

Haripada Das vs State Of W.B. And Anr. on 3 March, 1998

Equivalent citations: 1999CRILJ603, JT1998(9)SC30, 1999(I)OLR(SC)209, (1998)9SCC678, AIR 1999 SUPREME COURT 1482, 1998 (9) SCC 678, 1998 AIR SCW 4040, 1998 (2) FAC 187, 1998 SCC(CRI) 1340, 1999 FAJ 29, (1998) 9 JT 404 (SC), (1999) 2 EASTCRIC 125, (1998) 2 EFR 657, (1998) 2 FAC 187, (1999) 1 ORISSA LR 209, (1999) 24 ALLCRIR 591, (1999) 1 ALL WC 839, (2000) 1 ALLCRILR 97, (1999) 38 ALLCRIC 294

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Bench: G.N. Ray

ORDER

Criminal Appeal No. 698 of 1990

1. In this appeal the order of acquittal passed by the trial court has been set aside by the High Court. The trial court came to a finding that samples for the alleged adulterated oil have not been drawn in a clean container and for such finding the contradiction in the depositions of the four prosecution witnesses examined were referred to. The High Court has noted such contradictions but it appears that the High Court has proceeded on the footing that the accused being the seller should have protested if the container in which the samples were drawn were not clean and, therefore, ignored the contradictions in the depositions of the witnesses for the prosecution about the nature of bottles in which samples had been drawn.

2. It appears to us that if there are contradictions in the depositions of the witnesses for which there was a reason for the trial court to entertain doubt about proper drawing of the samples and such view cannot be held to be perverse or inconsistent with the depositions, the benefit of doubt should go to the accused. Therefore, there was no good reason for the High Court to interfere with the order of acquittal by ignoring the contradictions in the depositions and proceeding on the footing that the accused being a seller was expected to protest against the irregularities in drawing the samples. We, therefore, allow this appeal and set aside the conviction and sentence. The appellant has been released on bail. The bail bonds stand discharged.

3. In this appeal the conviction of the appellant for selling adulterated mustard oil, affirmed by the High Court, is impugned. It appears from the report of the Public Analyst that the mustard oil in respect of which samples were drawn by the Food Inspector was found to be adulterated because saponification value was found to be 178.8 against the maximum permissible limit of 177. There was no other impurity found in the sample which could be held to be injurious to health. Though Mr. Jethmalani, learned Senior Counsel appearing for the appellant, has strongly contended that such minor variation was likely to take place on account of natural process and it was the duty of the

prosecution to establish that there was no such chance of little variation in the saponification value on account of natural process, we are not inclined to accept such contention for want of proper evidence to that effect. He has also submitted that although a technical offence had been committed by the appellant for exceeding the saponification value to a marginal extent, the appellant has already suffered imprisonment for some time and on account of this protracted litigation at different stages he has also suffered a lot of financial hardship and mental agony. He was also released on bail by this Court long back. Therefore, the ends of justice will be met if he is not required to suffer further imprisonment to serve out the sentence passed against him and the sentence of imprisonment should be reduced to the period already undergone by him in the special facts of the case. In support of such contention Mr. Jethmalani has also referred to the decisions of this Court in Bhagwan Das Motu Lal Navalani v. State of Maharashtra, and Jagdish Prasad v. State of W.B., In both the cases, considering the special facts of the case and the hardship of the accused, this Court reduced the sentence to the period already undergone. Considering the facts of the case it appears to us that the ends of justice will be met if the sentence is reduced to the period already undergone by the appellant and we order accordingly. We, however, enhance the fine from Rs. 1000 to Rs. 5000. The fine should be paid within a period of four weeks from today, in default the appellant will suffer rigorous imprisonment for three months. The appeal is disposed of accordingly. The bail bonds will stand discharged.

4. In this appeal the conviction of the appellant for selling adulterated mustard oil has been upheld by the High Court. It was found by the Public Analyst that saponification value of the mustard oil seized by the Food Inspector exceeded the maximum limit permissible in law. There was no other impurity and nothing was found in the sample taken by the Food Inspector which could be held injurious to health. In this case also, Mr. Jethmalani, learned Senior Counsel for the appellant, has contended that such slight variation was likely to have taken place in the natural process but such contention had not been raised in the courts below and there is no sufficient evidence on the basis of which the finding to the said effect can be made. Therefore, we are not accepting the same. However, considering the facts of the case and also considering the fact that the offence had been committed under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act and also considering the fact that the respondent had already undergone detention for some period and the case is pending for a pretty long time for which he had suffered both financial hardship and mental agony and also considering the fact that he had been released on bail as far back as on 17-1-1986, we feel that the ends of justice will be met in the facts of the case if the sentence is reduced to the period already undergone. Besides the fine directed by the court below, we further direct that the appellant shall pay further fine of Rs. 10,000 within a period of four weeks from today, in default he will suffer imprisonment for a period of three months. The appeal is disposed of accordingly. The bail bonds stand discharged.

Criminal Appeal No. ... of 1998 in SLP (Criminal) No. 2255 of 1988

5. Leave granted.

6. This appeal is directed against the conviction of the appellant under the Prevention of Food Adulteration Act for selling adulterated mustard oil. Although in the samples drawn by the Food

Inspector, no impurities or objects injurious to health could be detected but it was found that the saponification value exceeded marginally than the prescribed limit and the BR reading also exceeded marginally than the prescribed limit. Considering the facts and circumstances of the case and also considering that the appellant was released on bail by this Court long back and because of the protracted litigation up to this Court he has also suffered a lot of mental agony and also financial hardship and also considering the fact that he had already undergone imprisonment for more than three weeks, we feel that in the facts of the case the ends of justice will be met if the sentence of imprisonment is reduced to the period already undergone. We, however, direct that besides the fine imposed by the courts below, the appellant will have to pay a fine of Rs. 5000 within four weeks from today, in default he will have to undergo imprisonment for three months. The appeals are disposed of accordingly. The bail bonds stand discharged.