

Vinod Kumar

Vs

State of Haryana

Criminal Appeal No. 239 of 1988

(A.P. Sen, L.M. Sharma JJ)

11.04.1988

ORDER

1. In this special leave petition notice was confined to sentence only. We granted special leave and heard learned counsel for the parties on that question.
2. The short question is whether the present case falls within the purview of Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and therefore the appellant should be visited with the lesser punishment of rigorous imprisonment for a period of three months, instead of the minimum sentence of six months as provided in the main connecting provision in Section 16(1). That depends on whether there are any 'adequate and special reasons' within the meaning of the proviso. It appears that the father of the appellant Shah Das is a petty kirana merchant having a shop near the bus stand at Panipat. In answer to the charge of selling adulterated kutti chillies to the Government Food Inspector on January 18, 1983, his plea in defence was that he was a student only who had completed his 11th class and had gone to the shop to deliver meals to his father who had gone for a while to the Sales Tax Office and during his absence he was busy studying his books at the shop when the Food Inspector came and took a sample of the foodstuff. From the testimony of Dr. R. K. Tandon, Medical Officer, Civil Hospital, Panipat who accompanied the Food Inspector, it is amply clear that neither the licence nor the cash memo or the bill was asked for as to know the name of the shop nor any documents inspected to ascertain as to whether the appellant was the owner of the shop. When asked whether the appellant had told them that he was only a student studying privately for his M.A. and had come to the shop bringing the meals for his father, he avoided giving a straight answer saying that he did not remember. On these facts it seems to us that the appellant was not in charge of the shop on a permanent basis and therefore the case is covered by the ambit of the proviso to Section 16(1) and the appellant is entitled to the benefit of the lesser punishment.
3. The appeal is accordingly partly allowed. While upholding the conviction of the appellant under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, we modify the substantive sentence of rigorous imprisonment for six months as awarded by the courts below to one of rigorous imprisonment for three months but enhance the sentence of fine of Rs. 1000 to Rs. 3000, or in default to suffer rigorous imprisonment for a period of three months.
4. Subject to this modification, the appeal fails and is dismissed.

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