
(1986) 04 GAU CK 0003
In the Gauhati High Court
Case No : Criminal Revision No. 123/81

Shri Md. Shamsul Haque

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 10-04-1986

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 16(1), 4, 7

Citation : (1986) 2 GLR 476

Hon'ble Judges : K. Lahirl, J

Bench : Single Bench

Advocate : D.N. Konwar and S. Ahmed, for the Appellant; A.K. Phukan, Assistant Public Prosecutor and P. Pathak, Public Prosecoutor, for the Respondent

Judgement

K. Lahirl, J.—This is a revision against the conviction of the accused Under Sections 7/16 of the Prevention of Food Adulteration Act, 1954, for short, "the Act" ; sentencing him to suffer 6 months" R.I. and to pay a fine of Rs. 100/-.

2. On 4.8.77, about 9 years ago, the Food Inspector visited Bhanga Bazar and in a shop found Khesari dal exposed for sale. The prosecution claims that there was an employee of the shop so the Food Inspector desired to have sample from him for testing the article analysis by the Public Analyst. He purchased 750 grams of Khesari dal and the report of the Public Analyst confirmed that it was a sample of "Khesari dal". The provisions of Rule 44A prohibits "sell or offer or expose for sale, or have in his possession for the purpose of sale of Khesari gram with effect from such date as the State Government concerned may by notification in the Official Gazette specify in this behalf". A notification was issued by the State Government prohibiting cultivation of Kheisri dal and possessing Khesari gram, Khesari dal and Khesari flour throughout the State of Assam. The validity of the notification was questioned in R.B. Mills Pvt. Ltd. v. The Secretary to the Government of Assam and Ors. 1973 ALR 316 and a Division Bench of this Court held that the notification banning the cultivation of Khesari gram was violative of the provisions contained in Rule 44A and declared the portion of the notification

as invalid. The cultivation of Khesari gram was thus authorised by this Court as Khesari gram/dal was used as cattle fodder i.e, food for animals and birds. It is not necessary for the purpose of the case to consider whether exposure of Khesari gram/dal for sale as fodder, meat for animals and birds was violative of Rule 44A of the Rules and a person could be convicted Under Sections 7/4 of the Act as the contention of Mr. D.N. Konwar, learned Counsel for the accused is that the accused is utterly a poor person having a large family to maintain. He eked out his livelihood as a tiller and if he is imprisoned the family members will starve. The next submission of the learned Counsel is that the incident happened about 9 years ago and the Petitioner has undergone sufferance during the trial of the case, before the appeal-late court and his criminal revision which is pending in this High Court for the last 5 years. He has been denied speedy trial which is his constitutional right and the Petitioner was not accountable or responsible for the delay. Learned Counsel submits that the owner of the shop, the co-accused of the case, since acquitted by the court below also confirmed that the accused was not the salesman of his shop. The accused also pleaded that he was a cultivator who had nothing to do with the shops. He did not sell the article to the Food Inspector. He happened to be present in shop when the sample was taken and the Food Inspector mistook him to be the salesman.

3. Now, the alleged owner of the shop has been acquitted by the appellate Court but the Petitioner has been convicted and sentenced. The sole contention urged before me is for reduction of the sentences imposed. Let me, therefore, consider whether the accused deserves lenient punishment on the facts and circumstances of the case.

4. Indeed, the accused stated before the magistrate that he was a cultivator. He was about 18/19 years of age at the relevant time. Now, he is married. There has been a long delay in disposal of the case. But the question is whether it is permissible in law to impose fine only and commute the sentence of imprisonment?

5. In my opinion the provisions of Section 16 of "the Act" deal with the penalties. Sub-section (1) of Section 16 lays down that the Court is bound to impose sentence of imprisonment for a term not less than six months but may extend the punishment to three years and with fine not less than 1000/-, The accused therefore, "shall be punishable" with the aforesaid imprisonment and fine. The first proviso to Section 16(1) provides that the court may for any adequate and special reason to be mentioned in the judgment impose sentence of imprisonment for a term "which shall not be less than three months but which may extend to two years and with fine which shall not be less than Rs. 500/-". The proviso permits a court to punish the accused with imprisonment for lesser term and smaller fine only in the cases referred in the proviso. As such, the court is competent to impose sentence but the court must impose the lesser sentences set out in the proviso. However, the second proviso mentions the offence under which "the court may for any adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may extend to

three months and with fine which may extend to Rupees five hundred. One of the offences falling under the second proviso is the contravention of any rule, Sale of adulterated food attracts Section 7(i) whereas the violation of the rule comes under the fold of Section 7(v). This differentiation is directly connected with and linked to Section 16 of "the Act". For such offences the second proviso to Section 16(1) brings into play the mitigatory discretion vested in the Court. Sub-section (1) of Section 16 uses the expression "shall...be punishable". The first proviso to Section 16(1) also obligates the court to impose a sentence of imprisonment for the prescribed term "which shall not be less than 3 months" and so forth. However, the second proviso to Sub-section (1) of Section 16 provides that "the court may for adequate or special reasons impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees". It is thus seen that for violation of the Rules framed under the Act the Court may exercise discretion to Impose sentence which may extend to three months and with fine of rupees five hundred. However, while using the discretionary power the court must record the reasons. The discretion permitted to the court in the matter of imposing sentence is available only in cases mentioned in the proviso. As such judicial compassion can play upon the situation only when the offence falls under the express provision of the Sub-section.

6. The case in band is violation of Rule 44A of the Rules. As such, this Court can exorcise discretionary power to impose sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees. The case of the Petitioner squarely falls under the second proviso to Sub-section (1) of Section 16 of the Act. On perusal of provisions of Sub-section (1) it appears that in the case of violation of the Rules framed under the Act the Court may impose the minimum sentence prescribed in the second proviso but it must give reasons In State of Maharashtra Vs. Baburao Ravaji Mharulkar and Others, the accused was convicted u/s 7 read with Section 16 but he was sentenced to three months" imprisonment as there was a long lapse of time. Their Lordships imposed the minimum penalty of three month? as the case was covered by the first proviso to Section 16(1). Where a person is convicted u/ s 16(1) and his case is covered by the first proviso the Court is bound to impose sentence of imprisonment therein. However, if the case falls under the second proviso and the offence is violation of any Rule the Court may impose sentence of imprisonment which may extend to three months. Under the first proviso the Court may impose lesser penalty than those prescribed in Sub-section (1) of Section 16 which "shall not be less than three mouths". It shows that the court is bound to, sentence an accused for a term not less than three months whereas in respect of the offences falling under the second proviso the Court may or may not impose a sentence of imprisonment for a term which may or may not extend to three months and with fine. Much more discretionary powers have been conferred on the Court to impose sentence than those contained under the first proviso.

7. In the instant case what I find is that there is no material to show whether the Khesari gram was exposed for sale as human food. As alluded to the cultivation of Khesari gram is permissible and legal. Accordingly, such an article may be sold as found for animals and birds. However, it would be violation of the Rules 44A read with this notification if it was a sale for human consumption. This apart the accused was aged about 18/19 years at all relevant time, The owner of the slop has been acquitted, The accused person is a poor cultivator. He has suffered a lot during the course of the proceedings which pended for 9 years or thereabout, I would say that it was not a fair procedure, The delay was "man made" but the accused had no hand in it. The fundamental rights of the accused to have a fair and speedy trial enshrined in Article 21 has been violated. This is a relevant consideration for the purpose of imposing sentence. In various cases the Supreme Court has taken the said consideration as a relevant factor for inflicting lesser punishment. The peasant accused has already undergone imprisonment for 21 days as submitted by Mr. Konwer learned Counsel for the accused and admitted by M.P. Patbak, learned Public Prosecutor, Assam. No useful purpose would be served to send the accused to jail. Under these circumstances, the conviction of the accused is maintained but the sentence is reduced to the period already undergone by him. The accused need not pay the fine. In the result the petition is accepted to the extent indicated above.

8. Before parting I would like to observe that the object of the Act is to safeguard the health of the people and the limit of the punishment has been statutorily prescribed. A person found guilty of the offence prescribed in Section 16(1) read with the first proviso must be punished as prescribed therein. However, considering the nature and quality of the offence the parliament in its wisdom has granted the Court the discretionary power to impose the minimum punishment in respect of the offence prescribed under the second proviso provided the facts and circumstances of the case justify the sentence which the Court may consider fit and proper.