
(1996) 03 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 947 of 1995

Ashok Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Citation : (1996) 2 RCR(Criminal) 281

Hon'ble Judges : S.C.Malte, J

Advocate : Atul Aggarwal, S.K. Sud, Advocates for appearing Parties

Judgement

S.C. Malte, J.

1. This revision has been admitted to the limited aspect of consideration of quantum of sentence. In view of that, I need not dilate upon the merits of the case except in respect of quantum of sentence. The petitioner in this case was found in possession of 20 Kgs. of cowmilk on 24.2.1991 at about 12.30 p.m. The Food Inspector took the sample of the milk by following due procedure. The milk was sent to the Public analyst for analysis. The report of the Analyst indicates that the milk was deficient by 3.5% in respect of fat contents. Since the milk did not conform to the prescribed standard, the petitioner was prosecuted. The trial Magistrate convicted and sentenced him to rigorous imprisonment for one year and fine of Rs. 2,000/, in default simple imprisonment for one month. Against that judgment dated 23.11.1993, the petitioner preferred appeal before the Sessions Court. The Additional Sessions Judge by judgment dated 18.2.1995 dismissed the appeal. The petitioner, therefore, filed this revision which is now confined to the question of quantum of sentence.

2. The counsel for the petitioner submitted that the petitioner happened to be unfortunate fellow to be accosted while he was taking the milk for a religious function to be held in the night in question. It was further submitted that the petitioner is a young man with family responsibilities. He was the first offender. It was further submitted that in view of the provisions, since the milk in question was not adulterated with the substance that would be injurious to health, he

deserves leniency in order to afford him to reform himself in future.

3. On behalf of the State, the Assistant Advocate General, Haryana, submitted that in view of the large scale adulteration in the milk, deterrent punishment should be awarded, and the trial court rightly fixed the quantum of sentence.

4. Section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (briefly stated "the Act") covers this case. It provides that in respect of food article adulterated within the meaning of subclause (m) of clause (ia) of section 2 of the Act, the court has discretion to consider mitigating circumstances while fixing the quantum of punishment. It further provides that in case of food articles being primary food which is adulterated due to human agency, the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months, but which may extend to two years, and fine which shall not be less than Rs. 500/. It, therefore, clearly appears that even if the case of the petitioner could be considered under these provisions of section 16 of the Act, the minimum sentence would not go below three months and fine not less than Rs. 500/. These provisions are further clarified by certain proviso with which I am presently not concerned. At this juncture, it may further be mentioned that subclause (m) of subsection (ia) of section 2 of the Act, pertains to a food article in respect of which the quality or purity of the article falls below the prescribed standard, but thereby it is not rendered injurious to health. In this case, the milk in question had fallen below the standard but it cannot be said that it was injurious to health. Briefly stated, therefore, in this case the Court should take into consideration adequate and special reasons for showing leniency to the petitioner.

5. The case put forth by the counsel for the petitioner was that the petitioner was carrying the milk for some function to be held in the night, does not appeal me, for the simple reason that the petitioner was found carrying milk at about 12.30 p.m. It is not possible to say that for the function that was arranged in the night, he was carrying the milk at about noon. All the same, the other factors deserve consideration. The petitioner is aged about 30 years and, in all probabilities, must be a married person having family. The matter then depends on the sole criteria as to the object and purpose of imposing punishment. Undoubtedly, the Legislature has taken a very stern view in respect of food adulteration. The Legislature has also provided the variation in the sentence depending on the gravity of the offence with reference to the adulteration which is injurious to the health, and which is not injurious to health. Therefore, though it appears that the object is to punish the culprit, some room is carved out for reformation in the future. The stringent punishment would not always yield to same result. On finding that the petitioner had to face the trial till this day, and had to incur expenses to defend himself and has to suffer the mental tension in respect of the result of the case, I am of the view that that is going to be enough deterrent punishment to him, as well as to the prospective offenders. All the same, even

after showing the leniency, the sentence cannot go below three months and fine of Rs. 500/. In view of that I reduce the sentence of the petitioner to three months" R.I. while maintaining the fine of Rs. 2000/ in default simple imprisonment for one month. With this modification, the Revision is allowed to that extent.