

Page No.# 1/6 vs The State Of Assam on 17 December, 2024

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GAHC010007742011

2024:GAU-AS:12805

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

Case No. : Cr1.Rev.P./317/2011

SAMIRAN PAUL and ANR

2: SRI HARI SANKAR PAUL
S/O SRI SHYAMAL PAUL
BOTH ARE R/O INDUSTRIAL ESTATE
P.O. BADARPURGHAT
P.S. BADARPUR
DIST. KARIMGANJ
ASSAM
PIN- 788806

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MRG P BHOWMIK, MS. P BHATTACHARJEE, AMICUS
CURIAE, MR. T C KHATRI, MS. J PURKAYASTHA

Advocate for the Respondent : PP, ASSAM, ,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

17.12.2024

1. Heard Ms. P Bhattacharjee, learned amicus curiae, appearing Page No.# 2/6 on behalf of the

petitioners. Also heard Mr. B Sarma, learned Addl. PP, Assam.

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 24.12.2010 passed by the learned Chief Judicial Magistrate, Karimganj in C.R. Case No. 942/2005, whereby the accused petitioners were convicted under Section 16(1)(a)(i)/7(i) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as Act, 1954) and petitioners were sentenced to undergo Rigorous Imprisonment for 6 (six) months each and to pay a fine of Rs. 2,000/- each and in default to pay fine, Rigorous Imprisonment for another 2 (two) month. The further challenge is Judgment and Order dated 30.06.2011 passed by the learned Sessions Judge, Karimganj in Criminal Appeal No. 1(i)/2011, whereby the learned Appellate Court dismissed the appeal and upheld the conviction.

3. Though this matter is pending since the year 2011, none represented the accused petitioner on 01.11.2022. Accordingly, this court has requested Ms. P Bhattacharjee, learned counsel to assist this court as an amicus. Accordingly the matter is listed for hearing today and Ms. P Bhattacharjee, learned counsel has gone through the record and placed her arguments.

4. 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, Page No.# 3/6 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 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.

5. To consider the aforesaid submission, this court has gone 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 25.06.2004, orange and pineapple syrup which was sold by the petitioner is adulterated (exhibit 25 & 27). And such materials were seized from the possession of the petitioners.

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.

8. The allegation in the complaint as well as the conviction under Page No.# 4/6 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) Page No.# 6/6 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 Rigorous Imprisonment for 6 (six) months 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.

17. While parting with the record, this court appreciates the assistance rendered by Mrs. P Bhattacharjee, learned counsel as Amicus Curiae. Accordingly registry shall ensure that Mrs. Bhattacharjee, learned counsel be paid the legal fee, as payable to a Legal Aid Counsel as per the norms fixed by the Legal Services Authority.

JUDGE Comparing Assistant