

Mahesh vs The State Of M.P. on 25 October, 2024

NEUTRAL CITATION NO. 2024:MPHC-IND:31145

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI
ON THE 25 th OF OCTOBER, 2024
CRIMINAL REVISION No. 4242 of 2024
MAHESH
Versus
THE STATE OF M.P. AND OTHERS

Appearance:
Shri Veer Kumar Jain - Senior Advocate with Shri Namit
for applicant.
Shri Ajay Raj Gupta - Panel Lawyer for the respondent /

ORDER

This revision petition under Section 397/401 of Code of Criminal Procedure, 1973 (hereinafter referred as, 'Cr.P.C.') is directed against the judgment dated 22/05/2024 passed in Criminal Appeal No.32/2023 by 29th Additional Sessions Judge, Indore (M.P.), whereby the judgment dated 22/12/2022 passed in Criminal Case No.2617417/2008 by Special Magistrate, Nagar Palik Nigam, Indore (M.P.) convicting and sentencing the applicant under Section 7(i) read with Section 16(1)(A)(i) of Prevention of Food Adulteration Act, 1954 (hereinafter referred as, 'Act of 1954') for a period of 06 months RI with fine of Rs.1,000/- with usual default stipulation.

02. The applicant was prosecuted for the aforesaid offence on the basis of allegation that his establishment Adarsh Agency was inspected by Food Inspector Rajesh Jaiswal (PW-1) on 06/12/2007 at about 11:30 am in the presence of Rajeew Thairani, accused No.1 before Magistrate Court. Various edible articles were stored for sell. A sample of 'Ambari Bandhani Hing' weight near about 50 gram in NEUTRAL CITATION NO. 2024:MPHC-IND:31145 2 CRR-4242-2024 pack of 800 gram (10 pack x 80 packets) were also found stored. Six packets of the above were purchased by paying Rs.96/-. On Form No.6 it was informed that it has been purchased for sampling by complying with due process and sample was sent for examination to L.H.A. Examination report No.110 dated 24/12/2007 was received with letter No.174 dated 31/12/2007. It was found that sample is 'misbranded'. The applicant being Proprietor of the Firm was arraigned as accused No.5 and after obtaining prosecution sanction, prosecution was launched.

03. After receipt of the report, on an application under provisions Section 13(2a), sample was also got examined by Central Food Laboratory, Ghaziabad. Report (Ex.-P/32) was obtained which found sample adulterated, therefore, accused were charged for the offences as mentioned in para 1 of the

judgment. They pleaded no guilt and claimed to be tried.

04. Food Inspector Rajesh Jaiswal was examined under Section 313 of Cr.P.C. and incriminating circumstances were brought into the notice of the applicant and other accused persons for which they claimed ignorance. In defence Prashant Nerkar (DW-1) and Ajeet Banjare (DW-2) were examined. Learned trial Court vide impugned judgment convicted and sentenced the applicant as mentioned in para 1 of the judgment.

05. The judgment when challenged before the Appellate Court, vide judgment dated 22/05/2024 (Annex.-A/1) Appellate Court uphold the conviction and sentence and appeal was dismissed, therefore, judgments of both the Courts below have been assailed by way of this petition.

06. Learned counsel for the applicant assailing the finding of conviction and sentence submits that Courts below have ignored serious anomalies, contradictions and omissions in the testimony of prosecution witness and NEUTRAL CITATION NO. 2024:MPHC-IND:31145 3 CRR-4242-2024 judgment of conviction and order of sentence has been passed only based on conjectures and surmises, which cannot be sustained. On this grounds, he has prayed for acquittal of the applicant by setting aside the impugned judgments of the Courts below.

07. In the alternative limb of prayer, learned counsel for the applicant submits that alleged incident took place long back in the year 2007. The applicant is facing trial and appeal for near about 17 years. He is not a habitual offender and no other criminal case is registered against him, therefore, taking a lenient view in the light of change in law by repealing Act of 1954 and enacting Act of 2006, jail sentence may be set aside and appropriate amount of penalty may be imposed on the applicant. To buttress his submission, learned counsel has referred provisions as contained in Sections 3(1)(i), 3(1)(zf) and 3(1)(zz) in consonance to Sections 51, 52 and 54 of the Act of 2006. To bolster his submission, learned counsel has placed reliance on the judgment by the Apex Court in Trilokchand Vs. State of Himachal Pradesh reported in 2019 (2) F.A.C. 608 . On the aforesaid contentions, learned counsel prays for allowing the revision and impugned judgments passed by both the Courts below be set aside and appropriate order may be passed.

08. Learned counsel for the State has opposed the prayer but could not dispute the judgments passed by the Apex Court as referred by counsel for the applicant in Trilok Chand (Supra) .

09. Heard learned counsel for the parties and perused the record.

10. This Court has given its thoughtful consideration to the rival submission raised at bar. It is undisputed that the sample was taken on 06/12/2007 and after completing procedural formalities complaint was filed against the applicant. From perusal of the evidence available on record, this Court is of the view that the conviction recorded by the Courts below cannot be interfered with NEUTRAL CITATION NO. 2024:MPHC-IND:31145 4 CRR-4242-2024 by way of this revision. Hence, finding of conviction as recorded by the trial Court and affirmed by the Appellate Court is hereby affirmed.

11. Submissions made on behalf of the applicant in alternative limb of the prayer for setting aside the jail sentence and imposing appropriate amount of penalty appears to be reasonable and has substance in light of the judgment by the Apex Court in the case of Trilokchand (Supra) .

12. In case of Trilokchand (Supra) Hon'ble the Apex Court relying on T. Barai Vs. Henry Ah Hoe and Another 1948-1997 (1983) 1 F.A.C. (S.C.C.)177 has partly allowed appeal reducing the punishment for an offence under Section 16(1)

(a) of the Act, 1954. Giving benefit of reduce punishment under the Food Safety and Standard Act the Hon'ble Apex Court set aside sentence of 3 months imprisonment and enhanced a fine of Rs.500/- to Rs.5000/-. It is beneficial to reproduce paragraph 22 of the judgment T.Barai (Supra) relied on which runs as under :-

"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 Criminal Appeal No. 214/2016 etc. beneficial construction requires that even ex post facto NEUTRAL CITATION NO. 2024:MPHC-IND:31145 5 CRR-4242-2024 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. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp. 388-89: A retrospective statute is different from an ex post facto statute. "Every ex post facto law...." said Chase, J., in the American case of *Calder v. Bull* [1 L Ed 648 : 3 US 386 (1798)] "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime." (L Ed p.650) (emphasis in original)

13. Co-ordinate Bench of this Court in Criminal Revision No.6276/2019 (Harish Dayani Vs. State of M.P.) judgment dated 06/01/2020 relying on T.Barai (Supra) has also given the revisionist Harish Dayani the benefit of changes in law by substituting the sentence of imprisonment by penalty only. The sentence of rigorous imprisonment of 6 months with a fine of Rs.1000/- imposed on the revisionist under Section 7(i) r/w Section 16(1)(a)(i), 7(ii) r/w 16(1)(a)(i) and Section 7(v) r/w (i) (a)(ii) of the Act, 1954 has been substituted by penalty of Rs.3,00,000/- for adulteration under Section 51 of the Act and Rs.2,00,000/- for misbranding of the Food under Section 52 of the Act and Rs.1,00,000/- for containing extraneous matter under Section 54 of the Act and further NEUTRAL CITATION NO. 2024:MPHC-IND:31145 6 CRR-4242-2024 Rs.1,00,000/- for not issuing warranty under Section 58 of the Act.

14. Keeping in view elucidation of law by Hon'ble the Apex Court and by the co-ordinate Bench of this Court, the submission made on behalf of the applicant on the point of sentence, deserves to be allowed. On the basis of aforesaid discussion, this criminal revision is partly allowed upholding the conviction under Section 7(i) read with Section 16(1)(A)(i) of the Act of 1954, jail sentence is set aside and cumulative penalty of Rs.3,00,000/- (Rupees Three Lakhs Only) under Sections 51, 52 and 54 of the Act of 2006 for storing and selling adulterated Hing is imposed.

15. The aforesaid amount, after adjusting amount of fine, if any, deposited by the applicant before the Trial Court in compliance of the directions in the impugned judgment, shall be deposited by the applicant within 30 days from the date of judgment of this Court. On deposit of the aforesaid amount by the applicant within stipulated time, his bail bonds shall stand discharged. In case of default of payment of fine as imposed by this Court, the applicant shall undergo rigorous imprisonment of six months.

16. With the aforesaid, criminal revision stands disposed off. Certified copy as per rules.

(BINOD KUMAR DWIVEDI) JUDGE Tej