

(2011) 10 DEL CK 0201
In the Delhi High Court
Case No : Criminal A. 26 of 2011

State	Vs	APPELLANT
Jagdish Grover		RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16A(1), 7

Citation : (2011) 10 AD 21 : (2011) 4 JCC 3062 : (2012) 1 RCR(Criminal) 717

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Mukesh Gupta, app, for the Appellant; Aasha Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

Crl. M.A. 159/2011

For the reasons stated in the application the delay of 56 days in filing the present appeal is condoned.

Application is disposed of.

CRL.A. 26/2011

1. The present appeal is directed against the judgment dated 5th August, 2010 passed by Learned Additional Sessions Judge in CRL.A. 85/09 whereby upholding the conviction of the Respondent for offences punishable u/s 16(1A) read with Section 7 of P.F.A Act the sentence awarded by the Learned Metropolitan Magistrate of Rigorous Imprisonment for one year was reduced to six months and a fine of Rs. 5,000/- in default of payment of fine to further undergo S.I. for one month.

2. Learned APP for the State contends that the impugned judgment is contrary to

law and facts of the case. There is no dispute that the sample was found to be adulterated with the presence of synthetic Colour tartrazine. The punishment prescribed u/s 16(1A) of P.F.A. Act is for a term which shall not be less than one year but which may extend to 6 years and with fine which shall not be less than Rs. 2000/-. Thus, the impugned order, reducing the sentence of the Respondent to a term less than the minimum prescribed punishment is illegal.

3. Per contra learned counsel for the Respondent contends that there is no illegality in the impugned order and the learned Additional Sessions Judge has correctly reduced the sentence of the Respondent. Learned counsel for the Respondent further contends that against the impugned order dated 5th August, 2010, the Respondent had also filed a petition being CrI. Rev. P. No. 420/2010 wherein this Court upholding the conviction further reduced the sentence to the period already undergone and enhanced the fine to Rs. 50,000/-. Thus this Court cannot now modify the order passed by this Court in another petition.

4. I have heard learned counsel for the parties and perused the record. Briefly the facts of the prosecution case are that on 6th October, 2001 at about 5.30 PM Food Inspector Shri N.N. Sharma purchased a sample of dal Arhar, a food article for analysis from Respondent Jagdish Grover, who was found carrying on the business in name and style of M/s. Inder Lal Store, S.No. 31, Parda Bagh, Daryaganj, Delhi-06 where said article was found stored for sale for human consumption. The sample consisted of approximately 750 gms of the food article which was taken from an open gunny bag, bearing no label declaration. The sample was taken under the supervision/direction of SDM/LHA. The sample was taken after properly mixing the food article with the help of clean and dry jhaba. The sample was divided into three equal parts and each part was put in separate clean and dry bottle and each part was packed, fastened and sealed separately as per the provisions of the PFA Act and Rules. Vendor's signatures were obtained on the LHA slip and the wrapper of the sample bottles. It is alleged that before starting the proceedings, efforts were made to join the public witnesses but none came forward. All the documents were got signed from the Respondent and other witnesses. The sample was taken under the supervision of local health authorities. One of the three samples was sent to the Public Analyst with the seals intact. The other two counter-parts of the sample were deposited with the local health authority. On analysis of the sample, the Public Analyst found that the sample did not conform to the standards because it was found to be coloured with synthetic colouring matter viz. tartrazine.

5. The Respondent exercised his right u/s 13(2) of PFA Act to get the second counter part of the sample to be analyzed from the Director CFL who vide its certificate dated 3rd May, 2003 and opined that the sample did not conform to the standards as it was found to be adulterated with the synthetic colour tartrazine. Learned ACMM after recording the evidence and statement of accused u/s 313 Cr.P.C. convicted the Respondent as mentioned hereinabove. This order of conviction was appealed against by the Respondent whereby learned

Additional Sessions Judge reduced his sentence as mentioned above.

6. It may be noted that the revision petition filed by the Respondent herein was disposed of by this Court vide order dated 11th November, 2010. This Court in the said judgment had observed that the Respondent herein is a patient suffering from hypertension with diabetes mellitus(type II) with diabetic retinopathy and had already undergone almost half of the imprisonment awarded to him and taking into account that the Petitioner had no other criminal record, the punishment awarded to the Petitioner was modified to the period already undergone by him with a fine of Rs. 50,000/-. In case of default of payment of fine the Petitioner was to undergo imprisonment for a period of three months. The present appeal has been filed belatedly by the State and the order passed in the revision petition has since attained finality.

7. Hon''ble Supreme Court in U.J.S. Chopra Vs. State of Bombay, while dealing the said issue held as under:-

15.....When an appeal or revision by the accused is allowed, after a full hearing on notice to the respondent, the conviction and sentence must be regarded as having been put in issue and finally decided. When the accused person in the presence of the State claims an acquittal or reduction of his sentence, the State ought then and there to apply for enhancement of sentence and its failure to do so cannot but be regarded as abandonment of the claim.

The acceptance by the High Court of the appeal or revision on notice to the respondent and after a full hearing is, therefore, nothing less than a judgment of acquittal or a judgment for reduction of sentence. On the other hand, the dismissal by the High Court of an appeal or revision after such a full hearing amounts to a judgment of conviction.

In both cases the judgment is final as regards both the accused and the respondent as regards the conviction as well as the sentence in all its aspects, namely, reduction or enhancement. In that situation no further question of revision can arise at the instance of either party. There can be no further application by the accused challenging his conviction or sentence.

Nor can there be any further application by the State for enhancement of the sentence, for that question could have been and should have been raised when the accused person in the presence of the respondent prayed for acquittal or reduction of sentence and not having then been raised it cannot be raised subsequently and consequently no question can arise for the exercise of right by the accused u/s 439(6).

This result is brought about not by any technical doctrine of constructive res judicata which has no application to criminal cases but on the general principle of finality of judgments. The summary dismissal of an appeal or revision by the accused, with or without hearing him or his pleader but without issuing notice to the respondent is, so far as the accused is concerned, a judgment of conviction

and confirmation of his sentence and he can no longer initiate revision petition against his conviction or sentence.

The judgment or decision is a final judgment qua the accused person, for otherwise he could go on making successive appeals or revision applications which obviously he cannot be permitted to do. But the State or other interested person who has not been served with any notice of the appeal or revision cannot be precluded, by the summary dismissal of the accused's appeal or revision, from asking for enhancement, for in that situation the State or the complainant not being present the question of enhancement was not in issue before the Court and the summary dismissal cannot be regarded as an adjudication on the question of enhancement.

That question not having been put in issue and not having been decided by the High Court, the finality attaching to the summary dismissal as against the accused does not affect the position. This, I apprehend, is the true distinction between a summary dismissal of an appeal or revision and a dismissal of it after a full hearing....

8. Thus, keeping in view the law laid down, the fact that the impugned order has attained finality in view of the order dated 11th November, 2010 passed by this Court in Crl. Rev. P. No. 420/2010 where the notice was served to the State and after affording full hearing to the parties, the matter was decided and applying doctrine of merger, the present appeal cannot be entertained being a coordinate bench.

9. Appeal is dismissed accordingly.