 4 of the Probation Act should be applied. Our attention has been drawn to certain decisions which deal with a different point altogether, namely, the meaning of the word 'may' under Section 11 of the Probation Act. These decisions are of a different nature altogether and involve different points. But even according to those decisions the benefit that is to be given under Section 3 or Section 4 of the Probation Act is subject to the limitations laid down in those provisions. These decisions do not support the proposition that the word 'may' in Section 4 of the Probation Act means 'must'. On the contrary, it has been made clear in categorical terms in these judgments that the provisions of the Probation Act distinguish offenders below 21 years of age and those above that age and offenders who are guilty of committing 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, 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 Sections 3 and 4 of the Acts. [Rattan Lal v. State of Punjab, ((1964) 7 SCR 676 : AIR 1965 SC 444 : (1965) 1 Cri LJ 360) and Ramji Missir and Another v. The State of Bihar. (1963 Supp 2 SCR 745 : AIR 1963 SC 1088 : (1963) 2 Cri LJ 173)

In the result, we find no merit in this appeal which fails and is dismissed. The appellant is on bail. He will surrender to his bail bonds to serve out the rest of the sentence.

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