
(1985) 02 GUJ CK 0004
In the Gujarat High Court

Hemantkumar Dahyabhai Prajapati

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 25-02-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a), 20AA, 7

Citation : (1985) 2 GLR 1036

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Judgement

B.S. Kapadia, J.—The present revision application is filed by the original accused against the order of conviction and sentence passed by the learned Addl. Sessions Judge, Ahmedabad, in the criminal Appeal No. 142 of 1984 wherein the order of conviction u/s 7 read with Section 16(1)(a) of the Prevention of Food Adulteration Act was confirmed but he modified the order of sentence passed by the learned Metropolitan Magistrate Court No. 6, Ahmedabad, in Criminal Summary Case No. 47 of 1983 dated 30-6-1984 imposing the sentence of Simple Imprisonment for six months and to pay fine of Rs. 1,000/-, in default to undergo further simple imprisonment for three months. The order of sentence was modified by the learned Addl. Sessions Judge and the accused was ordered to undergo simple imprisonment of one month and to pay a fine of Rs. 1,000/- in default to undergo further simple imprisonment of three months.

2. The facts of the case are that the accused applicant is running a shop on small scale basis in the name of "Meenakshi Provision Store" situated near St. Xavier's High School at Gopalnagar in Memnagar area of Ahmedabad City. On 1st February 1983 at 9.30 a m. the Food Inspector Shr P. M. Modi went to the shop of the accused-applicant and he found edible oil kept in the shop for sale in an open tin. At the request of Mr. Modi, the original complainant (sic accused) sold this groundnut oil to him. The accused was then informed that Mr. Modi wanted to purchase the same for getting the sample analysed. Mr. Modi then purchased the oil, filled it in dry bottles and sealed these bottles as per the Rules and

managed to forward the sample for analysis. On analysis the sample was found adulterated with castor oil. Thereafter, after following the provisions of the Prevention of Food Adulteration Act, the accused was prosecuted. The accused took the defence of warranty saying that he had purchased the edible oil from one Mohmadbhai Jivabhai, who is carrying on his business in the name and style of Bharat Oil Depot. The learned Magistrate recorded the evidence in the presence of accused Mohmadbhai Jivabhai. On appreciation of the evidence, the learned Magistrate came to the conclusion that the accused had failed to prove that the edible oil, which he sold to the complainant Mr. Modi for analysis, was the same which he purchased from Mohmadbhai Jivabhai of Bharat Oil Depot and acquitted the latter for the offence with which he was charged. However, the learned Magistrate found the present applicant guilty of selling adulterated edible oil and convicted and sanctioned him as aforesaid. Thereafter the appeal, was preferred against the said order of conviction being the Criminal Appeal No. 142 of 1984 and the learned Addl. City Sessions Judge partly allowed the appeal on the point of sentence only as stated above.

3. Mr. G.A. Pandit, the learned Advocate appearing for the applicant states that he is limiting his argument only on the point of sentence and he does not challenge the conviction. He submits that the learned Sessions Judge was kind enough to reduce the sentence from six months S.I. to one month's S.I., but he has not given the benefit of "the provisions of the Probation of Offenders Act to the accused and therefore, he submits that the fine may be maintained but so far as the imprisonment is concerned, the accused should be given the benefit of the provisions of Probation of Offenders Act, 1958. Mr. Dipak Trivedi, the learned Add. P.P. and Mr. M. A. Panchal. the learned Advocate for the Food Inspector submit that this is not a case where the benefit of the provisions of Probation of Offenders Act can be given. Mr. Panchal has brought to my notice the decision reported in Ram Parkash Vs. The State of Himachal Pradesh, while Mr. Pandit, had brought to my notice the judgment of the Supreme Court reported in AIR 1981 S.C. 1776. Mr. Pandit has stated that the accused-applicant should be given the benefit of the provisions of Probation of Offenders Act and he should be released.

4. However, it appears that in the Prevention of Food Adulteration Act, Section 20AA is inserted on the statute book by the Amendment Act No. 34 of 1976 and the said amendment has come into force with effect from 1-4-1976. Section 20AA is as under:

Nothing contained in the Probation of Offenders Act, 1958. or Section 360 of the Code of Criminal Procedure, 1973 shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

In view of the clear and positive statutory provision, (namely, Section 20AA of Act 37 of 1954) there is no question of applying the provisions of Probation of Offenders Act or Section 360 of the Criminal Procedure Code to a person convicted of an offence who is above 18 years of age. It may be noted that the

case reported in Ram Parkash Vs. The State of Himachal Pradesh, is a case which is decided by the Supreme Court before the insertion of Section 20AA in the Prevention of Food Adulteration Act and therefore, in view of the specific statutory provision, the said Supreme Court Judgment would be applicable to the present case. So far as the second judgment of the Supreme Court reported in AIR 1981 SC 1776 is concerned, it may be stated that it is a very short judgment delivered by the Supreme Court wherein it is very difficult to make as to whether the accused was below 18 years of age or not and that the offence for which he was convicted took place prior to the coming into force of Section 20AA of the Prevention of Food Adulteration Act. Even assuming that the Provisions of Probation of Offenders Act would apply only at the time of passing the order of conviction and sentence still however, there is nothing to show that it was brought to the notice of the Lordships of the Supreme Court about the insertion of Section 20AA. It is true that in the head note prepared for the said judgment, Section 20AA is referred to but it is not part of the judgment, it may also be noted that there is no discussion and or mention about Section 20AA of the Prevention of Food Adulteration Act in the said judgment and therefore, it cannot be said that it is the law laid down by the Supreme Court on the applicability of the provisions of Probation of Offenders Act after considering the provisions of Section 20AA. In view of the clear position of law i.e. the provisions of Section 20AA of the Prevention of Food Adulteration Act, benefit under the provisions of Probation of Offenders Act cannot be given to the accused-applicant particularly when he is shown to be of 20 years of age in the complaint filed by the Food Inspector which has not been challenged.

5. On the point of sentence it may be stated that the trial court imposed sentence of six months S.I. and a fine of Rs. 1,000/- in default S.I. for three months. However, in appeal being the Criminal Appeal No. 142 of 1984 filed by the accused the order of sentence was modified and he was ordered to undergo S.I. for one month and to pay a fine of Rs. 1,000/- in default S.I. for three months. The learned Addl. City Sessions Judge has given reasons for reducing the sentence less than the minimum prescribed under the Act. The State has not come for enhancement of sentence awarded by the learned Addl. City Sessions Judge in the aforesaid appeal. However, Mr. Pandit the learned Advocate for the applicant-accused submits that in view of the peculiar circumstances narrated by the learned Addl. Sessions Judge in his judgment the accused should be punished with fine and there should not be any order for imprisonment. For that purpose he has relied on the Judgment of the Patna High Court in the case of Dilo Sao v. The State of Bihar in Criminal Revision No. 1054 of 1969 decided on 2-4-1970 reported in 1974 Prevention of Food Adulteration Cases, page 49. The very number of criminal revision application and the date of the decision clearly indicate that at the time of giving the said decision there was no provision of minimum sentence as provided in Section 16 of the Act, because Section 16 has also been amended by the Act No. 34 of 1976 which has come into operation from 1-4-1976. In that view of the matter I do not find any merit in this revision

application for further reducing the sentence particularly in view of the mandatory provision of Section 16 of the Prevention of Food Adulteration Act.

6. Mr. Pandit further submits that in view of the peculiar circumstances of the case accused would like to make an application for remission under the provisions of Section 432 of the Criminal Procedure Code to the State Government. The accused would be at liberty to make an application before the State Government for remission under the provisions of Section 432 of the Criminal Procedure Code. The State Government may consider it sympathetically if it thinks fit to do so. In the result the Criminal Revision Application stands dismissed. Rule discharged. With a view to enable the petitioner-accused to make an application u/s 432 of the Criminal Procedure Code for remission before the State Government, the accused-petitioner is ordered to surrender within three weeks from today.