

Pawan Aggarwal vs Delhi Administration/Food Inspector on 9 March, 2022

IN THE COURT OF SHRI ANIL ANTIL
ADDITIONAL SESSIONS JUDGE-04, NEW DELHI DISTRICT
PATIALA HOUSE COURTS, NEW DELHI

Unique Case ID No.		DLND01-009694/2016
Criminal Appeal Number	:	8731/2016
CC No.	:	47/2011
U/S:	:	7/16 of P.F.A Act-1954

Pawan Aggarwal,
S/o Sh. Biharilal Aggarwal,
R/o H. No. 1216, Sangam Vihar,
Ratiya Marg, New Delhi-110062

.....Appellant

versus

Delhi Administration/Food Inspector
Department of PFA,
Govt of NCT of Delhi,
A-20 Lawrence Road,
Industrial Area,
Delhi 110035.

.....Respondent

Appeal received by Predecessor Court on : 08.09.2016
And By this court on : 17.10.2019
Arguments concluded : 09.03.2022
Date of judgment : 09.03.2022

APPEAL	: Partly allowed;partly dismissed
Decision	: Conviction upheld; sentence modified

JUDGMENT

CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 1 of 10

1. The present appeal was preferred by the appellant on 08.09.2016 and was assigned to the then learned ASJ-01/FSSA Court and after administrative directions vide order no. 12072-12106/Judl./NDD/PHC/ND dated 01.10.2019, it was re-assigned to this court for disposal of the same as per law.

2. By way of present appeal, the appellant herein has challenged the judgment dated 02.09.2016 and order on the point of sentence dated 07.09.2016 passed by the then learned ACMM-II, PHC, New Delhi vide which the appellant/accused Pawan Aggarwal was held guilty for commission of offences punishable under sections 16(1)(a) r/w Section 7 of PFA Act for violation of Section 2(ia)(a) and (m) of PF Act 1954 and was sentenced to Simple Imprisonment for two years as well as to pay a fine of Rs. 50,000/- and in default of payment of fine to undergo simple imprisonment of 15 days with benefit of Section 428 Cr.P.C.

3. The brief facts of the present case are that on 23.08.2010, the Food officials consisting of (FI) Sh. P.M. Kothekar, Field Assistant (F.A) Sh.S.Maissy, under the supervision of Local Health Authority/SDM Sh. V.P. Singh, reached at M/s. Pawan Aggarwal Sweets Corner at Shop No. A-110, Main Road, Tehkhand Village, New Delhi- 110020 where the accused was found conducting business of various food articles including sweets which were lying stored/exposed for sale for human consumption ;

- that FI disclosed his identity and expressed his intention to purchase a sample of 'Pista Burfi' from the vendor, to which he CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 2 of 10 agreed ;

- that thereafter as per the prescribed procedure under the PFA Act and Rules, the sample was lifted.

- that each sample was separately packed, fastened, marked, sealed and necessary documents including Notice as per Form-VI in the presence of appellant/accused alongwith Panchnama proceedings etc was prepared at the spot. The price of the sample commodity "Pista Burfi" was also paid to the vendor.

- that thereafter one counterpart of the sample was sent to Public Analyst (PA), in intact condition and other two counterparts were deposited with SDM/LHA ;

- that vide report dated 16.09.2010, the PA found the sample to be adulterated on the ground that it contained aluminum leaves instead of silver leaves which might be injuries to health and also that the sample contained hydrogenated vegetable oil, which was not declared as an ingredient.

- that upon receipt of report, SDM/LHA directed investigation which was carried out by Food Inspector and after completion of investigation sanction under Section 20 of the PFA Act was obtained from the Director PFA. The complaint was then filed in the court on 08.03.2011 alleging violation of Section 2(ia)(a)(b)(c) and (h) of PFA Act, as punishable under Section 7/16(1A) of the PFA Act.

4. That since the complaint was filed in writing by a public servant, hence, recording of pre-summoning evidence was dispensed with and the accused was summoned vide order dated 08.03.2011 for 14.04.2011 to face trial.

CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 3 of 10 The accused then appeared and filed an application under Section 13 (2) of the PFA Act, thereby, exercising his right to get the

second counterpart of the sample analyzed from the Central Food Laboratory (CFL). The CFL examined the sample and its Director gave Certificate dated 07.04.2011, opining the sample to be not conforming the part of PFA Rules due to presence of aluminum foil instead of silver foil.

-* On the basis of CFL report, notice of accusation under Section 251 Cr. PC was framed against the appellant/accused on 30.07.2011 for commission of the offence punishable under Section 7/16 (1) (a) of PFA Act, being violation of Section 2 (ia)

(a) and (m) of PFA Act, to which appellant/accused pleaded not guilty and claimed trial.

-* After filing appearance appellant/accused adopted the procedure available as per the statute ; pre-charge evidence was recorded ; and on the basis of testimony of prosecution witnesses, charge was framed against the appellant to which he pleaded not guilty ; prosecution evidence was led ; thereafter statement of accused u/s 313 Cr.P.C was recorded and after seeking opportunity to lead DE, no witness was examined or produced ; final arguments were heard and appellant/accused was held guilty by the learned trial court observing that prosecution has been able to establish its case and prove the guilt of the accused beyond the shadow of reasonable doubt ; and appellant/accused had sold adulterated food in violation of Section 2(ia),(a) and (m) of PFA Act and has committed CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 4 of 10 the offence punishable under Section 7/16(1)(a) of PFA Act and was thus convicted for the said offences by the learned trial court.

- In the order on quantum of sentence, appellant was sentenced to undergo simple imprisonment for two years and to pay a fine of Rs. 50,000/- and in default of payment of fine to undergo simple imprisonment for 15 days for offence punishable u/s 16(1)(a) r/w Section 7 of PFA Act, 1954.

5.(I) The appellant has assailed the judgment and order on sentence passed by the learned trial court by urging various grounds.

5.(II) However, during the course of argument on 09.03.2022, learned counsel for the appellant submitted that the benefit of new legislation be given to the appellant, in this regard affidavit of appellant/accused was filed, mentioning that he is not challenging the merits of the case/ conviction decided by the learned trial court vide judgment dated 02.09.2016 and confining his appeal limited to the quantum of sentence only awarded to him vide order dated 07.09.2016, and prayed that a lenient view be taken against him by giving him the benefit of New Legislation FSSAI.

6. It is argued by learned counsel for the appellant that on the date of pronouncement of judgment/order on sentence, the PFA Act, 1954 was repealed and new act had come into operation. It is stated that the court should give benefit of the new legislation to the accused vide which the punishment provided under the old act has been diluted to a considerable extent, and that the offence for which the accused/appellant has been convicted now falls under the CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 5 of 10 category of "Unsafe Food" punishable under section 59 of the new Act i.e Food and Safety Standards Act, 2006 (hereinafter called FSSAI) punishable only with fine upto Rs. Five lacs. and the minimum sentence provided in the earlier act has also been done away with.

7. It was argued by learned counsel for the appellant/convict that appellant is aged about 32 years, has wife and two children, one aged about 12 years and another of 07 years ; old aged parents, father aged 60 years and mother aged 58 years, who are not having good health are dependent upon him ; poor person of society : running snacks cart by selling Samosa and Tea etc, to earn livelihood to maintain his family ; has no other source of income, not involved in any other case, and prayed that a lenient view be taken against him in the light of the provisions of law under the new Act. 7.1 Further, that the case pertains to the year 2011, the appellant/accused has faced the trial of almost 11 years which by itself is a sufficient punishment and, the hardship faced by the appellants during the said period has caused great mental agony and stress. It is also stated that now a days special circumstances exists due to outbreak of pandemic of Covid-19 and there are chances of appellant being infected with virus in case imprisonment of sentence is awarded to him and considering the submissions, the fine already imposed by the learned trial court accordingly be reduced.

7.2 In support of his submissions qua the benefit of new legislation, learned counsel for appellant had relied upon the CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 6 of 10 judgment of Nemi Chand Vs. State of Rajasthan (Crl. Appeals No. 214 and 215 of 2016, vide order dated 10.03.2016, as corrected vide order dated 17.03.2016, as reported in 2016 (1) FAC 203) of Hon'ble Supreme Court and earlier judgment T Barai Vs. Henry 1983 () SCC 177.

7.3 Per contra, learned SPP, strongly opposed the submissions advanced by learned counsel by addressing that the sentencing cannot be done under new Act since the definition of many offences have changed in the new Act including this particular offence of which appellant/accused is charged. Definition of major offences like "adulteration" and "misbranding" have been changed. Now FSSAI have definition "substandard food", "food containing extraneous matter" "unsafe food" and misbranded food". Due to this reason, the ingredients have changed and thus there is no way in which the old offences could be related to new offences.

7.4 The application of Nemi Chand Judgment (supra), the same is based on the old judgment i.e. T Barai (Supra) of Hon'ble Supreme Court. The relevant portion of the T Barai Judgment is as follows :

- (Para 25) It is settled both on authority and principle that when a later statute again describes an offence created by an earlier statute and imposes a different punishment or varies the procedure, the earlier statute is repealed by implication in *Michell Vs. Brown* (1958) 120 ER 909, 912 : 32 LTOS 146:7 WR 80 Lord Campbell put the matter thus :

- "It is well settled rule of construction that, if a later statute CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 7 of 10 again describes an offence created by a former statute and affixes a different punishment, varying the procedure, the earlier statute is repealed by the later statute see also *Smith Vs. Benabo* (1937) 1 ALL ER 523 : (1997) 1 KB 518: 156 LT 194"

- In Regina Vs. Youle (1861) 158 ER 311,315-16 : LT 299 : 9 WR 637 Martin B. said in the oft-quoted passage :

- If a statute deals with a particular class of offences, and a subsequent Act is passed which deals with precisely the same offence, and a different punishment is imposed by the later Act, I think that, in effect, the legislature has declared that the new Act shall be substituted for the earlier Act."

- The rule is however subject to the limitation contained in Article 20(1) against ex post facto law providing for a greater punishment and has also no application where the offence described in the later Act is not the same as in the earlier Act i.e. when the essential ingredients of the two offences are different.

- Moreover, this particular aspect is stated as a illustration in the same judgment in Para 23 which is as follows :

- Moreover, this particular aspect is stated as a illustration in the same judgment in Para 23 which is as follows :

- To illustrate, if Parliament were to reenact Section 302 of the Indian Penal Code, 1860 and provide that the punishment for an offence of murder shall be sentence for imprisonment for life instead of the present sentence of death or imprisonment for life, then it can not be that the courts would still award a sentence of death even in pending cases.

CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 8 of 10 7.5 - Academic Reference can also be made to the letter dated 03.10.2017 of Food Safety and Standards Authority of India, produced before the court during the proceedings. Vide said letter the said authority, in the light of judgment of Hon'ble Supreme Court in Nemi Chand's Case (supra) issued an advisory to the Commissioners of Food Safety/Officers incharge of Food Safety to dispose of the long pending court cases filed under old PFA Act mainly concerning substandard and misbranding by imposing fine only.

7.6 - In view of the above discussion, it can be safely said that while considering on the point of sentence, in backdrop of the object and reasons of the new act and the intention of the legislature, the quantum of sentence so passed, in the interest of justice, needs to be considered under the new Act i.e. FSSAI, while deciding the present appeal.

8. Thus, analyzing the facts of the case, taking note of the special circumstances of the appellant/convict that no other previous or subsequent involvement is cited ; and coupled with the the fact that appellant has faced the trial of almost 11 years, read in light of the above cited judgment and the judgment of Hon'ble High Court of Delhi

titled as GNCT Vs. Jagdish Tyagi dated 11.10.2017 in my view the convict/ appellant is entitled to the benefit of new legislation.

Accordingly to meet the ends of justice, the sentence of the appellant as awarded by the learned trial court vide order dated 02.09.2016 sentencing him to undergo simple imprisonment for two years and to pay a fine of Rs.50,000/- and in default of payment of fine to undergo CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 9 of 10 simple imprisonment for 15 days for offence punishable u/s 16(1)(a) read with Section 7 of the PFA Act, 1954 for violation of Section 2(ia),

(a) and (m) of PFA Act with benefit of Section 428 Cr.P.C, if any, stands modified to the extent that instead of two years imprisonment appellant shall undergo TRC and shall pay a fine of Rs. 1,25,000/- instead of Rs. 50,000/- as awarded to him by the learned trial court. Sentence modified accordingly.

9. Appellant/Convict is directed to deposit the fine amount within 8 Weeks from the date of pronouncement of this judgment and, if any, amount of fine was deposited earlier by the appellant before the learned trial court same shall be adjusted accordingly.

10. The present appeal is disposed of accordingly in terms thereof.

11. TCR be sent back alongwith copy of the judgment to the learned trial court.

12. Appeal file be consigned to record room after completion of all other necessary formalities.

Announced in open court on 09.03.2022 (Anil Antil) Addl. Sessions Judge 04, Patiala House Courts, New Delhi District, New Delhi 09.03.2022 CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 10 of 10 IN THE COURT OF SHRI ANIL ANTIL ADDITIONAL SESSIONS JUDGE-04, NEW DELHI DISTRICT PATIALA HOUSE COURTS, NEW DELHI Unique Case ID No. DLND01-009694/2016 Criminal Appeal Number : 8731/2016 U/S : 7/16 of P.F.A Act-1954 Pawan Aggarwal, S/o Sh. Biharilal Aggarwal, R/o H. No. 1216, Sangam Vihar, Ratiya Marg, New Delhi-110062Appellant versus Delhi Administration/Food Inspector Department of PFA, Govt of NCT of Delhi, A-20 Lawrence Road, Industrial Area, Delhi 110035.Respondent 09.03.2022 Present : Sh. R.D. Goyal, learned counsel for the appellant/ convict/ accused alongwith appellant.

Sh. Kundan Lal, Id. SPP for the complainant department. Vide separate judgment announced today, it is observed that, Appellant/Convict is entitled to the benefit of new legislation. Accordingly to meet the ends of justice, the sentence of the appellant as awarded by the learned trial court vide order dated 02.09.2016 sentencing him to undergo simple imprisonment for two years and to CA no. 8731/16 Pawan Aggarwal Vs. Food Inspector (PFA) Pages 11 of 10 pay a fine of Rs.50,000/- and in default of payment of fine to undergo simple imprisonment for 15 days for offence punishable u/s 16(1)(a) read with Section 7 of the PFA Act, 1954 for violation of Section 2(ia), (a) and (m) of PFA Act with benefit of Section 428 Cr.P.C, if any, stands modified to the extent that instead of two years imprisonment appellant shall undergo TRC and shall pay a fine of Rs.1,25,000/- instead of Rs.50,000/- as awarded to him by the learned trial court. Sentence modified accordingly.

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