
(1987) 03 MP CK 0042

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 171 of 1984

Indore Municipal Corporation, Indore

APPELLANT

Vs

Kishanlal Assodamal and another

RESPONDENT

Date of Decision : 03-03-1987

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 7(i)

Citation : (1987) MPLJ 641

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : S.J. Dhanji, for the Appellant; Harishkumar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Shrivastava, J.

This revision petition is directed against the appellate order dated 5-3-1984 passed by the 3rd Additional Sessions Judge, Indore in Criminal Appeal No. 350 of 1982.

Circumstances giving rise to this petition are these. The Food Inspector of the appellant-Corporation had on 31-8-1977 obtained sample of the rapeseed oil from the non-applicant No. 1 Kishanlal. On analysis it was, on saponification test, found to be adulterated. He was, therefore, prosecuted and the learned trial Magistrate at the conclusion of the trial convicted him u/s 7(i) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act 1954 (for short "the Act") and sentenced him to R.I. for six months and fine of Rs. 1000/-.

The non-applicant No. 1 preferred the aforesaid appeal wherein his conviction has been maintained but only the sentence of imprisonment has been reduced to imprisonment till the rising of the Court.

Aggrieved by the aforesaid appellate order the Corporation has preferred the present revision petition contending that the sentence being below the prescribed

minimum is illegal and deserves to be interfered with in exercise of revisional powers of this Court.

The contention of the learned counsel for the non-applicant Kishanlal is that in view of the decisions in Santlal's case 1986 FAJ 69 and Omprakash's case 1986 FAJ 71 it is within the province of the High Court to maintain the minimum sentence. He contends that in the instant case as several years have rolled by since the commission of the offence and the petitioner has already left the business no interference is called for in exercise of the discretionary revisional jurisdiction.

The learned counsel for the non-applicant Kishanlal relying on Food Inspector M.M's case 1981 FAJ 657, further contends that though Section 377(3) of the Code does not in terms apply to the revision petition, he has a right to plead for his acquittal and on the material on record the petitioner is entitled to the protection of Section 19(2) of the Act regarding warranty as the article was sold in the same state as he had purchased it.

Paragraph 3 of the decision in Santlal's case (supra) may usefully be reproduced. It reads thus : -

Mr. D. S. Bali, learned counsel for the petitioner has not addressed me on merits. He submits that the petitioner is a first offender; that he is facing the trial since the year 1981, and that he is on bail under orders of this Court since October 11, 1984. He therefore, prays that leniency in the sentence is called for. I feel no useful purpose will be served by sending the petitioner to jail at this stage. Consequently, I feel that a case for imposition of lesser sentence than the minimum prescribed under the law, is made out. Resultantly, I reduce the sentence of the petitioner to one already undergone by him. However, the sentence of fine and sentence in lieu thereof would remain undisturbed. But for this modification, the petition fails and is hereby dismissed.

The decision in Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, which relates to mustard oil also points out that in certain circumstances sentence imposed may be reduced.

It may be pointed out that the scope of the revisional jurisdiction of this Court is a limited one and is also discretionary. In exercise of that jurisdiction, the Court steps in only to ensure that there is no miscarriage of justice.

As compared to the petitioner in the decision in Santlal's case (supra) the non-applicant No. 1 in the instant case is in a much better position to urge for leniency in the sentence and I consider that looking to the time lag and other factors, the discretion in the matter of exercising the revisional jurisdiction will certainly be better exercised if no interference in the sentence is made holding that in the circumstances of the case, the ends of justice have amply been served by the one imposed.

On the facts and in the circumstances of the case, I am not inclined to interfere

with the sentence and, therefore, it is not necessary for the decision of this revision petition to go into the merits of the aforesaid contentions sought to be canvassed by the learned counsel for the non-applicant No. 1.

In the result, the revision petition is, for the foregoing reasons, dismissed.