
(1997) 08 RAJ CK 0012

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 200 of 1988

Dayal Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433
Penal Code, 1860 (IPC) — Section 302
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (1998) CriLJ 567 : (1997) 3 RLW 1504 : (1998) 1 WLC 109 : (1997) 2 WLN 206

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : P.N. Mohanani, for the Appellant; P.R. Patel, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Heard the learned counsel for the parties. On 25-10-1979. Food Inspector took sample of hard boiled sugar confectionary from the petitioner. Report of Public Analyst dated 16-11-1979 shows that it was not according to the prescribed standards and mineral oil was found present and the taste and smell of it was unpleasant. This type of sweets are mostly used by small childrens. After obtaining sanction the Food Inspector filed complaint against the petitioner Dayal Singh and Pratap Narain on 29-1-1980 before the Court of Chief Judicial Magistrate, Jodhpur. The allegation in the complaint was that Dayal Singh was the manufacturer and selling hard boiled sugar confectionary items. Alongwith Dayal Singh complaint was also filed against Pratap Narain. At the end of trial the learned Magistrate acquitted the accused Pratap Narain, but convicted the present petitioner Dayal Singh for the offence punishable under Sections 7 and 16 of Prevention of Food, Adulteration Act (for short the Act) and sentenced him to suffer R.I. for two years and to pay fine of Rs. 2000/- and in default to further undergone six months R.I. Criminal appeal No. 77/86 was filed by the petitioner

against the order of conviction and sentence passed by the trial Court, which was decided by the learned Sessions Judge on 4-8-88, whereby, the conviction order passed by the learned Magistrate was confirmed, but the sentence was reduced from two years R.I. to six months R.I. and the fine was reduced from 2000/- to Rs. 1,000/- and in default to further undergo R.I. for one month. This order passed by the learned Sessions Judge in appeal is challenged by the petitioner in this revision petition, which was filed in 1988. On 10-8-88, this petition was admitted and the accused was ordered to be released on bail. Since then he is on bail. He has hardly undergone the sentence of four days as stated by the learned counsel Shri Mohanani for the petitioner.

2. Learned counsel Shri Mohanani for the petitioner vehemently submitted that there is an amendment in the Act and now it cannot be said that accused had committed any offence. He submitted that the amendment in question came into force subsequently, but it is settled principle of law that it will apply to the pending cases where the offences have been committed prior to the amendment came into force. According to him, mere finding of mineral oil and the taste and smell found to be unpleasant will not constitute an offence. He also submitted that the co-accused Shri Pratap Narain has been acquitted by the learned Magistrate, on whose name the receipt of shop was issued, therefore, the learned Magistrate was in error in not acquitting the petitioner particularly when his co-accused was acquitted. No such amendment is brought to the notice of this Court. Even assuming for the sake of argument that there is some amendment then also in my humble opinion it will not apply retrospectively unless and until it is provided. This contention of learned counsel was not raised before the trial Court pointing out that amendment has come into force after the judgment delivered by the learned Sessions Court in appeal. Therefore, there is no question of that being cited before the courts below. That contention has not been raised in this memo of revision. Be that as it may, this submission cannot be accepted as both the courts below have concurrently found against the petitioner on appreciation of evidence, therefore, this Court in revision petition cannot interfere with the same. The second contention of Mr. Mohanani is that the co-accused has been released, therefore, the petitioner could not have been convicted. This contention of Mr. Mohanani cannot be accepted. It is true that the co-accused, in whose name the receipt was issued, has been acquitted. Unfortunately, there was no appeal against the order of acquittal of the co-accused and in absence of any appeal I do not want to express my views on the matter. However, from the evidence of Food Inspector, it is clear that when the sample was taken by the Food Inspector the petitioner was very much present in the shop, therefore, second submission of Mr. Mohanani has no substance and it is rejected.

3. Lastly, Mr. Mohanani submitted that the offence was committed way back on 25-10-1979 and by now almost 18 years period has passed. The petitioner has closed down the shop and there is no possibility of the petitioner being involved in similar type of offence. He submitted that there was a hanging sword on head

for all these years and he has remained in jail for about 4 days, therefore, the order of sentence as, already undergone be passed by reducing the same from six months R.I. to the sentence as already undergone. He submitted that fine may suitably be raised from Rs. 1000/- as it was done by the Hon''ble Supreme Court in case of N. Sukumaran Nair Vs. Food Inspector, Mavelikara, In N. Sukumaran's case (Supra) the sample of Ice Cream was found to be adulterated and the offence was committed in 1984 and more than a period of decade was passed. The Apex Court after considering the provisions of Section 433(d) of Cr. P.C. thought it fit to commute the sentence and directed the appellant of that case to deposit Rs. 6000/- fine instead of undergoing sentence of six months S.I. Section 433(d) read as under :-

(d) a sentence of simple imprisonment, or fine.

4. u/s 433 the power to commute the sentence of imprisonment for life on sentence of R. I. or sentence of S.I. or fine vest only with the appropriate Govt. In case of N. Sukumaran Nair's case 1995 Cri LJ 365 (supra) the Hon''ble Supreme Court thought it fit to commute the sentence by directing the State Govt. that on deposit of such fine the State Govt. may formulate the matter by passing appropriate order under clause (d) of Section 433 of Code of Criminal Procedure. In my humble opinion, this Court cannot direct the State Govt.. to commute the sentence as prayed for by Mr. Mohanani in this case. In my opinion, it is a serious matter where sample of sweet, which is hard boiled sugar confectionary, was found to be adulterated with mineral oil and the taste and smell were found to be unpleasant. The same is mostly used by children, therefore, even if this Court had powers to direct the State Govt. to commute the sentence u/s 433(c) Cr. P.C. then also this Court would not have done so. This is a case where minimum sentence of six months is provided. In my opinion the appellate Court wrongly reduced the sentence of two years R.I. to six months R.I. on the ground that case was pending for last about 9 years. Looking to the gravity of offence committed by the accused the sentence is required to be imposed. It is unfortunate that criminal cases of 1979 came to be decided by the trial Court after seven years i.e. in 1986. Appeal was disposed of in 1988. In such case the sentence should not have been reduced. Be that as it may, there is no appeal for enhancing the sentence preferred by the complainant or by the State, therefore, this Court cannot enhance the sentence. However, the question of reducing the sentence is totally out of question. In fact, the Courts below ought not to have exercised their discretion in such serious offences. These offences are more serious than the offence of murder u/s 302, IPC, where persons are playing with the lives and health of innocent children. It is true that in this case by now 18 years have passed, if this petition was not admitted in 1988 then 9 year would not have passed. It was a fortuitous circumstance which cannot be used by the petitioner his favour for reducing the sentence particularly when law provides that the Court cannot impose sentence less than a sentence of six months.

5. In view of the above discussion, this petition fails and is hereby dismissed. The bail bonds of the petitioner stands cancelled forthwith.