

# Page No.# 1/6 vs The State Of Assam on 9 December, 2024

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GAHC010007302010

2024:GAU-AS:12581

THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Rev.P./361/2010

GAURAV DEORAH and ANR  
S/O SRI RAM GOPAL DEORAH

2: SRI RAM GOPAL DEORAH  
S/O LT. BASUDEO DEORAH BOTH R/O T.R. PHOOKAN ROAD  
FANCY BAZAR  
GHY-1 DIST. KAMRUP  
ASSAM

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.B DEKA, MR.J M CHOUDHURY,MR.D K KOTHARI,MRR K  
MOUR,MR.D TALUKDAR

Advocate for the Respondent : PP, ASSAM, , , ,

BEFORE  
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY  
For the Petitioner : Mr. Y. Kothari, Advocate.  
For the Respondents : Mr. B. Sarma, APP.  
Date of Hearing : 09.12.2024  
Date of Judgement : 09.12.2024

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JUDGMENT & ORDER (ORAL)

1. Heard Mr. Y. Kothari, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent.

2. The present criminal revision petition under Section 397/401 read with Section 482 of Cr.P.C., 1973 is filed assailing a Judgment and Order dated 07.01.2010 passed by the learned Sub Divisional Judicial Magistrate No.II (Sadar), Kamrup, Guwahati in C.R.Case No. 82 c/1999, whereby the accused petitioners were convicted under Section 7/16 of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as Act, 1954) and petitioners were sentenced to undergo Simple Imprisonment for 6 (six) months each and to pay a fine of Rs. 10,000/- each and in default to pay fine, Simple Imprisonment for another 1 (one) month. The further challenge is Judgment and Order dated 19.08.2010 passed by the learned Sessions Judge, Kamrup, Guwahati in Criminal Appeal No. 13/2010, whereby the learned Appellate Court dismissed the appeal and upheld the conviction.

3. Referring to the decision of the Hon'ble Apex Court in the case of M/s A.K.Sarkar & Co. & Anr. -Vs- The State of West Bengal & Ors reported in 2024 INSC 186 , Mr. Kothari, learned counsel for the petitioners argues that the sentence prescribed under Section 7/16 of the Act, 1954, at the relevant point of time when the alleged offence was committed was minimum Simple Imprisonment for a period of six months and fine of Rs. 1000/-. However, in terms of Section 52 of Food Safety and Standards Act, 2006 (hereinafter referred to as Act, 2006), the punishment Page No.# 3/6 prescribed is now only fine upto Rs. 3 lakhs and therefore he submits that the petitioners should also get benefit of the aforesaid principle of law laid down by the Hon'ble Apex Court. The learned counsel, however, has confined his argument to the sentence only.

4. To consider the aforesaid submission, this Court is to go through the complaint filed against the petitioners. The basic allegation in the complaint is to the effect that as per the Public Analyst Report dated 18.11.1988, refined vegetable oil which is sold by the petitioner is rancid and does not conform to the standard and the same is misbranded. Such materials were seized from the possession of the petitioners. Accordingly, two petitioners along with the National Co-operative Consumer's Federation of India Ltd. were prosecuted.

5. It is submitted by the learned counsel for the petitioners that though three of the accused person including the accused No. 3 i.e. National Co- operative Consumer's Federation of India Ltd were convicted, however, the accused No. 3, did not prefer any appeal and paid the fine. So far relating to the accused No. 1 and 2 from whose possession, the misbranded materials were recovered i.e. petitioner Nos. 1 and 2 had preferred the present revision petition.

6. I have heard the learned counsel for the parties. Perused the materials available on record including the provisions of Act, 1954 and the Act, 2006.

7. Section 7 of the Act, 1954 prohibits any person to manufacture for sale or store, sell or to distribute any adulterated food and any misbranded food etc. Page No.# 4/6

8. The allegation in the complaint as well as the conviction under Section 7 of the Act, 1954 of the petitioners herein, is relatable to adulteration and misbranding.

9. The Act, 2006 was enacted with an object to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

10. In terms of Section 97 of the Act, 2006, the Acts/Orders specified in Second Schedule were repealed, which include the Act, 1954. Clause-(ii) of Sub Section 1 of Section 97 of the Act, 2006 on the other hand prescribes that such repeal shall not affect any right, privilege application or liability acquired, accrued or incurred under any of the enactment or orders under repeal.

11. That being the position, generally the repeal of Act, 1954 shall not have any affect on the conviction made in the case in hand under the Act, 1954. However, the Hon'ble Apex Court in Trilok Chand -Vs- State of Himachal Pradesh reported in 2020 10 SCC 763 referring to the earlier judgment of the Hon'ble Apex Court in T. Barai -Vs- Henry Ah Hoe reported in (1983) 1 SCC 177, more particularly relying on paragraph 22 of the said judgment, concluded that since the amendment was beneficial to the accused person it could be applied with respect to the earlier cases as well as which are pending in the Court.

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12. In view of the aforesaid principle of law laid down by the Hon'ble Apex Court, the learned counsel for the petitioners argues that now the sentence is required to be modified as per Section 52 of the Act, 2006.

13. Section 52 of the Act, 2006 prescribes that 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 substandard, shall be liable to a penalty which may extend to five lakh rupees. In the case in hand, the complaint and the conviction is also relatable to an allegation which says that the material/food seized from the possession of the accused petitioners were not fit for human consumption. Therefore, learned counsel, in the considered opinion of this Court, is correct in arguing that such conviction is relatable to Section 51 of the Act, 2006. The other complaint is regarding misbranding inasmuch as, in the complaint, on the basis of expert opinion, it was alleged that the foods were misbranded. Therefore, it can be relatable to Section 52 of the Act, 2006 which prescribes that 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 misbranded, shall be liable to a penalty which may extend to three lakh rupees.

14. Therefore, in the given context of the present case, this Court is of the view that the determination made in Trilok Chand (supra) and M/s A.K.Sarkar (supra) can be made applicable.

15. Accordingly, the present criminal revision petition stands allowed by interfering with the sentence of Simple Imprisonment for 6 (six) months Page No.# 6/6 each and it is directed that the sentence be confined to the fine already directed to be paid. Accordingly, the fine be realized.

16. LCR be returned back.

JUDGE Comparing Assistant