

**(2017) 09 RAJ CK 0009**  
**In the Rajasthan High Court**  
**Case No : 220 of 1996**

Bhanwar Lal

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

---

**Date of Decision :** 04-09-2017

**Acts Referred:**

<a href=3863>Code of Criminal Procedure, 1973</a>, <a href=3863-433>Section 433</a> - Power to commute sentence  
<a href=6468>Prevention of Food Adulteration Act, 1954</a>, <a href=6468-16>Section 16(1)(c)</a> - Penalties

**Citation :** (2017) 09 RAJ CK 0009

**Hon'ble Judges :** Pradeep Nandrajog

**Bench :** SINGLE BENCH

**Advocate :** Srikant Verma, J.P.Bhardwaj

---

## Judgement

1. Petitioner No.1 has expired and thus the issue has to be decided regarding petitioner No.2.
2. As per the case of the prosecution the Food Inspector visited a shop carrying on business in the name and style "M/s Vijay Kumar Ram Kumar" on 22.8.1983. Jagdish Prasad, petitioner No.2 was at the counter selling food items and his brother Bhanwar Lal, petitioner No.1 was making entries in the account books. When the Food Inspector wanted to purchase 375 grams of mustered oil, Jagdish Prasad took the tin of oil outside and threw it in the open ground thereby committing offence punishable under Section 16(1)(c) of the Prevention of Food Adulteration Act, 1954.
3. Vide decision dated 28.7.1993 both brothers have been

convicted and sentenced to undergo imprisonment for a period of one year. Appeal filed has been dismissed on 20.6.1996.

4. The argument of learned counsel for the sole surviving petitioner is that no private person was associated when the Food Inspector came to the shop and ostensibly demanded to purchase mustered oil.

5. I have perused the testimony of PW1 to PW3, all of whom support the case of the prosecution that Jagdish Prasad was at the counter selling food stuff and threw mustered oil outside the shop when the Food Inspector demanded to purchase 375 grams of mustered oil. That an independent person was not associated is neither here nor there.

6. At this stage learned counsel for the sole surviving petitioner prays for directions to be issued as were issued by the Supreme Court in the decision reported as 1997 (9) SCC 101

N.Sukumaran Nair V/s Food Inspector.

7. Section 433 Cr.P.C. reads as under:-

"433. Power to commute sentence.- The appropriate Government may, without the consent of the person sentenced, commute- (a) a sentence of death, for any other punishment provided by the Indian Penal Code ; (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine; (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine; (d) a sentence of simple imprisonment, for fine."

8. In N.Sukumaran Nair's case (supra) the Supreme Court observed and directed as under:-

"The offence took place in the year 1984. The appellant has been awarded six months" simple imprisonment and has also been ordered to pay a fine of Rs.1000. Under clause (d) of Section 433 of the Code of Criminal procedure, "the appropriate government" is empowered to commute the sentence of simple imprisonment for fine. We think that this would be an appropriate case for commutation of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial court a sum of Rs.6000 as fine in commutation of the sentence of six months" simple imprisonment within a

period of six weeks from today and intimate to the appropriate Government that such fine has been deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate orders under clause (d) of Section 433 of the Code of Criminal Procedure."

9. I find that in a later judgment reported as 2004(5) SCC 721

Dayal Singh V/s State of Rajasthan the Supreme Court had

observed as under:-

"15. In the instant case it was not disputed that for the offence charged a minimum sentence of 6 months" rigorous imprisonment is prescribed by law. The appellant has been sentenced to undergo 6 months" rigorous imprisonment which is the minimum sentence. We are not inclined to modify the sentence by passing an order of the nature passed in N. Sukumaran Nair where this Court in exercise of its extraordinary jurisdiction imposed only a sentence of fine and directed the State to exercise its powers under section 433 of the Code of Criminal Procedure to commute the sentence of simple imprisonment for fine. In the instant case, the appellant has been sentenced to undergo 6 months" rigorous imprisonment. Moreover, we are firmly of the view that strict adherence to the Prevention of Food Adulteration Act and the Rules framed thereunder is essential for safeguarding the interest of consumers of articles of food. Stringent laws will have no meaning if offenders could get away with mere fine. We, therefore, find no reason to interfere with the sentence imposed against the appellant."

10. Noting the two earlier decisions, in the decision reported as

2009(12) SCC 646 State of Rajasthan V/s Jagdish Prasad the

Supreme Court directed as under:-

"However, since the occurrence took place nearly three decades back if the accused respondent moves the appropriate Government to commute the sentence of imprisonment, the same shall be considered in the proper perspective. For a period of three months, the accused need not surrender to undergo sentence during which period it shall be open to him to move the appropriate Government for commutation. If no order in the matter of commutation is passed by the appropriate Government the accused shall surrender to custody to serve the remainder of sentence."

11. Since I am not inclined to interfere with the judgment of conviction and sentence passed, I would be inclined to issue the direction as was issued by the Supreme Court in Jagdish Prasad's case (supra).

12. Dismissing the revision petition, I suspend the sentence for a

period of four months directing that if the petitioner makes a representation to the appropriate Government for commutation of sentence of imprisonment within one month. The same shall be considered by the appropriate Government and decision would be taken within three months. The petitioner need not surrender for a period of four months. If the appropriate Government commutes the sentence, the petitioner need not surrender. If the petition seeking commutation is dismissed the petitioner would suffer the remaining sentence.