SUPREME COURT OF INDIA

Mithilesh

Vs.

State of NCT of Delhi

Crl.A.Nos.1570 of 2010

(Dr.B.S.Chauhan and A.K.Sikri JJ.)

28.05.2014

ORDER

A.K. SIKRI,J.

1. The appellant was running a small kirana shop at 96-A, MIG Flats, Opposite G.T.B. Hospital, G.T.B. Enclave, Shahdara, Delhi. On 11.3.1993, some officials from the Food Adulteration Department visited his shop which was being run under the name and style M/s Mithlesh General Store. They lifted a sample of red chilly powder (Lal Mirch) from an open container of 2 kg. capacity from the shop of the appellant. The sample was weighed on scale in a brown sheet and divided into three parts. The entire sample collected was of 450 gms. It was sent for examination by Public Analyst. The report dated 7.4.1993 was submitted by the Public Analyst which, inter alia, affirmed that sample adulterated because it contained salt as an adulterant. Relevant portion of the report is as under: Moisture-8.22% Total ash " 7.44% A insoluble in dil.Ncl. - 0.34% Non Voletile other extract " 20.97% Crude fibre " 19.25% Test for coaltar dye " negative Test for starch " negative Insect & Fungus " nil Microscopy-Chillies structures seen. Test for sodium chloride " positive Sodium chloride (common salt) " 2.54%.

2. Confronted with the sample, the appellant exercised his right under Section 13(2) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'PFA Act'). Accordingly, another sample was sent for examination which was examined by the

Director of the Central Forensic Laboratory (CFL). In its report dated 30.6.1993 even this sample was found to be adulterated on two counts, namely:

(a) Total ash content exceeds the maximum specified limit of 8.0% by weight.

(b) It is not free from the presence of sodium chloride. Total ash was found to be 9.72% by weight and Sodium Chloride content was 2.5% by weight. On the basis of the aforesaid reports, a complaint was filed with the Metropolitan Magistrate, New Delhi and trial was conducted against the appellant. Learned Metropolitan Magistrate found that the appellant had violated the provisions of Section 2 (ia)(a)(m) and therefore, he was found guilty for the offence punishable under Section 7 read with Section 16(1) of the PFA Act. Vide order dated 6.4.2002, the appellant was sentenced to undergo rigorous imprisonment for one year and also was also imposed a fine of Rs.3000/-; in default of payment of fine, to undergo simple imprisonment for three months.

3. Aggrieved, the appellant preferred the appeal against such judgment which was dismissed by the Additional Sessions Judge, New Delhi vide order dated 30.7.2002. The appellant thereafter filed Revision Petition in the High Court of Delhi. This Criminal Revision Petition has also been dismissed by the High Court vide judgment and order dated 4.11.2009 thereby maintaining the conviction. However, in so far as the quantum of sentence is concerned, the High Court has reduced the same from RI of one year to a period of three months RI, which is the minimum sentence. The reasons for reducing the sentence has been given by the High Court in paragraph 25 of its judgment.

4. Learned counsel for the appellant submitted that in one sample analysis by the Public Analyst, only salt was found as adulterant which was common in such cases as the appellant was a petty shopkeeper who had kept the things in open and there was every chance of spilling of this salt into the container which contained red chilly powder. He further submitted that even the total ash was found to be marginally higher, that is, 9.72% by weight as against maximum specified limit of 8% by weight. He also argued that in view of this, it was a fit case where the sentence should be reduced to the period already undergone. More so, even the incident happened way back in the year 1993.

5. Though, an attempt was made to argue that the sample was not adulterated, it is difficult to accept the said submission. Definition of adulterated as contained in Section 2(ia)clauses (k) and (m) thereof are relevant. Section 2 (ia)(k) reads as under: (k) if the article contains any prohibited preservative of permitted preservative in excess of the prescribed limits;

Section 2(ia)(m) reads as under :

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Clause (m) postulates a situation where the articles fall below the prescribed standard even if it is not injurious to health. It is clear from this provision that if salt is added to chillies even if it would not be rendered injurious to health, nevertheless the quality/purity of the article would fall below the prescribed standards/its constituents as prescribed in A.05.05.01 limit. It would be adulterated. Having regard to the aforesaid provisions, it is clear that an article of food may be adulterated once it does not meet the specifications and exceed the limit prescribed under the PFA Act. As pointed out above, the presence of salt, that is , Sodium Chloride by 2.5% weight as well as presence of total ash exceeding the prescribed limit is sufficient to hold that the sample drawn was adulterated, even if one was to proceed on the basis that mere addition of common salt to the chilly powder did not render it injurious to health. The High Court in support of its aforesaid conclusion has referred to various judgments and we are in full agreement with the view taken by the High Court on this count. Faced with the aforesaid position, the main emphasis of the learned counsel for the appellant was for showing some more leniency by reducing the sentence to the one already undergone. It is not in dispute that the sentence of R.I. 3 months, awarded by the High Court, is the minimum prescribed in law. No doubt, as per the provisions which were prevailing at the relevant time, it was still permissible for the court to reduce it to below minimum, by giving special reasons. We find that the High Court has already shown leniency by reducing the sentence from RI one year to RI three months. While doing so, the High Court has given the following reasons:

24. However, on the quantum of sentence, this Court has taken due regard of the fact that the petitioner herein was a petty shop keeper,. Matter relates to the year 1993 i.e. dating back to sixteen years; petitioner has suffered incarceration of about 12 days out of the period of sentence of one year which had been awarded to him. There is no overemphasizing the fact that speedy trial which is the essence of justice has been lost. The Supreme Court in Braham Das vs. State of Himachal Pradesh AIR 1988 SC 1789 had held that 8 years having been lost, where part of the sentence had been undergone, the petitioner had been sentenced to the period already undergone by him. In Veer Singh Chauhan vs. State of Delhi 1994 (2) CCC 253, the revision had come up for hearing after seven years; the court reduced the sentence to the one already undergone i.e. of a period of 3 months.

25. In the instant case, the offence relates to the year 1993. The nature of offence i.e. the sample having been found to be adulterated in terms of Section 2 (ia)(m); the period of 12 days of incarceration already undergone by the petitioner who would as on date be about 47 years of age, he having rooted himself in society, the ends of justice would be met if the sentence is reduced from RI one year to a period of RI three months. No modification is made in the fine which has been imposed.

6. We are of the view that no further benevolence can be shown to the appellant, more so, when it is a case of food adulteration. There is no special circumstances which may warrant reducing the sentence below the minimum. The appeal is accordingly dismissed. The appellant is directed to surrender within four weeks to serve the remaining sentence, failing which the Chief Judicial Magistrate, New Delhi shall take the appellant into custody and send him to jail to serve out the remaining sentence.