

(2004) 08 BOM CK 0097
In the Bombay High Court
Case No : Criminal Appeal No. 180 of 1991

State of Maharashtra

APPELLANT

Vs

Chimanlal Giopalji Dhruwamalkan

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 16(1), 2, 2(1)L, 23(1A)

Citation : (2005) CriLJ 1890 : (2005) 3 RCR(Criminal) 162

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : Y.B. Mandpe, app, for the Appellant; Gayatri Joshi, for the Respondent

Judgement

P.S. Brahme, J.—Heard learned A. P. P. Mr. Mandpe, for the appellant and Ms. Gayatri Joshi, Advocate holding for Mr. Purohit Advocate for Respondent.

The respondent was convicted of the offences punishable u/s 2(i-a)(m) read with Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 and was sentenced to undergo simple imprisonment till rising of the Court and to pay fine of Rs. 500/-, in default simple imprisonment for 30 days. As the sentence awarded by the Trial Court was less than minimum sentence prescribed under the proviso (1) to Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 (in short called as P. F. A. Act), the appellant-State has preferred this appeal for enhancement of sentence.

2. The prosecution case in briefs is that the respondent-Chimanlal was Proprietor of M/s. Swastik Stores situated in Wanjari Chouk, Wardha. On 13-8-1987, complainant-Chikte who was then notified Food Inspector for Wardha District visited the shop premises of respondent with Panch witness-Chandrashekhar Linganwar. During inspection of the shop complainant found some sealed tin packs of groundnut oil and one loose tin containing the ground nut oil. All the tins bore a label "Manpasand Double Filter Ground Nut Oil". It was revealed from the recitals in the label that the said groundnut oil was manufactured by Pahdhi

Oil Industries, Nagpur. The complainant purchased 375 grams of groundnut oil from one of the sealed tin and divided the same in three dry, clear and empty bottles equally. He completed the formalities pertaining to drawing of the samples and its sealing. He also issued requisite notices to respondent. He has prepared detailed panchanama in the presence of respondent and panch witnesses. On completing all formalities one counter part of the sample was sent to Public Analyst, Nagpur for analysis. While remaining two counter parts were sent to Local Health Authority. He also intimated Local Health Authority, Wardha about drawing of the sample. The local Health Authority received Public Analyst Report which was communicated to the complainant. From the report it was revealed that the sample did not conform to the standard of groundnut oil as prescribed by P. F. A. Act and the Rules framed thereunder. Then all the papers were submitted to the Joint Commissioner, Food and Drugs Administration, Nagpur for obtaining necessary sanction and after the sanction was issued. Local Health Authority, Wardha directed Food Inspector-Mr. Dhapre to launch prosecution against the respondent as Mr. Chikte was transferred.

3. Respondent pleaded not guilty to the charge and claimed to be tried. To substantiate the charge the prosecution examined in all five witnesses including Shri Chikte (P. W. 1), Khwaja Wahidulla (P. W. 2), Local Health Authority at the relevant time, Madhukar Patil (P. W. 3) who made further investigation in the matter as Mr. Chikte had proceeded on leave and Mr. Anand Dhapre, the then Food Inspector who succeeded Mr. Chikte on his succeeded. On the evidence that was led before the trial Court, the trial Court found that the ground nut oil that was purchased by the Food Inspector from respondent was adulterated one and consequently the respondent was convicted of offence u/s 16(1)(a)(ii) of the P. F. A. Act. However, taking into consideration that the respondent was a retailer and not being the manufacturer of the ground nut oil in question and that the sample from loose tin as well as sealed tin collected by the Food Inspector was found to be identically adulterated one and that it was not injurious to health, the trial Court taking recourse to the proviso to Section 16 awarded punishment as stated in earlier part of the judgment. The said sentence is admittedly less than the minimum sentence prescribed under the P. F. A. Act. The State has preferred this appeal for enhancement of the sentence. Mr. Mandpe, the learned A. P. P. submitted that u/s 16(1)(a) of the P. F. A. Act, for sale of adulterated food article the punishment prescribed is of imprisonment for a term which shall not be less than 6 months, but which may extend to 3 years and with fine which shall not be less than one thousand rupees. But under the proviso to Section 16(1) if the offence is under Clause (i) of Clause (a) and is with respect of an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of Sub-clause (k) of Clause (ix) of Section 2 or (ii) if the offence is under Sub-clause (ii) of Clause (a), but not being an offence with respect to the contravention of any rule made under Clause (a) or Clause (g) of Sub-section (1-A) of Section 23 or under Clause (b) of Sub-section (2) of Section 24, the Court may, for any adequate and

special reasons to be mentioned in the judgment, impose a 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 five hundred rupees. Learned A. P. P. first submitted that the trial Court has committed an error in taking recourse to the proviso for awarding minimum sentence inasmuch as no adequate and special reasons are given. Secondly it is submitted that, the trial Court committed error by even awarding sentence less than minimum prescribed. As pointed out earlier the minimum sentence prescribed in the proviso for sentence for term which shall not be less than three months and with fine which shall not be less than Rs. 500/- and as against that the trial Court awarded sentence till the rising of the Court and fine of Rs. 500/-, in default to undergo S. I. for 30 days. The learned A. P. P. therefore, urged that having regard to the nature of offence committed by the respondent for having sold adulterated ground nut oil and without there being any justification for awarding sentence less than minimum prescribed, it is a fit case to enhance the sentence.

4. The learned Advocate for the respondent submitted that in paragraph 13 of the Judgment the trial Court has given adequate and special reasons for awarding the minimum sentence as provided under the proviso to Section 16 of the P. F. A. Act. Therefore, irregularity or illegality is committed by the trial Court in awarding even minimum sentence. She further submitted that respondent is by now 68 years old. His son has filed affidavit in this appeal which is taken on record. In his affidavit he has stated in detail about the deteriorated health condition of the respondent who was required to undergo a surgery twice. His condition is critical and as has been described in the affidavit he is almost on death-bed. It is also stated that respondent has abandoned the business. In support of his statement made in support of his affidavit he has filed medical certificate issued by Dr. A.M. Bhole and. copy of shop establishment certificate are annexed as R-1 and R-2, which shows that the establishment of the respondent was transferred to his son and as such since then the respondent is not concerned in whatsoever manner with the business of the establishment.

5. The learned counsel to justify the award of sentence less than minimum prescribed by the trial Court placed reliance on the decision of our High Court in 1977 Mh LJ 80 : 1977 Cri LJ 383 Hariram Baliram Pande-Appellant v. State of Maharashtra-Respondent. In that case considering the facts and circumstances attending the case, the High Court has justified the sentence awarded by the Magistrate which was less than minimum prescribed.

6. We have to consider the enhancement of sentence in this appeal, which came to be filed in the year 1991. It is needless to say that the prosecution against the respondent was initiated on the basis of the visit of Food Inspector-Mr. Chikte on 13-8-1987, wherein admittedly the adulterated ground nut oil was found in possession of the respondent in the shop premises for sale. Therefore, total lapse of period of 17 years is certainly a factor which at least the High Court has to take into consideration for justification or otherwise for enhancement of

sentence. In addition to that the present age of the respondent is of 68 years and added to that his critical health condition are the factors which are required to be considered for enhancement of sentence as sought for. It is admitted that the Food Inspector visited the shop of the respondent took two samples of ground nut oil i.e. one from sealed tin and other from the loose tin. What is pertinent to note that the article i.e. ground nut oil in both the samples was found to be adulterated identically. The trial Court has accepted the fact that the respondent was not manufacturer of the ground nut oil. He was a retailer. So bearing in mind these circumstances, the trial Court gave in para 13 of the judgment adequate and special reasons for taking recourse to the proviso of Section 16 of the P. F. A. Act for awarding the minimum sentence. The trial Court amongst other reasons has also found that the article that was for sale and that was found to be adulterated was not injurious to health. Therefore, I have no hesitation in saying that the trial Court has assigned special and adequate reasons for taking recourse to proviso for awarding minimum sentence prescribed. That is why the first submission of the learned A. P. P. that the judgment lacks of adequate and special reasons for awarding minimum sentence cannot be accepted.

7. But then so far as second submission is concerned finding much substance and merit in it as admittedly the trial Court has awarded sentence less than minimum. Under the garb of awarding minimum sentence under the proviso to Section 16. It is crystal clear that under the proviso minimum sentence prescribed was of imprisonment which shall not be less than three months and fine but which may extend to two years and with fine which shall not be less than Rs. 500/-, as against that so far as substantive sentence is concerned, the trial Court awarded sentence of imprisonment till rising of the Court.

8. Now the question is whether though technically the appellate Court is empowered to enhance the sentence, whether from the propriety point of view and even in the interest of justice having regard to the circumstances now prevailing it would be justifying for the High Court to enhance the sentence. In this context the counsel for the respondent has rightly placed reliance on the decision of our High Court in 1977 Mah LJ : 1977 Cri LJ 383 (supra). In that case accused was found guilty for having committed contravention of Section 7(i) read with Section 2(1)(L) of the Act and on both counts he was sentenced to undergo R. I. for one month and to pay fine of Rs. 500/ on each count. The order of conviction and sentence passed by the learned Magistrate came to be confirmed by the Sessions Judge in appeal preferred by the accused, that is how the accused approached the High Court and challenged the substantive sentence by preferring criminal revision application. His revision was admitted and the Court issued notice for enhancement of sentence as admittedly the sentence awarded by the trial Court and confirmed by the appellate Court was less than minimum prescribed. It is in that situation the Court while dismissing revision application with modification of sentence found justification for the trial Court to award the sentence less than minimum prescribed on the basis of the circumstances and

offence which occurred subsequent to the decision of the trial Court. The Court observed that so far as the question of sentence is concerned, it was found that sentence imposed upon the accused was less than the minimum prescribed by the Act and that is why the notice of enhancement was issued. In reply to that notice an affidavit had been filed by the accused before the High Court (a situation similar to the case before hand),

9. So on the point of adequate sentence the Court observed that the adequate sentence must depend on the facts and circumstances of each case. In that context a reference was made to the observations of the Supreme Court in *Ramashraya Chakravarti Vs. State of Madhya Pradesh*, as under (para 6 of Cri LJ) :

"In judging the adequacy of a sentence the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to society, effect of the punishment of the offender, eye to correction and reformation of the offender, are some amongst many other factors which would be ordinarily taken into consideration by courts. Trial Courts in this country already over burdened with work have hardly any time to set apart for sentencing reflection. This aspect is missed on deliberately ignored by the accused lest a possible plea for reduction of sentence may be considered as weakening his defence. In a good system of administration of criminal justice pre-sentence investigation may be of great sociological value. Throughout the word humanitarianism is permitting into penology and the courts are expected to discharge their appropriate roles."

10. The question of sentence will have to be decided having regards to these principles. The question of sentence is a matter of judicial discretion subject to mandatory minimum prescribed by the Act. In that case the Court found that the accused has stated on oath in his affidavit that he has completely stopped business of selling curd and milk for last more than 4 months. He has also stated that in his premises only stationary shop is going on and there is no dairy section in the shop. He has stated that he has completely stopped the business of selling milk or any of its bye-products. The Court found that it will not be possible for the accused to carry on similar tactics or exploit gospel customers any further, since he has closed his business. The learned J. M. F. C. also found that for the reasons disclosed in his judgment there are adequate and special reasons for imposing a sentence less than the minimum prescribed by law. It was not a case of the prosecution that any injurious substance was found to be added in the sample. The offence in that case took place in 1973, since then the accused was facing trial. So having regard to the special facts in the opinion of the Court it was not expedient to send the accused to jail at that stage. However, the ground found that for meeting ends of justice and having regard to the peculiar facts and circumstances of the said case, the fine imposed should be enhanced to more than the minimum prescribed by the Act so as to teach lesson to the accused and at the same time give him an opportunity to improve his life. That is why the

Court found that the ends of justice would be amply met if the sentence of rigorous imposed on the accused on both the counts is reduced to the simple imprisonment till the rising of the Court on both the counts and the fine was enhanced.

11. It is very clear from this pronouncement of our High Court that a sentence less than minimum prescribed can be awarded by the Court provided it is justified having regard to the facts and circumstances and other factors attending the case. In other words there is discretion with the Court which justifies to impose sentence less than minimum prescribed having regard to the facts and circumstances of the case. In that decision the High Court has not only justified the sentence awarded by the trial Court which was admittedly less than minimum prescribed, however to meet the ends of justice while reducing the substantive sentence which was less than minimum prescribed, the Court has enhanced the amount of fine to meet ends of justice. It is very clear from the judgment of this Court that the circumstances which prevailed subsequent to the decision of the trial Court were taken into account for justifying the sentence less than minimum prescribed to meet the ends of justice.

12. In the case before hand as I have stated in earlier part of judgment, the trial Court has in paragraph 13 of the Judgment given special and adequate reasons for taking recourse to proviso of justifying awarding minimum sentence. In addition to that the circumstances now prevailing as has been brought to the notice of this Court by the son of the respondent by filing his affidavit, goes to show that there is justification to uphold sentence awarded by the trial Court which was less than minimum prescribed. In the case before hand as stated earlier the prosecution against respondent is hanging on his head since almost 17 years and has withdrawn from the business of the proprietary concerned and as could be seen his health is materially deteriorated which goes to show that in present critical health condition the respondent No. 2 would not engage into the business of proprietary concerned in future. In my opinion these circumstances certainly justify the award of sentence till the rising of the Court which is certainly less than minimum prescribed sentence. But having regard to the nature of the offence the fine is to be enhanced. Therefore, this needs to modify the sentence of fine making it to fine of Rs. 1000/-, in default to undergo S. I. for two months. Therefore, with this modification in sentence of fine, the appeal is to be partly allowed and disposed of accordingly. Hence the order.

ORDER

13. The appeal is partly allowed. The substantive sentence "till rising of the Court" awarded by the trial Court is maintained. However, the sentence of fine is modified and the respondent is required to pay fine of Rs. 1000/-, in default to undergo S. I. for two months. Respondent has already paid the amount of fine of Rs. 5000/- as fine that was awarded by the trial Court. The respondent is given 2 weeks time to pay the remaining amount of fine of Rs. 500/-. On payment of fine amount it is directed that the bail bonds of respondent shall stand cancelled.