

State of Punjab

Vs

Mithu Singh

Criminal Appeal No. 539 of 1987

(B. C. Ray, K. Jagannatha Shetty JJ)

19.10.1987

ORDER

1. Special leave granted. Arguments heard.

2. The question raised is as to the application of the Probation of Offenders Act, 1958 to the accused who has been convicted under Prevention of Food Adulteration Act. The accused-respondent was convicted under Section 16(1)(a)(i) of the Food Adulteration Act to undergo RI for six months and to pay a fine of Rs. 1000 in default to further undergo imprisonment for one month. The appeal preferred by the accused was dismissed by the Sessions Judge. Upon revision the High Court of Punjab and Haryana observed thus :

Admittedly the petitioner was below 21 years of age at the time of commission of offence. He is not a previous convict. He is facing the trial since long and is on bail since December 4, 1981 under orders of this Court. I do not think any useful purpose will be served sending the petitioner to jail again. I feel it is a fit case where awarding of minimum sentence prescribed under the law should be dispensed with. Although in view of Section 20-AA of the Prevention of Food Adulteration Act now the benefit of Probation of Offenders Act cannot be given to the petitioner but the offence in this case was committed long time back when the courts had the power in appropriate cases to release the offenders on probation.

3. So stating the High Court suspended the sentence and ordered that the accused be released on probation on his entering into a bond of Rs. 3000 with one surety in the like amount for a period of one year to the satisfaction of the trial court.

4. The High Court in our view, has committed a serious error in going against the mandate of Section 20-AA of the Prevention Food Adulteration Act. Section 20-AA reads :

Nothing contained in the Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure, 1973 shall apply to a person convicted of an offence under this Act, unless that person is under 18 years of age.

5. It is clear from these provisions that Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure shall not apply to a person convicted of an offence under the Prevention of Food Adulteration Act, unless the person is under 18 years of age. The High Court, however, extended the benefit of the said provisions to the accused since he committed the offence before the said amendment.

6. This is undoubtedly a wrong approach. The question is about the application of the provisions of the Probation of Offenders Act or Section 360 of the Code of Criminal Procedure to a given accused. It is a benefit to be conferred or not to be conferred on the accused at a given point of time. It has nothing to do with the date of the offence committed by the accused. When Section 20-AA expressly excludes the application of Probation of Offenders Act or Section 360 of the Code of Criminal Procedure to the accused convicted of an offence under the Prevention of Food Adulteration Act, the court shall not apply those provisions to such accused after Section 20-AA was brought into force.

7. With these clarifications, we dispose of the appeal without disturbing the order made by the High Court since the accused has already been released on probation on his entering into a bond.

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