[2025] 6 S.C.R. 471 : 2025 INSC 703

# Nagarajan & Anr.
# v.
# The State of Tamil Nadu

(Criminal Appeal No. 1390 of 2025)

15 May 2025

**[Dipankar Datta* and Manmohan , JJ.]**

## Issue for Consideration

Whether the benefit of the provisions of the Probation of Offenders Act, 1958 can be granted to the appellants; if the answer to the aforesaid issue is in the negative, can the reduced sentence that the Food Safety and Standards Act, 2006 Act envisages be imposed on the appellants instead.

## Headnotes†

**Prevention of Food Adulteration Act, 1954 – s.20AA – Food Safety and Standards Act, 2006 – s.97 – Probation of Offenders Act, 1958 – Offences under the PoFA Act took place in 2001 and 1985 – Appellants were convicted and sentenced – Mollification of sentence sought by the appellants:**

**Held:** s.20AA, PoFA Act r/w s.97, FSS Act makes it clear that the benefit under the Probation Act is inapplicable to an offence committed under the PoFA Act, if the offence has been committed between introduction of s.20AA in 1976 and its repeal in 2006 by the FSS Act – However, in the facts and circumstances and the discrepancy in the analysis reports of the seized curd, the lead appeal is partly allowed following the decision in C. Mohammed – The connected appeal is also partly allowed in the interest of justice, equity, propriety and judicial comity on the basis of the dictum in A.K. Sarkar & Co. – Sentences imposed converted to fine. [Paras 47, 48]

**Interpretation of Statutes – Rule of literal construction – Food Safety and Standards Act, 2006 – s.97 – Repeal and savings – Prevention of Food Adulteration Act, 1954 – s.20AA – Probation of Offenders Act, 1958:**

**Held:** A 'repeals and savings' clause in any statute is not mere surplusage that the Courts may ignore in the interpretation of the

* Author

law – When a 'repeal and savings' clause specifically protects a penalty provided for in the old enactment, the intention of the legislature is clear – This Court cannot and should not provide a benefit to the accused that is not permitted in law – Mollification must only be provided in cases where a provision in relation to 'repeal and savings' is either not present or where the 'repeal and savings' clause envisages such a possibility – This Court cannot offend the express provisions present in any legislative instrument merely to provide a benefit to an offender, not envisaged under the law – General Clauses Act, 1897 – s.6, 26 – Constitution of India – Article 20. [Paras 41, 43]

**Case Law Cited**

*T. Barai v. Henry Ah Hoe* **[1983] 1 SCR 905 : (1983) 1 SCC 177;** *Paramjit Singh v. Municipal Corpn.* **(1982) 3 SCC 317;** *Santosh Kumar v. Municipal Corpn.* **(2000) 9 SCC 151 – held inapplicable.**

*Babu Ram v. State of Haryana* **(1987) Supp. SCC 12;** *Basheer v. State of Kerala* **[2004] 2 SCR 224 : (2004) 3 SCC 609;** *C. Mohammed v. State of Kerala* **(2006) 13 SCC 290 – relied on.**

*A.K. Sarkar & Co. v. State of W.B.* **[2024] 3 SCR 356 : (2024) 10 SCC 727;** *Ishar Das v. State of Punjab* **[1972] 3 SCR 312 : (1973) 2 SCC 65;** *Jai Narain v. Municipal Corpn. of Delhi* **[1973] 1 SCR 923 : (1972) 2 SCC 637;** *Pyarali K. Tejani v. Mahadeo Ramchandra Dange* **[1974] 2 SCR 154 : (1974) 1 SCC 167;** *Prem Ballab v. State (Delhi Admn.)* **[1977] 1 SCR 592 : (1977) 1 SCC 173;** *Nemi Chand v. State of Rajasthan* **(2018) 17 SCC 448;** *Rattan Lal v. State of Punjab* **[1964] 7 SCR 676 : 1964 SCC OnLine SC 40;** *Arvind Mohan Sinha v. Amulya Kumar Biswas* **[1974] 3 SCR 133 : (1974) 4 SCC 222 – referred to.**

**List of Acts**

Prevention of Food Adulteration Act, 1954; Food Safety and Standards Act, 2006; Probation of Offenders Act, 1958; Constitution of India; Criminal Procedure Code, 1973; General Clauses Act, 1897.

**List of Keywords**

Food adulteration; Mollification of sentence; Benefit of probation; Repeals and savings clause; Release of offenders on probation; Samples of curd; Spice; Chilli powder, Flour; Cooking oil; Salt; Food Inspector; Rule of beneficial construction; Rule of statutory

interpretation; Rule of literal construction; Food adulteration; Crime against public health; Safety of consumers; Safety standards of food; Preventing adulterated food; International Covenant on Civil and Political Rights, 1966; Discrepancy in the analysis reports; Seized curd; Interest of justice; Equity; Propriety; Judicial comity.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1390 of 2025

From the Judgment and Order dated 04.06.2019 of the High Court of Judicature at Madras at Madurai in CRLRC (MD) No. 111 of 2010

With

Criminal Appeal No. 2054 of 2025

**Appearances for Parties**

*Advs. for the Appellants:*
S. Nandakumar, Sr. Adv., R. Satish Kumar, Ms. V. Susheatha, Ms. Deepika Nandakumar, Aakash Elango, Ms. Sandhya Dutt, Mohit Kumar Gupta, P.V. Yogeswaran.

*Adv. for the Respondent:*
Sabarish Subramanian.

**Judgment / Order of the Supreme Court**

## Judgment

**Dipankar Datta, J.**

### The Appeals

1. The two criminal appeals before us, arising from different incidents of crime, question the correctness of two decisions of the respective High Courts involving the same question of law. We, therefore, propose to decide the said two appeals by this common judgment and order.

2. In the lead appeal, the appellants - Nagarajan and Selvaraj - have assailed the judgment of the High Court of Judicature at Madras[1]

1 Madras High Court

dated 04th June, 2019 dismissing the criminal revision[2] filed by them on the grounds assigned therein.

3. In the connected appeal, the appellant - Naresh Chandra - has assailed the judgment of the High Court of Judicature at Allahabad[3] dated 04th July, 2019. The criminal revision[4] filed by the appellant was dismissed thereby on similar grounds.

**Factual Matrix**

4. The case of the prosecution in the lead appeal is that a sample of curd was taken from the shop of the appellants on 26th June, 2001 at about 14:30 hours and sent for analysis. The analysis revealed that the standard, prescribed under the Prevention of Food Adulteration Act, 1954[5] and the relevant rules, was not fulfilled. A complaint came to be registered followed by trial. Upon perusal of the evidence, *vide* judgment and order dated 18th June, 2006, the Trial Court convicted Nagarajan and Selvaraj under Sections 7(1) and 16(1)(a)(i) r/w Section 2(ia)(a)(m) of the PoFA Act and sentenced them to undergo simple imprisonment for 6 (six) months each and to pay a fine of Rs. 3000/- each, in default to undergo simple imprisonment for 2 (two) months each.

5. Aggrieved, Nagarajan and Selvaraj filed an appeal[6] before the concerned Appellate Court, which confirmed the conviction and the sentence of the Trial Court *vide* judgment and order dated 18th December, 2009.

6. Still aggrieved, Nagarajan and Selvaraj invoked the revisional jurisdiction of the Madras High Court unsuccessfully.

7. The case of the prosecution in the connected appeal is that at about 10:45 hours on 20th March, 1985, in the area of Karkala Bazaar, the concerned Food Inspector found Naresh Chandra selling spice, chilli powder, flour, cooking oil, salt and other stuff. Upon suspicion, the Food Inspector presented Form VI to Naresh Chandra who refused to accept and sign it. The Food Inspector then called on witnesses

2 CRLRC (MD) No. 111/2010

3 Allahabad High Court

4 CRLR No. 1660/1998

5 PoFA Act

6 CA No. 183 of 2004

present there; however, no one agreed to take part except one Radhey Lal (PW2). Thereupon, an attempt was made by the Food Inspector to take a sample on his own. Naresh Chandra intimidated the Food Inspector and refused to allow him to take a sample. The complaint lodged by the Food Inspector eventually led to a trial. The Trial Court *vide* order dated 25th August, 1987 convicted Naresh Chandra u/s Section 7/10(1) r/w Section 16(1)(c)(d) of the PoFA Act and sentenced him to undergo simple imprisonment for 6 (six) months and fine of Rs. 1000/-, in default to undergo simple imprisonment for 2 (two) more months.

8. The conviction and sentence had been carried in appeal[7] by Naresh Chandra whereupon, the Appellate Court upheld the same and dismissed the appeal *vide* order dated 16th November, 1988.

9. The appellate judgment and order having been subjected to challenge before the Allahabad High Court in its revisional jurisdiction, *vide* the impugned judgment, the court refused to interfere and dismissed the revision.

**CONTENTIONS**

10. Mollification of sentence is sought on behalf of the two sets of appellants by learned counsel appearing on their behalf on the common following grounds:

    a. That Section 20AA of the PoFA Act effectively denies the benefit of probation for first-time offenders, thereby violating Article 14 of the Constitution of India.

    b. That Section 20AA of the PoFA Act violates Article 21 of the Constitution as denial of probation impacts the liberty of individuals without due consideration of their circumstances considering that the Probation of Offenders Act, 1958[8] is to rehabilitate offenders and reduce the burden on the prison system.

    c. That Section 20AA of the PoFA Act contradicts the reformative justice approach enshrined in Section 360 of the Criminal Procedure Code, 1973[9] which encourages rehabilitation of offenders.

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7 Criminal Appeal No. 138 of 1987

8 Probation Act

9 Cr. PC

d. That the Food Safety and Standards Act, 2006,[10] which repealed the PoFA Act, does not include a provision equivalent to Section 20AA evincing the legislative intent to move towards a reformatory framework.

11. However, learned counsel for the respondent in the lead appeal - State of Tamil Nadu - has placed great reliance on the express words in Section 20AA of the PoFA Act, prescribing a categorical and complete exclusion of the applicability of the Probation Act and Section 360 of the Cr. PC. Therefore, according to the State, the legislative intent is clear that food adulteration is a crime against public health and the perpetrators of such crimes must face consequences for their acts of crimes. Furthermore, emphasis was laid on incorporation of Section 20AA in the PoFA Act by way of amendment and reliance was placed on the Statement of Object and Reasons for such amendment highlighting the growing concern over the prevalence of food adulteration and the inadequacy of existing provincial laws to address the issue uniformly.

12. The State of Uttar Pradesh has not pressed any arguments before us.

## The Legislative Framework

13. Section 20AA was introduced in the PoFA Act though an amendment in 1976. It reads thus:

> **20AA. Application of the Probation of Offenders Act, 1958 and section 360 of the Code of Criminal Procedure, 1973.—**Nothing contained in the Probation of offenders Act, 1958 (20 of 1958) or section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

14. The PoFA Act was repealed by the FSS Act. We may also refer to Section 97 of the FSS Act, which deals with 'repeal and savings'. The proviso to Section 97 specifically saves certain aspects of the PoFA Act. The relevant part is reproduced below:

10 FSS Act

**97. Repeal and savings.–**

…

Provided that such repeal shall not affect:—

(i) the previous operations of the enactment and Orders under repeal or anything duly done or suffered there under; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

…

15. The appellants have largely based their arguments on the basis of Article 20(1) of the Constitution, which is as follows:

> **20. Protection in respect of conviction for offences.—** (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

16. Article 15(1) of the International Covenant on Civil and Political Rights, 1966, which was ratified by India in 1979, includes a provision similar to Article 20(1) of the Constitution. It says:

> **Article 15. 1.** No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier

penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

17. Section 6 of the General Clauses Act, 1897[11] notes the effect of a repeal of any enactment:

> **6. Effect of repeal.—**Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
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> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
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> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

18. Section 26 of the GC Act positing a situation of an offence being punishable under two or more enactments, ordains that the offender shall be liable to punishment only under one of those enactments and not under both [quite falling in line with Article 20(2) of the Constitution]. It reads thus:

11 GC Act, hereafter

> **26. Provision as to offences punishable under two or more enactments.—**Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence

19. The relevant part of Section 16 of the PoFA Act stipulating penalties reads as follows:

> **16. Penalties.—**(1) Subject to the provisions of sub-section (1A) if any person—
>
> (a) Whether by himself or by any other person on his behalf, imports into India or manufacturers for sale or stores, sells or distributes any article of food—
>
> (i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;
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> (ii) Other than an article of food referred to in sub-clause (I), in contravention of any of the provision of this Act or of any rule made thereunder, or
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> …
>
> (c) prevents a food inspector from taking a sample as authorised by this Act; or
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> (d) prevents a food inspector from exercising any other power conferred on him by or under this Act;
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> …
>
> he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:
>
> …

**QUESTIONS**

20. Special Leave Petitions having been presented before this Court by the two sets of appellants, separate coordinate Benches issued notice, limited to the question of sentence.

21. Based on the rival contentions, two short but interesting inter-connected questions of law arise for decision in the present appeals: (i) whether the benefit of the provisions of the Probation Act can be granted to the respective appellants? (ii) should the answer to the above question be in the negative, can the reduced sentence that the FSS Act envisages be imposed on the appellants instead?

**ANALYSIS**

22. We now proceed with our analysis. The task ought to commence with a study of judicial precedents.

**PRECEDENTS**

23. The parties before us have referred to a catena of decisions of this Court in support of their contentions. A study of such decisions along with a few other decisions would provide guidance for the ultimate disposal of these appeals.

24. Prior to 1976, i.e., before Section 20AA was included in the PoFA Act, there was no doubt that the Probation Act applied to the offences committed under the PoFA Act. A profitable reference may be made to the decision in ***Ishar Das v. State of Punjab,***[12] wherein Hon'ble H.R. Khanna, J. (as His Lordship then was) speaking for the Bench observed:

> "**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 Edn). It has also to be borne in mind

12 (1973) 2 SCC 65

> 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 Art 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..."

However, Their Lordships rightly cautioned against resorting to the provisions in the Probation Act in normal circumstances and instead advocated adoption thereof on a case-to-case approach such that the Court is convinced about the application of the Probation Act:

> "**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..."
>
> (emphasis supplied)

25. Thereafter, a three-Judge Bench of this Court dealing with an offence under the PoFA Act in ***Jai Narain v. Municipal Corpn. of Delhi,***[13] while upholding the view expressed in ***Ishar Das*** (supra), held that the conduct of the appellant therein being anti-social did not merit the application of the Probation Act.

13 (1972) 2 SCC 637

26. Yet again, in the case of ***Pyarali K. Tejani v. Mahadeo Ramchandra Dange,***[14] this Court, through Hon'ble V.R. Krishna Iyer, J., upheld the view in ***Ishar Das*** (supra) and observed that the offence under the PoFA Act is an economic offence and would therefore, not be easily susceptible to the probationary process. We quote His Lordship hereunder:

> "**28.** The kindly application of the probation principles is negatived by the imperatives of social defence and the improbabilities of moral proselyti-sation. No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white-collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive — not easily humanised by the therapeutic probationary measure. It is not without significance that the recent report (47th report) of the Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments. It observed:
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> > 'We appreciate that the suggested amendment would be in apparent conflict with current trends in sentencing. But ultimately, the justification of all sentencing is the protection of society. There are occasions when an offender is so anti-social that his immediate and sometimes prolonged confinement is the best assurance of society's protection. The consideration of rehabilitation has to give way, because of the paramount need for the protection of society. We are, therefore, recommending suitable amendment in all the Acts, to exclude probation in the above cases'."

27. Shortly after the amendment in 1976, this Court speaking through Hon'ble P.N. Bhagwati, J. (as His Lordship then was) in ***Prem Ballab v.***

14 (1974) 1 SCC 167

***State (Delhi Admn.),***[15] while deciding on a similar issue arising from the unamended statute, observed that:

> "**7.** …The imperatives of social defence must discourage the applicability of the probation principle. No chances can be taken by society with a man whose anti-social activities, in the guise of a respectable trade, jeopardise the health and well-being of numerous innocent consumers. The adulterator is a social risk. It might be dangerous to leave him free to carry on his nefarious activities by applying the probation principle to him. Moreover, it must be remembered that adulteration is an economic offence prompted by profit motive and it is not likely to lend itself easily to therapeutic treatment by the probationary measure. It may be pointed out that the Law Commission also in its Forty-seventh Report recommended the exclusion of applicability of the probationary process in case of social and economic offences and presumably in response to this recommendation, the legislature has recently amended the Prevention of Food Adulteration Act, 1954 by introducing Section 20AA providing that 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 the Act unless that person is under eighteen years of age. This amendment of course would not apply in the present case but it shows the legislative trend which it would not be right for the court to ignore. We cannot, therefore, give the benefit of the Probation of Offenders Act, 1958 to the appellants and release them on probation."
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> (emphasis supplied)

28. However, another three-Judge Bench of this Court in ***T. Barai v. Henry Ah Hoe,***[16] was called upon to decide various issues including the issue whether a convict is entitled to the mollified sentence on account of the fact that the new Central enactment provided for a

15 (1977) 1 SCC 173

16 (1983) 1 SCC 177

lesser punishment for the same offence as compared with an older State enactment under which the appellant was convicted. Hon'ble A.P. Sen, J. (as His Lordship then was) speaking for the Bench ruled that:

> "**11.** It was not long before Parliament stepped in to meet the growing menace of the anti-social offence of adulteration of articles of food meant for human consumption which was a threat to the national well-being and it was felt that such offences must be ruthlessly dealt with. It was also felt that there should be a summary trial of these offences. The Prevention of Food Adulteration (Amendment) Act, 1976 was accordingly brought into force with effect from April 1, 1976. It not only created new offences but also enhanced the punishment provided. But at the same time it also provided for graded punishment for various types of offences. Incidentally, it mollified the rigour of the law by providing for a reduced punishment for an offence punishable under Section 16(1)(*a*). We are however not concerned with other types of offences except the one punishable under Section 16(1)(*a*) and for this the maximum punishment provided was for a term of three years instead of six years…
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> …
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> **22.** It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(*a*) of the Act, there is no

reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense.

**23.** To illustrate, if Parliament were to reenact Section 302 of the Penal Code, 1860 and provide that the punishment for an offence of murder shall be sentence for imprisonment for life instead of the present sentence of death or imprisonment for life, then it cannot be that the courts would still award a sentence of death even in pending cases.

…

**25.** It is settled both on authority and principle that when a later statute again describes an offence created by an earlier statute and imposes a different punishment, or varies the procedure, the earlier statute is repealed by implication…The rule is however subject to the limitation contained in Article 20(1) against ex post facto law providing for a greater punishment and has also no application where the offence described in the later Act is not the same as in the earlier Act i.e. when the essential ingredients of the two offences are different.

**26.** In the premises, the Central Amendment Act having dealt with the same offence as the one punishable under Section 16(1)(*a*) and provided for a reduced punishment, the accused must have the benefit of the reduced punishment. We wish to make it clear that anything that we have said shall not be construed as giving to the Central Amendment Act a retrospective operation insofar as it creates new offences or provides for an enhanced punishment."

(emphasis supplied)

29. ***T. Barai*** (supra) is no doubt a leading decision on the aspect of the principle of beneficial interpretation of penal statutes for the purposes of sentencing. However, we are not convinced that the same is wholly applicable in the instant case as (i) the dispute therein was between

a Central enactment and a State enactment pertaining to the same offence, (ii) the case concerned punishment to be provided and was not a decision related to release of an offender on probation and (iii) in that case, there existed no such provision similar to either Section 20AA of the PoFA Act or even Section 97 of the FSS Act and obviously, was not a case dealing with repeal.

30. Shortly after the decision in ***T Barai*** (supra), this Court in the case of ***Babu Ram v. State of Haryana,***[17] in no uncertain terms held that the special provision made in the form of Section 20AA of the PoFA Act, would override the provisions of the Probation Act.

> "**2.** The appellant was convicted under Section 16(1)(*a*)(i) of the Prevention of Food Adulteration Act. The facts are not in dispute. The respondent has been sentenced to 6 months' rigorous imprisonment and to pay a fine of Rs 1000. Notice was issued confined to the question of sentence. The learned counsel argues that this is a fit case where the appellant should be admitted to probation. On the other hand, Mr Mahajan for the respondent points out the provision in Section 20AA in support of his submission that the Special Act excludes application of the Probation of Offenders Act. We are inclined to agree with him that the special provision made in the Prevention of Food Adulteration Act overrides the provision of the Probation of Offenders Act and therefore the appellant will not be entitled to the benefit thereof…"
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> (emphasis supplied)

31. In the case of ***Nemi Chand v. State of Rajasthan,***[18] this Court applying the decision in ***T. Barai*** (supra) modified the sentence of six months' imprisonment and fine of Rs. 1000/- to Rs. 50,000 for an offence committed under Sections 7/16 of the PoFA Act.

32. Recently, a co-ordinate bench of this Court in ***A.K. Sarkar & Co. v. State of W.B.,***[19] placing reliance on ***T Barai*** (supra) held that:

17 (1987) Supp. SCC 12

18 (2018) 17 SCC 448

19 (2024) 10 SCC 727

> "**10.** The Prevention of Food Adulteration Act, 1954 was repealed by the introduction of the Food Safety and Standards Act, 2006 where Section 52 provides a maximum penalty of Rs 3,00,000 for misbranded food. There is no provision for imprisonment…
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> …
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> **15.** Considering all aspects, more particularly the nature of offence, though we uphold the findings of the courts below regarding the offence, but we hereby convert the sentence of Appellant 2 from three months of simple imprisonment along with fine of Rs 1000 to a fine of Rs 50,000 (Rupees fifty thousand only). The sentence of Appellant 1 which is for a fine of Rs 2000 is upheld. The amount shall be deposited with the court concerned within a period of three weeks from today. Accordingly, the appeal is partly allowed."

33. Two more decisions have been cited before us, which we believe are inapplicable to the present *lis*. The reasons are assigned below:

    a. In ***Paramjit Singh v. Municipal Corpn.,***[20] the Court held that since the offence pertained to November 1968 at which point of time the Courts had the power to release the offender on probation, the same should be done as the facts did not necessitate the passing of a sentence of imprisonment upon the appellant therein. This case is, therefore, clearly distinguishable from the present matter.

    b. The decision in ***Santosh Kumar v. Municipal Corpn.***[21] is also not applicable to the facts at hand as that was a case of commutation of sentence under Section 433(d), Cr. PC.

34. At this stage, we would also like to highlight a few other decisions of this Court that would seem to be applicable for resolution of the controversy.

35. In the case of ***Rattan Lal v. State of Punjab,***[22] Hon'ble K. Subba Rao, J. (as His Lordship then was) speaking for the majority in a 3-Judge Bench decision held that:

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20 (1982) 3 SCC 317

21 (2000) 9 SCC 151

22 1964 SCC OnLine SC 40

"**6.** …Every ex post facto law is necessarily retrospective. Under Article 20 of the Constitution, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. But an ex post facto law which only mollifies the rigour of a criminal law does not fall within the said prohibition. If a particular law makes a provision to that effect, though retrospective in operation, it will be valid. The question whether such a law is retrospective and, if so, to what extent depends upon the interpretation of a particular statute, having regard to the well-settled rules of construction. Maxwell in his book On Interpretation of Statutes, 11th Edn., at pp. 274-75, summarizes the relevant rule of construction thus:

> 'The tendency of, modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature, then formerly. It is unquestionably right that the distinction should not be altogether erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed

> or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence.'
>
> **7.** Let us now proceed to consider the question raised in the present case. This is not a case where an act, which was not an offence before the Act, is made an offence under the Act; nor this is a case where under the Act a punishment higher than that obtaining for an offence before the Act is imposed. This is an instance where neither the ingredients of the offence nor the limits of the sentence are disturbed, but a provision is made to help the reformation of an accused through the agency of the court. Even so the statute affects an offence committed before it was extended to the area in question. It is, therefore, a post facto law and has retrospective operation. In considering the scope of such a provision we must adopt the rule of beneficial construction as enunciated by the modern trend of judicial opinion without doing violence to the provisions of the relevant section. … As the Act does not change the quantum of the sentence, but only introduces a provision to reform the offender, there is no reason why the legislature should have prohibited the exercise of such a power, even if the case was pending against the accused at one stage or other in the hierarchy of tribunals…"

36. In ***Basheer v. State of Kerala,***[23] a batch of appeals was heard on the point of the constitutional validity of the proviso to Section 41(1) of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001. The unamended statute made no distinction between "any quantity" and "small quantity". In all the appeals before the Court, the accused were convicted by the trial courts and had filed appeals before the respective High Courts. Further, their appeals were pending before the High Courts on 2nd October, 2001, when the amending Act came into force. The accused were found guilty of offences and were sentenced to rigorous imprisonment of 10 years and a fine of Rs one lakh each, which was the minimum punishment prescribed under the unamended statute. The new Act, however,

23 (2004) 3 SCC 609

provided for graded punishment on the basis of the quantity of drugs in the possession of the accused. This Court ruled that the concerned rule of beneficial construction of a penal statute is limited to the reduction of any sentence and the conviction remains under the old Act. The amendment had in effect created a new set of offences, and therefore, the benefit of graded punishment would not be available to the appellants therein. Relevant passages read thus:

> "**13.** Nothing much however, turns on this principle as far as the appeals before us are concerned. Notwithstanding the application of the mollifying provisions of the Act retrospectively, by the proviso to Section 41(1), Parliament has expressly declared that the benefit of the retrospective mollificatory provisions would not be available to the cases 'pending in appeal'. What is crucial is whether this segregation of 'cases pending in appeal' and their exclusion from the application of the beneficial effects of the amending Act infringes the equality right guaranteed under Article 14 of the Constitution.
>
> …
>
> **22.** Inasmuch as Act 9 of 2001 introduced significant and material changes in the parent Act, which would affect the trial itself, application of the amended Act to cases where the trials had concluded and appeals were pending on the date of its commencement could possibly result in the trials being vitiated, leading to retrials, thereby defeating at least the first objective of avoiding delay in trials. The accused, who had been tried and convicted before 2-10-2001 (i.e. as per the unamended 1985 Act) could possibly urge in the pending appeals, that as their trials were not held in accordance with the amended provisions of the Act, their trials must be held to be vitiated and that they should be retried in accordance with the amended provisions of the Act. This could be a direct and deleterious consequence of applying the amended provisions of the Act to trials which had concluded and in which appeals were filed prior to the date of the amending Act coming into force. This would certainly defeat the first objective of avoiding delay in such trials. Hence, Parliament appears to have removed

this class of cases from the ambit of the amendments and excluded them from the scope of the amending Act so that the pending appeals could be disposed of expeditiously by applying the unamended Act without the possibility of reopening the concluded trials.

**23.** Thus, in our view, the Rubicon indicated by Parliament is the conclusion of the trial and pendency of appeal. In the cases of pending trials, and cases pending investigation, the trial is yet to conclude; hence, the retrospective mollification of the rigour of punishment has been made applicable. In the cases where the trials are concluded and appeals are pending, the application of the amended Act appears to have been excluded so as to preclude the possible contingency of reopening concluded trials. In our judgment, the classification is very much rational and based on clearly intelligible differentia, which has rational nexus with one of the objectives to be achieved by the classification. There is one exceptional situation, however, which may produce an anomalous result. If the trial had just concluded before 2-10-2001, but the appeal is filed after 2-10-2001, it cannot be said that the appeal was pending as on the date of the coming into force of the amending Act, and the amendment would be applicable even in such cases. The observations of this Court in *Nallamilli case* [(2001) 7 SCC 708] would apply to such a case. The possibility of such a fortuitous case would not be a strong enough reason to attract the wrath of Article 14 and its constitutional consequences. Hence, we are unable to accept the contention that the proviso to Section 41 of the amending Act is hit by Article 14.

…

**28.** In the result, we are of the view that the proviso to Section 41(1) of the amending Act 9 of 2001 is constitutional and is not hit by Article 14. Consequently, in all cases, in which the trials had concluded and appeals were pending on 2-10-2001, when amending Act 9 of 2001 came into force, the amendments introduced by the amending Act 9 of 2001 would not be applicable and they would have to be

disposed of in accordance with the NDPS Act, 1985, as it stood before 2-10-2001. Since there are other contentions of law and fact raised in each of these cases, they would have to be placed before the appropriate Benches for decision and disposal in accordance with the law."

37. Lastly, in the case of ***Arvind Mohan Sinha v. Amulya Kumar Biswas,***[24] Y.V. Chandrachud, J (as His Lordship then was) arising from a conviction under the Customs Act, 1962 succinctly delineated the purpose, purport and object of the Probation Act in the following words:

> "**11.** The Probation of Offenders Act is a reformative measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated. In recalcitrant cases, punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of Offenders Act recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, is apt to think that he has no more to lose or fear may breed a litter of crime. The object of the Probation of Offenders Act is to nip that attitude in the bud. Winifred A. Elkin describes probation as a system which

24 (1974) 4 SCC 222

> provides a means of re-education without the necessity of breaking up the offender›s normal life and removing him from the natural surroundings of his home [ English Juvenile Courts, (1938) p. 162] . Edwin H. Sutherland raises it to a status convicted offender. [ Principles of Criminology 4th Edn. (1947) p. 383]
>
> …
>
> **13.** There is no foundation for the fear that offenders released on probation may hold the society to ransom and the society may therefore look upon the release of offenders on probation as the triumph of criminals over the weaknesses of law. An offender released on probation is convicted but not forthwith sentenced in the sense of penal laws. Under the disposition made by the Court the sentence is suspended during the period of probation. Section 4(1) of the Act provides that instead of sentencing the offender 'at once', the Court may direct his release on his entering into a bond to 'receive sentence when called upon' during the probationary period and in the meantime to keep the peace and be of good behaviour. Thus it is only in a limited, though a socially significant, sense that the Act constitutes an exception to the broad and general principle of criminal law embodied, for example, in Sections 245(2), 258(2), 306(2) and Section 309(2) of the Code of Criminal Procedure, that a sentence shall follow on a conviction."

38. We preface our observations that this Court has consistently held that the safety of citizens is paramount. The safety of consumers was the goal of the PoFA Act as safety standards of food is essential for the health and well-being of its citizens. The PoFA Act, now repealed by the FSS Act, was instrumental in preventing adulterated food in the market by creating a framework wherein adulterated food could not be sold as they would endanger the lives of consumers. Food, as we all know, is essential for life and no leeway must be given in such circumstances.

**Application Of The Probation Of Offenders Act**

39. A canonical rule of statutory interpretation, i.e, the rule of literal construction, is that the words of a statute should be read as it is

and should be understood in their natural and ordinary sense. A reference to the rule of beneficial construction of a statute or any other rule of statutory interpretation may be resorted to only if the literal rule fails to provide suitable guidance or results in absurdity.

40. There can be no quarrel that Section 20AA, introduced by way of amendment, is too clear admitting of no absurdity and seals this question of law against the appellants. Nothing in these decisions have shown us that the rule of beneficial construction can also be extended to the release of offenders on probation, especially considering the express provision present in Section 20AA of the PoFA Act.

41. This Court has often lamented the lack of sentencing guidelines in this country, which we echo. That being said, we are of the firm opinion that there exists a fundamental difference between reduction or mollification of a sentence and releasing an offender on probation. The probationary process envisages that first time offenders who are capable of reformation can be provided a benefit such that they can continue to a be a part of society as capable and law-abiding citizens in the future. The thrust of penology in the past few decades has been focused on the reformation of an individual. "Every saint has a past, and every sinner has a future". While there is no quarrel with the probationary process, we ought to remain subservient to the wisdom of the legislature in applying the benefit of probation. This Court cannot offend the express provisions present in any legislative instrument merely to provide a benefit to an offender, not envisaged under the law. Section 20AA of the PoFA Act read with Section 97 of the FSS Act makes it clear that the benefit under the Probation Act cannot be made applicable to an offence committed between 1976 (when Section 20AA was introduced) up to the repeal of the statute in 2006 by the FSS Act in line with the decision rendered in ***Babu Ram*** (supra).

42. Therefore, the first question is decided against the appellants.

**MOLLIFICATION OF PUNISHMENT**

43. While deliberating on the second question, we have also considered the claim that the sentence should at least be reduced as per the FSS Act. Several decisions have been cited before us to contend that mollification of a punishment on the ground that the new enactment provides for a lesser punishment is permissible. We are, however, in

respectful disagreement with such proposition insofar as the instant case is concerned. A 'repeals and savings' clause in any statute is not mere surplusage that the Courts may ignore in the interpretation of the law. When a 'repeal and savings' clause specifically protects a penalty provided for in the old enactment, the intention of the legislature is clear. This Court, in its enthusiasm, cannot and should not provide a benefit to the accused that is not permitted in law. Mollification must only be provided in cases where a provision in relation to 'repeal and savings' is either not present or where the 'repeal and savings' clause envisages such a possibility. This is in line with the decision rendered in ***Basheer*** (supra). Therefore, the second question too is decided against the appellants.

44. At this stage, a plea to our conscience has been made that despite the order issuing notice being limited to sentence, to look at the grounds for conviction and to provide some relief in the lead appeal. Considering the age of the appellants and the fact that the offences took place in 2001 and 1985, we consider it appropriate to look into the record to see whether we may interfere with the conviction recorded against these appellants.

45. In the lead appeal, the cause for the offence is that the appellants were selling curd that was found to have a fat content lower than the standard prescribed for buffalo milk, leading to its classification as adulterated. The record before us suggests that the Food Inspector took 12 samples of curd, mixed them in a vessel and out of that mixture took a sample and sent it for analysis. The Food Inspector had not marked whether the milk was buffalo milk or cow milk, and the standard for buffalo milk was taken for the purpose of analysis. The public analyst recorded that there was 4.6% fat against a minimum of 5% fat as required under the standard for buffalo milk. However, the curd was also sent for analysis to the Central Food Laboratory, Kolkata. It reported that the percentage of fat in the sample was 8.3%, which is higher than the minimum percentage required. This apparent discrepancy should be interpreted to the benefit of the accused.

46. In ***C. Mohammed v. State of Kerala,***[25] the sentence of imprisonment was converted to a sentence of fine on the ground that there was a discrepancy between the reports as to the percentage of adulteration:

25 (2006) 13 SCC 290

"**3.** The appellant was found guilty of an offence punishable under Sections 16(1)(*a*)(*i*) and (*ii*) read with Sections 7(1) and (2)(*ix*)(*d*) of the Prevention of Food Adulteration Act, 1954. A sample of moong dal (black gram dal) was taken from the shop of the appellant on 20-3-1989 and it was sent for chemical analysis and it was found by the Regional Analytical Laboratory at Calicut that it contained 0.28% of talc as foreign matter. The appellant was not satisfied with the report and sent the second sample to be examined by the Central Food Laboratory and the Central Food Laboratory issued a certificate dated 1-8-1989 wherein the percentage of talc was described as 1.363% and the learned Single Judge held the appellant guilty of the offence punishable under the sections as aforesaid of the Prevention of Food Adulteration Act.

**4.** Counsel for the appellant submits that talc is not an inorganic foreign matter as it does not come within the Explanation contained in clause A.18.06.11 (*sic* A.18.06.10) of the Prevention of Food Adulteration Rules, 1955 and whereas the said contention was refuted by the counsel for the State. Counsel for the appellant also contended that this is not a harmful substance and the talc was added only as preservative and to prevent the sticking of the grains of dal and therefore, the sentence of imprisonment may be converted to that of a sentence of fine.

**5.** Having regard to the facts and circumstances of the case that though the certificate issued by the Central Food Laboratory supersedes the report of the Regional Analytical Laboratory, it should be noticed that the first report showed the percentage only at 0.28 which was much below the prohibited percentage. In view of the aforesaid circumstances, we hold that the sentence of imprisonment be converted into a sentence of fine and a sum of Rs 10,000 is imposed as fine. The appellant to remit the fine so imposed within a period of two months from the date of receipt of a copy of this order."

(emphasis supplied)

Therefore, the approach adopted in ***C. Mohammed*** (supra) can be followed and the lead appeal calls for being allowed in part.

47. With reference to the connected appeal, we do not find any reason to interfere with the conviction of the courts below. However, the decision of the coordinate Bench in ***A.K. Sarkar & Co.*** (supra) weighs on us heavily. Being a decision of a coordinate Bench, ordinarily we ought to follow the same. However, we have our own reservations on the reasoning that led to the conclusion in such decision. This is primarily because the Bench had not been taken through the 'repeal and savings' clause in the FSS Act, when it provided the benefit of mollified sentence, and also because of reliance placed on ***T. Barai*** (supra) which we, for reasons assigned above, have held not to be applicable here. While the normal course of action calls for a reference of the question of law to a larger Bench for an answer, we believe that this will only lead to protracted litigation and would leave the appellant - Naresh Chandra - at the mercy of the sword of Damocles which has been looming over him for forty summers. Therefore, notwithstanding that we are unable to be *ad idem* with the dictum in ***A.K. Sarkar & Co.*** (supra) but, in the interest of justice, equity, propriety and judicial comity, we propose to follow the same and proceed to partly allow the connected appeal too.

**CONCLUSIONS AND RELIEF**

48. Therefore, resting on our discussion aforesaid, we conclude that:

    a. The benefit that the Probation Act envisages is inapplicable to an offence committed under the PoFA Act, if the offence has been committed between introduction of Section 20AA in 1976 and its repeal in 2006 by the FSS Act, in line with the decision rendered in ***Babu Ram*** (supra);

    b. The benefit of mollification of sentence cannot be given when a 'repeal and savings' clause in the repealing statute expressly saves a penalty incurred under the repealed statute;

    c. As per the approach in ***C. Mohammed*** (supra), the lead appeal has to be partly allowed considering the facts and circumstances and the discrepancy in the analysis reports of the seized curd;

    d. The connected appeal also needs to be partly allowed on the basis of the dictum in ***A.K. Sarkar & Co.*** (supra).

49. For the aforesaid reasons, both the appeals are partly allowed.

50. Sentences of imprisonment for 6 (six) months imposed on Nagarajan and Selvaraj stand converted to a fine of Rs. 30,000/- each, while in case of Naresh Chandra, the sentence of imprisonment is converted to that of fine of Rs.20,000/.

51. All three appellants are given time till end of June, 2025 to pay the fine, failing which this order shall stand revoked and they shall expose themselves to be taken in custody for serving the prison term of six months, minus set-off for any period they were in custody earlier.

*Result of the case:* Appeals partly allowed.

†*Headnotes prepared by:* Divya Pandey