

Raja Gupta vs The State Of Madhya Pradesh on 10 July, 2023

Author: Dinesh Kumar Paliwal

Bench: Dinesh Kumar Paliwal

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL
ON THE 10th OF JULY, 2023
CRIMINAL REVISION No. 2712 of 2023

BETWEEN: -

RAJA GUPTA S/O LATE MAKRAND PRASAD GUPTA,
AGED ABOUT 41 YEARS, OCCUPATION: BUSINESS R/O
PRO. PRA. PUNEET KIRANA STORES, STATION ROAD,
UMARIA P.S. UMARIA TAHSIL BANDHAVGARH
DISTRICT- UMARIA (MADHYA PRADESH)

(BY SHRI P. C. PALIWAL - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH FOOD
AND DRUGS ADMINISTRATION UMARIA DISTRICT-
UMARIA (MADHYA PRADESH)

(BY SHRI SANTOSH YADAV - DY. GOVT. ADVOCATE)

Th is revision coming on for hearing this day, th e court
following:

ORDER

This revision petition has been filed by the applicant under Section 397/401 of the Cr.P.C. being aggrieved by the judgment of conviction and order of sentence dated 19.6.2023 passed by Sessions Judge, Umaria, in Criminal Appeal No.31 of 2019 affirming the judgment dated 21.11.2019 passed by the JMFC, Umaria in Criminal Case No.2764/2011, whereby the applicant has been convicted for commission of offence punishable under Section 16 (1)

(a) (i)(ii) of Prevention of Food Adulteration Act, 1954 (in short the "PFA Act") and sentenced to undergo RI for 6 months with fine of Rs.1000/- with default stipulations.

2. The facts of the case, in brief, are that as per prosecution story on 22.5.2009 Rajkumar Shukla, Food Inspector, went to the shop of the applicant for inspection. During Inspection he found that the date of preparation and last date for use of Vanaspati Ghee was not clear. Panchnama was

prepared, sample was found to be mis-branded. Complaint was filed before the trial Court. Learned JMFC convicted and sentenced the applicant as aforementioned. Being aggrieved by the conviction and sentence, applicant preferred appeal before the learned Sessions Judge, Umari which was also dismissed by appeal judgment dated 19.6.2023. Hence, this revision.

3. Learned counsel for the applicant has submitted that though the applicant has some prima facie case even on merits, he does not want to press this revision and by giving up the plea on merits, his only submission is with regard to the sentence which has been imposed by the courts below on the ground of changes in the law. The Prevention of Food Adulteration Act, 1954 has been repealed by the Food Safety and Standard Act, 2006, w.e.f. 5.8.2011 and under the Food Safety and Standards Act, 2006, the aforesaid punishable acts are not punishable with imprisonment and only penalty can be imposed and the applicant / accused is entitled to get the benefit under the changes in the law and in this regard, reliance has been placed on a judgment of Hon'ble the Apex Court in Nemi Chand V. State of Rajasthan (2016) 1 FAC 561 (SC) and clarification order reported as (2016) 1 FAC 203, in which the Apex court relying on the judgment of T. Barai V. Henry Ah Hoe and another (1982 (2) FAC 362), held as under :

3. It is not in dispute that the charge against the appellant was only of sub standardization of goods. Mr. Sushil Kumar Jain, learned senior counsel appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below.

He has in this behalf, argued that there has been an amendment in the Act by the Central Amendment Act 34 of 1976 whereby Section 16A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in 'T. Barai v. Henry Ah Hoe and Another' [1982 (2) FAC 362] [1983 (1) SCC 177] wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. In the said judgment, the Court held 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 FSAT No.27/16 M/s Buttercup Confectionery Ltd & Ors. Vs FSO Page No. 13 of 17 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. This finds support in the following passage from Crales 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* "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."

And thereafter, Hon'ble the Apex court has given benefit of changes in the law and substituted the sentence by penalty in case of conviction of the adulteration of food.

4. Learned counsel has further placed reliance on a judgment of the Apex court in *Trilok Chand v. State of Himachal Pradesh*, passed in criminal appeal no. 1831/2019 decided on 1.10.2019, in which the Apex court has also placed reliance on the judgment of *T. Barai (supra)* and substituted the sentence for misbranding under the PFA Act by penalty and also placed reliance on a judgment of M. P. High Court, Indore Bench in *Purushottam v.*

State of M.P. passed in CRR No. 3324/2019 decided on 19.7.2019, in which the aforesaid case of *Nemi Chand (supra)* has been relied upon and the sentence under the PFA Act with regard to adulteration and misbranding has been substituted by penalty and also placed reliance on a judgment of High Court of Gujarat in *Kasnab-hai v. State of Gujarat*, passed in CRR No. 662/2013 decided on 22.09.2017; on a judgment of High Court of Punjab and Haryana in *Parveen Kapoor v. Food Inspector, Chandigarh*, passed in CRR No.2975/2016 decided on 23.08.2018; on a judgment of High Court of Delhi in *State of NCT of Delhi v. Satish Kumar*, (2018) 4 JCC 2111 and on a judgment of High Court of Punjab and Haryana in *Sanjay Agarwal v. Government Food Inspector*, passed in CRR No.1275/2014 decided on 15.03.2019 with regard to substitution of the sentence by penalty.

5. Learned counsel in the light of the aforesaid judgments of the Supreme Court and the High Courts, has submitted that in the present case, food item was not unsafe and it was only misbranded, for which, under Section 51 of the Food Safety and Standards Act, 2006 penalty has been provided. Similarly, for misbranding under Section 52 of the Act, penalty has been provided and for containing extraneous matter under Section 54 of the Act, penalty has also been provided and for not issuing warranty, no separate provisions for punishment has been made and for

violation of the Act and Rules, where no separate provision has been made, under Section 58 of the Act the provision of penalty has been provided. Accordingly, the sentences be substituted by imposing appropriate penalty.

6. Learned Dy. Govt. Advocate has submitted that if the sentences are substituted by penalty then maximum penalty be imposed keeping in mind the provisions of Section 49 of the Food Safety and Standards Act, 2006.

7. Having considered the contentions of learned counsel for the parties and on perusal of the record, in view of the law laid down by the Apex Court and the High Court, considering the facts of the case, applicant is entitled to get the benefit of changes in the law by substituting the sentence by penalty and for the acts, the applicant has been convicted, penalty may be imposed under Sections 52 and 58 of the Food Safety and Standards Act, 2006. Therefore, this revision is partly allowed confirming the conviction under the aforesaid offence of PFA Act and considering the unfair advantage of the amount, the sentence is substituted by imposing penalty of Rs.50,000/- (Rs. Fifty Thousand) for misbranding of food. The aforesaid amount shall be deposited by the applicant within fifteen days with the trial Court. On deposit of the aforesaid amount by the applicant within 15 days, he shall be released from jail immediately. If the amount is not deposited within stipulated period, the applicant shall undergo the sentences as imposed by the Courts below.

8. With the aforesaid, this criminal revision is disposed of.

C.C. as per rules.

(DINESH KUMAR PALIWAL) JUDGE mrs. mishra