

Fazru vs State on 21 March, 2024

Author: Praveer Bhatnagar

Bench: Praveer Bhatnagar

[2024:RJ-JP:13922]

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 879/2005

Fazru s/o Tundal, Resident of Village Khohra Pipli, Police Station
Kishangarh-bas, District Alwar (Rajasthan)
(At present confined in Sub-Jail, Kishangarh-bas Alwar)

----Petitioner

Versus

The State of Rajasthan through PP

---Respondent

For Petitioner(s)	:	Mr.Ashish Sharma
For Respondent(s)	:	Mr.SS Mahla, Public Prosecutor

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR Order Date of Reserve :: 28/02/2024 Date of Pronouncement :: 21/03/2024

1. The matter pertains to an incident which occurred in the year 1996 and the present criminal revision is pending since the year 2005.

2. This criminal revision petition under Section 397 read with Section 401 Cr.P.C. has been preferred against the judgment dated 05.09.2005 passed by learned Additional Sessions Judge (Fast Track), Kishangarh-bas (Alwar) in Criminal Appeal No.39/2005, whereby the learned Appellate Court, while dismissing the appeal of the accused-petitioner, has upheld the judgment of conviction and order of sentence dated 12.12.2001 passed by the learned Additional Chief Judicial Magistrate, First Class, Kishangarh-bas (Alwar) in Criminal Case No.131/1996, whereby, the revisionist-petitioner was convicted and sentenced [2024:RJ-JP:13922] (2 of 7) [CRLR-879/2005] as under:-

Section 7/16 of Prevention of Food Adulteration Act :

Six months' simple imprisonment along with a fine of Rs.1000/- and in default of payment of fine, to further undergo one month's simple imprisonment.

3. Learned counsel for the revisionist-petitioner submits that the sentence so awarded to the revisionist-petitioner was suspended by this Hon'ble Court vide order dated 25.10.2005 passed in S.B. Criminal Misc. Bail Application No.229/2005.

4. Learned counsel for the revisionist-petitioner, however, makes a limited submission that the petitioner has already remained in custody for a period of 2 months and 16 days, thus without making any interference on merits/conviction, the sentences awarded to the present revisionist-petitioner may be substituted with the period of sentence already undergone by him.

5. Learned Public Prosecutor opposes the same.

6. Heard learned counsel for the parties and perused the material available on record.

7. The alternative plea for reduction of sentence was analysed in the latest pronouncement rendered in the matter of M/S A.K. Sarkar & Co. & Anr. Vs. The State of West Bengal (Special Leave Petition (Criminal) No.6095/2018) dated 07.03.2024 and after relying upon judgments of T. Barai Vs. Henry Ah Hoe [(1983) 1 SCC], Nemi Chand Vs. State of Rajasthan [(2018) 17 SCC 448] and Trilok Chand Vs. State of Himachal Pradesh [(2020) 10 SCC 763] after taking into consideration the provision enshrined in Article 20 of the Indian [2024:RJ-JP:13922] (3 of 7) [CRLR-879/2005] Constitution, the Apex Court held as under:-

"All the same, the above provision does not prohibit this Court, to award a lesser punishment in a befitting case, when this Court is of the opinion that a lesser punishment may be awarded since the new law on the penal provision provides a lesser punishment i.e. lesser than what was actually applicable at the relevant time. The prohibition contained in Article 20 of the Constitution of India is on subjecting a person to a higher punishment than which was applicable for that crime at the time of the commission of the crime. There is no prohibition, for this Court to impose a lesser punishment which is now applicable for the same crime."

8. In the matter of T. Barai v. Henry Ah Hoe (1983) 1 SCC 177, the Apex Court held that when an amendment is beneficial to the accused it can be applied even to cases pending in Courts where such a provision did not exist at the time of the commission of offence. The Apex Court further held that:-

"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 [2024:RJ-JP:13922] (4 of 7) [CRLR-879/2005] applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense."

9. In the aforesaid matter accused appellants were convicted under section 7/16 of the Prevention of Adulteration Act for simple imprisonment for a period of six months along with a fine of Rs.1,000/- each, for a fine of Rs.2,000/- respectively. The Apex Court, after taking into consideration the provisions of section 52 containing the punishment clause in the newly enacted Food Safety and Standards Act, converted the sentence of appellant No.2 from three months of simple imprisonment along with a fine of Rs.1,000/- to a fine of Rs.50,000/- (Rupees Fifty Thousand) and upheld the sentence of fine of another appellant number 1.

10. In the present case, the petitioner is convicted for the offence under Section 7/16 of the Prevention of Food Adulteration Act for simple imprisonment of 6 months along with a fine of Rs.1000/-. It is alleged against the petitioner that he sold substandard milk..

11. Indubitably the Prevention of Food Adulteration Act 1976 stands abrogated and replaced with the Food Safety and Standards Act, 2006. In the repealed Act 1976 the definition of Adulteration is provided under section (i), which reads as under :-

"adulterated"--an article of food shall be deemed to be adulterated--

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

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(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

- (g) if the article is obtained from a diseased animal;
- (h) if the article contains any poisonous or other ingredient which renders it injurious to health;
- (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;
- (j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;
- (k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;
- (l) 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 renders it injurious to health;
- (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:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the [2024:RJ-JP:13922] (6 of 7) [CRLR-879/2005] control of human agency, then, such article shall not be deemed to

12. The instant case falls under section (m) of the old Act. In the Act of 2006, the definition of "adulterant" is provided under Section 3(1)(a), which reads as under:-

(a) "adulterant" means any material which is or could be employed for making the food unsafe or sub-standard or mis-branded or containing extraneous matter;

13. In Section 51 of the Act of 2006, penalty for selling/ storing substandard articles is prescribed, which is as under:-

"51. Penalty for sub-standards food.-Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees."

14. Thus from the above provision, it is conspicuous that under the new act, only the penalty of a fine is stipulated therefore applying the doctrine articulated in the above-referred matters and also

considering the fact that the crime itself was committed in the year 1996 and twenty eight years have elapsed since, while upholding the conviction of the petitioner under section 7/16 of Prevention of Food Adulteration Act, the sentence is modified from six months of simple imprisonment along with fine of Rs.1,000/- to a fine of Rs.50,000/- (Rupees Fifty Thousand only). The amount shall be deposited with the concerned Court within a period of three months from today. If the petitioner fails to deposit the aforesaid fine in the prescribed limit then the trial Court shall proceed to recover it, [2024:RJ-JP:13922] (7 of 7) [CRLR-879/2005] in accordance with law.

15. With the aforesaid directions, the revision petition is partially allowed. All other pending applications, if any, stand disposed of. The record of the case be sent forthwith to the concerned Court to do the needful.

(PRAVEER BHATNAGAR),J Preeti Asopa /23 Powered by TCPDF (www.tcpdf.org)