

(2018) 01 GUJ CK 0044
In the Gujarat High Court
Case No : 685 of 2013

GURUDINO BALOMAL SUGANDHI

APPELLANT

Vs

VIMALKANT KANCHANALAL TAILOR & ANR

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Prevention of Food Adulteration Act, 1954, Section 16, Section 7, Section 52, Section 51 - Penalties - Prohibition of manufacture, sale, etc. of certain ar

Citation : (2018) 01 GUJ CK 0044

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : AMIT V THAKKAR, RUTUL P DESAI, MANAN MEHTA

Judgement

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 15/11/2013 passed by the learned 2nd (Acting) Additional

Sessions Judge, Navsari in Criminal Appeal No.40/2000 by which the learned appellate Court has rejected the said Appeal and has confirmed the

judgment and order of conviction and sentence passed by the learned trial Court vide judgment and order dated 10/04/2001 in Criminal Case

No.11722/1999 by which the learned trial Court convicted the original accused under Sections 7(1) and 16(1)(a) of the Prevention of Food

Adulteration Act, 1954 (hereinafter referred to as the Act) and sentenced the original accused to undergo one year Simple Imprisonment with fine

of Rs.5000/- and in default to undergo one month Simple Imprisonment, original accused have preferred the present Criminal Revision

Application.

2. It is not in dispute that charge against the petitioners original accused was

only of sub standardization of the goods.

3. Shri Amit V. Thakkar, learned advocate appearing on behalf of the petitioners has submitted that though all the accused have some case even

on merits, he would be giving up the plea on merits and his only submission is about sentence imposed by the Courts below. He has requested to

consider the subsequent amendment in the Act by the Central Amendment Act whereby Sections 51 and 52 have been added and under the said

Sections, only fine is to be imposed. Therefore, he has requested to maintain conviction but modify the sentence and impose fine only.

4. In support of his above submissions and in support of his above request, Shri Thakkar, learned advocate appearing on behalf of the petitioners

original accused has heavily relied upon the decision of the Hon''ble Supreme Court in the case of Nemi Chand vs. State of Rajasthan dated

17/03/2016 passed in Criminal Appeal No.214 of 2016.

5. Mr. Manan Mehta, learned Additional Public Prosecutor has appeared on behalf of respondent - State.

5.1 Considering the facts and circumstances of the case and more particularly the fact that charge is only of sub-standardization of goods and

request is made by learned advocate appearing for the petitioners and considering the decision of the Hon''ble Supreme Court in the case of Nemi

Chand (supra), learned advocates appearing for the other side have requested to pass appropriate order.

6. Having heard Shri Thakkar, learned advocate appearing for the petitioners, Mr. Manan Mehta, learned Additional Public Prosecutor appearing

on behalf of respondent - State and considering the facts and circumstances of the case, more particularly, when the charge against the petitioners

is only of sub standardization of the goods and that original accused were convicted for the offence under Sections 7 and 16(1)(a) of the

Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) and sentenced the original accused to undergo one year Simple

Imprisonment with fine of Rs.5000/- and in default to undergo one month Simple Imprisonment, considering the decision of the Hon''ble Supreme

Court in the case of Nemi Chand (Supra) and amendment in the Act by Central Amendment Act 34 of 1976 whereby Sections 51 and 52 have

been added and under said Sections only fine is leviable, decision of the Hon''ble

Supreme Court in the case of Nemi Chand (supra) squarely applies.

7. In the case of Nemi Chand, (supra), the Hon"ble Supreme Court has considered similar request and has observed as under:

2. It is not in dispute that the charge against the appellant was only of sub-standardization of goods. Mr. Sushil Kumar Jain, learned senior counsel

appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits

and his only submission is about the sentence which has been imposed by the courts below. He has, in this behalf, argued that there has been an

amendment in the Act by the Central Amendment Act 34 of 1976 whereby Section 16A was added and under the said section, only a fine is

leviable. He has drawn our attention to the judgment of this Court in T. Barai V. Henry Ah Hoe and Another [1983 (1) SCC 177] wherein this

Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are

pending in the Court. In the said judgment, the Court held as under :-

22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall

be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall

he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It

is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person

can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the

Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused

should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type

should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the

following passage from Craies on Statute Law, 7th Edn., at pp. 388-89:

A retrospective statute is different from an ex post facto statute. "Every ex post

facto law...." said Chase, J., in the American case of *Calder v. Bull*

must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested

agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no

retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their

commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed.

But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate

the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference

between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime.

From the facts of the present case, we have no doubt in mind that the aforesaid judgment squarely applies thereon. This appeal is, therefore, partly

allowed and the sentence imposed upon the appellant is modified by imposing fine of Rs. 50,000/- which shall be deposited within two months

with the trial court. On deposit of the aforesaid amount, the bail bonds furnished by the appellant shall be discharged.

8. It cannot be ignored that similar view has been taken by the co-ordinate bench in judgment and order dated 22.09.2017 in Criminal Revision

Application No.456 of 2012.

9. Under the circumstances, present Criminal Revision Application is partly allowed. Conviction of the accused for the offences alleged against

them is hereby maintained. However, sentence is modified by imposing fine of Rs.50,000/-, which shall be deposited before the learned trial court

within a period of four weeks from today. On deposit of the aforesaid amount, bail bond furnished by the petitioners original accused shall be

discharged. Rule is made absolute to the aforesaid extent. Direct service is permitted.