
(1968) 02 AHC CK 0029
In the Allahabad High Court
Case No : Criminal Revision No. 2095 of 1965

Shyam Lal	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 08-02-1968

Acts Referred:

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

Citation : AIR 1968 All 392 : (1968) 38 AWR 390 : (1968) CriLJ 1461

Hon'ble Judges : D.P. Uniyal, J;C.B. Capoor, J

Bench : Division Bench

Advocate : T.N. Sinha and Raghunath Prasad, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Uniyal, J.—This case has been referred to a larger Bench by a learned Single Judge. The question involved is one relating to the effect on pending proceeding of an amending Act which gives discretion to the Court in imposing a lesser punishment than that prescribed in the original Act.

2. The applicant had a tea stall and he used to store milk for the purpose of making tea which he served to his customers. The Food Inspector purchased a sample of milk from him which was found to be adulterated by the Public Analyst. He was prosecuted u/s 7(I) read with Section 16(1)(a) of the Prevention of Food Adulteration Act (Act 37 of 1954), hereinafter referred to as the "Principal Act" Since the offence alleged to have been committed by him was a second offence, he rendered himself liable to imprisonment for a term extending to two years and with fine but which punishment could not be less than one year together with fine of not less than Rs 2,000 as laid down in Section 16(i)(ii) of the Principal Act.

3. The offence charged had been committed on 28-9-1964 and the applicant was convicted and sentenced on 4-8-1965 to one year's rigorous imprisonment and a

fine of Rs. 2,000, in default of payment of fine to undergo further rigorous imprisonment for six months. The learned Sessions Judge affirmed the said conviction and sentence in appeal. The applicant filed an application in revision in this Court and the main contention raised on behalf of the applicant before the learned Single Judge was that the Legislature had amended Section 16(i) of the principal Act by the amending Act of 1965 which came into force on 1st March, 1965 and that by reason of the said amendment it was open to the Magistrate, in exercise of his discretion, to impose a sentence of imprisonment for a term of less than six months or of fine of less than Rs. 1,000 if in his opinion the circumstances of the case did not require the imposition of a higher punishment.

4. In order to appreciate the point under consideration, it is necessary to set out the provisions of Section 16 of the principal Act as also the provisions of the said section as substituted by the amending Act Section 16, as it originally stood, was in these terms:--

"16. (1) If any person--

(a) Whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or

(b)

(c)

(d)

(e)

(f)

(g)

(i) for the first offence, with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both;

(ii) for a second offence with imprisonment for a term which may extend to two years and with fine,

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees"

5. Section 16(1), as substituted by the amending Act of 1965, is as follows:--

"16. (1) Any person--

(a) Whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food--

(i) which is adulterated.....

(ii)

(b)

(c)

(d)

(e).....

(f).....

He shall in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees;

Provided that--

(i) if the offence is under Sub-clause (i) of Clause (a) and is with respect to an article of food which is adulterated under Sub-clause (1) of Clause (i) of Section 2

(ii) .. (a) the Court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees"

6. It will be noticed that by the amending Act, a person who commits breach of sub-Clause (i) of Clause (a) in respect of an article of food which is adulterated under Sub-clause (1) of Clause (i) of Section 2, renders himself liable to imprisonment extending to six years and with fine which shall not be less than one thousand rupees. At the same time, the Legislature has given a wide discretion to the Court to impose a sentence of imprisonment for a term of less than six months or a fine of less than Rs 1,000 if the Court for adequate and special reasons considers it proper to do so. The amending Act has abolished the distinction between the first, second or third offence in the matter of punishment. Under the principal Act, on the other hand a second offence in breach of the provisions of the Act rendered a person liable to a sentence of imprisonment of not less than one year and of fine of not less than two thousand rupees. It was contended by the learned counsel for the applicant that the Magistrate acted illegally in passing the sentence on the applicant in accordance with the provisions of the principal Act inasmuch as on the date on which the judgment was rendered, the principal Act had ceased to exist and the amending Act had come into force and substituted in its place. It was said that the amending Act had come into force during the pendency of the trial of accused and, therefore, the new section superseded the original section of the principal Act and became part of the law just as if the amendment had always been there.

7. It is well established that the repeal of a statute has the effect of saving all transactions past and closed. Whether a right has been created or liability incurred under the original statute, its repeal cannot affect a vested right accrued or liability incurred thereunder. Crawford, in his treatise "the Construction of Statutes (1940 Edition) states as follows:--

"Since an amendment becomes a part of the original statute, both must be construed together as if they constituted one enactment, even if the amendment occurs merely by implication. Their provisions should be harmonized, if possible, but where there is irreconcilable conflict the provisions of the amendment must prevail over those of the original statute on the theory that the former constitutes the last expression of the will of the Legislature (page 617)".

8. Dealing with the problem of repealing statutes, the learned author goes on to say;

"A repeal will generally, therefore, divest all inchoate rights which have arisen under the repealed statute, and destroy all accrued causes of action based thereon. As a result, such a repeal, without a saving clause, will destroy any proceeding, whether not yet begun, or whether pending at the time of the enactment of the repealing Act, and not already prosecuted to a final judgment so as to create a vested right (at page 599)".

9. The above rule of construction is based on the principle that until the proceedings have reached final judgment in the Court, of last resort, that Court, when it comes to announce its decision must conform to the law then existing. Dealing with the question of criminal offences and punishment, the learned author, at p. 574 of his treatise, cites the decision of the United States Supreme Court, *Calder v. Bull* (1780) 1 Law Ed. 648. The Supreme Court, in that case said: --

"But I do not consider any law *ex post facto*, within the prohibition that mollifies the rigor 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".

10. The learned author goes on to say: "Where the punishment is altered, and, consequently, in the light of human experience and morality, favours the defendant, he cannot complain of the retroactive effect of the law which changes the punishment. Obviously, since the condemnation of *ex post facto* legislation is founded on its inherent harshness, the basis of the condemnation disappears where the alteration operates in favour of the accused or condemned persons"

11. Maxwell on Interpretation of Statutes (Eleventh Edition) at page 275 states the rule of construction regarding penal statutes as follows:--

"All statutes are now construed with a more attentive regard to the language and criminal statutes with a more rational regard to the aim and intention of the legislature than formerly. It is unquestionably right that the distinction should not

be altogether erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty".

12. It seems to us clear that the true rule of construction of a penal statute is that where the legislature evinces its intention to modify the law, in favour of the accused, so as to reduce the rigour of the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The Court trying an accused person has to take into consideration the law as it exists on the date of the judgment. It seems reasonable that an accused person cannot render himself liable to a higher punishment under a statute which has ceased to exist and has been substituted by a new law which favours him. Where the question as to the interpretation of a penal statute is concerned, the Court must construe its provisions beneficially in regard to their applicability to the accused. It would be violating the spirit of the law and the will of the Legislature as expressed in the amending statute to sentence an accused person on the basis of the original Act which has been considered by the Legislature to be harmful and harsh against public interest.

13. We are of the opinion that inasmuch as the amending Act had come into force on the date when the judgment came to be passed by the Magistrate in this case, the applicant was entitled to invoke the aid of Section 16, as amended. We have examined the record of this case and it seems to us that the punishment awarded to the accused was disproportionate to the nature of the offence alleged to have been committed by him. While, therefore, upholding the conviction of the applicant u/s 16(1) of the Prevention of Food Adulteration Act, we set aside his sentence of imprisonment and fine of Rs. 2,000. Instead we sentence him to a fine of Rs. 200 in default to undergo two months' rigorous imprisonment.

14. We accordingly allow this revision in part subject to the directions contained in our order.