

Harish Dayani Vs State Of Madhya Pradesh

Court: Madhya Pradesh High Court

Date of Decision: Jan. 6, 2020

Acts Referred: Code Of Criminal Procedure, 1973 " Section 397, 401

Prevention Of Food Adulteration Act, 1954 " Section 7(i), 7(ii), 7 (v), 14, 16(A), 16(1)(a), 16(1)(a)(i), 16(1)(a)(ii)

Food Safety And Standards Act, 2006 " Section 49, 51, 52, 54, 58

Prevention Of Food Adulteration Rules, 1955 " Rule 12(a)

Hon'ble Judges: J.P. Gupta, J

Bench: Single Bench

Advocate: Vivek K. Tankha, Yagyavalk Shukla, Jasneet Singh Hora, Trishala Trivedi, Abhinav Dubey

Final Decision: Disposed Of

Judgement

1. This revision petition has been filed by the applicant under Sec-tion 397/401 of the Cr.P.C. being aggrieved by the judgment of convic-tion and order

of sentence dated 30.12.2019 passed by 18th Additional Sessions Judge, Jabalpur, in Criminal Appeal No.8/15 affirming the judg-ment dated

10.12.2014 passed by the JMFC, Jabalpur in RCT No.13550/2011, whereby the applicant has been convicted for commis-sion of offence of food

adulteration under Section 7 (i) r/w S. 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (in short the "PFA Act") and sentenced to

undergo RI for 6 months with fine of Rs.1000/-, also convicted for commission of offence of misbranding of Lipton Tree Top Orange Cold Drinks

under Section 7 (ii) r/w 16 (1) (a) (i) of the Pre-vention of Food Adulteration Act, 1954 (in short the "PFA Act") and sen-tenced to undergo RI

for 6 months with fine of Rs.1000/- and further convicted for commission of offence of selling of aforesaid items with-out warranty under Section 7

(v) r/w S.16 (1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 (in short the "PFA Act") and sentenced to undergo RI for 6 months with

fine of Rs.1000/-, with default stipulation clause as mentioned in the impugned judgment.

2. The facts, giving rise to this revision, are that the applicant is the nominee of the Lipton India Limited Company under the Prevention of Food

Adulteration Act and is responsible to implement the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the

"PFA Act") with regard to food products of the company. The food products of the company were stored in the depot of the com-pany situated

at Panagar, District Jabalpur which was being managed by M/s. Rathore Clearing & Forwarding Agency and Mohd. Saleem was the Depot

Manager. On 21.9.1989 Food Inspector Shri H. D. Dubey, inspected the depot where he found that "Tree Top Orange Cold Drinks of Lipton

Company Limited were stored for sale and distribution which were misbranded and took sample of the said Tree Top Orange Cold Drinks in

accordance with law and sent the same for its public analysis which was found adulterated and on inquiry from the Depot Manager, it was also found

that no warranty was issued with regard to the product as required under Section 14 of the PFA Act and Rule 12 (a) of the PFA Rules, 1955 and

thereafter, after getting sanction to prosecute the applicant, the Lipton India Limited Company and the Depot Manager Mohd. Saleem and other co-

accused persons, a complaint was filed before the trial court and during the trial, other co-accused persons were discharged as they were not liable

under the criminal law for the act of the company. During the trial, the sample of the food was also sent to the Central Food Laboratory and the

sample was found adulterated and misbranded having extraneous substance. Further, there is no report that food item was injurious to health or was

unsafe and after trial, learned JMFC convicted and sentenced the applicant being the nominee of the Company and also Depot Manager Mohd.

Saleem. In the appeal, learned appellate court acquitted the Depot Manager Mohd. Saleem and confirmed the conviction and sentence of the

applicant. Hence, this revision.

3. Learned Senior Advocate appearing on behalf of the applicant has submitted that though the applicant has some prima facie case even on merits,

he does not want to press this revision and by giving up the plea on merits, his only submission is with regard to the sentence which has been imposed

by the courts below on the ground of changes in the law. The Prevention of Food Adulteration Act, 1954 has been repealed by the Food Safety and

Standard Act, 2006, w.e.f.5.8.2011 and under the Food Safety and Standards Act, 2006, the aforesaid punishable acts are not punishable with

imprisonment and only penalty can be imposed and the applicant / accused is entitled to get the benefit under the changes in the law and in this regard,

reliance has been placed on a judgment of Hon'ble the Apex Court in Nemi Chand V. State of Rajasthan (2016) 1 FAC 561 (SC) and

clarification order reported as (2016) 1 FAC 203, in which the Apex court replying on the judgment of T. Barai v. Henry Ah Hoe and another (1982

(2) FAC 362), held as under :

3. It is not in dispute that the charge against the appellant was only of sub standardization of goods. Mr. Sushil Kumar Jain, learned senior counsel

appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits and

his only submission is about the sentence which has been imposed by the courts below. He has in this behalf, argued that there has been an amend-

ment in the Act by the Central Amendment Act 34 of 1976 whereby Section 16A was added and under the said section, only a fine is leviable. He has

drawn our attention to the judgment of this Court in 'T. Barai v. Henry Ah Hoe and Another' [1982 (2) FAC 362] [1983 (1) SCC 177] wherein this

Court held that since the amend-ment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are

pending in the Court. In the said judgment, the Court held as under:

22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be

convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall FSAT

No.27/16 M/s Buttercup Confectionery Ltd & Ors. Vs FSO Page No. 13 of 17 he be subjected to a penalty greater than that which might have been

inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new

offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced

punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable

under Section 16(1) (a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial

construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on

sound reason and common sense. This finds support in the following passage from Crales on Statute Law, 7th Edn., at pp. 388-89:

A retrospective statute is different from an ex post facto statute. "Every ex post facto law...." said Chase, J., in the American case of *Calder v. Bull*

must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested

agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no

retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their

commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But

I do not consider any law ex post facto within the prohibition that mollifies the rigour 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.... There is a great and apparent difference between

making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime.

and thereafter, Hon'ble the Apex court has given benefit of changes in the law and substituted the sentence by penalty in case of conviction of the

adulteration of food.

4. Learned Senior counsel has further placed reliance on a judgment of the Apex court in Trilok Chand v. State of Himachal Pradesh, passed in

criminal appeal no. 1831/2019 decided on 1.10.2019, in which the Apex court has also placed reliance on the judgment of T. Barai (supra) and

substituted the sentence for misbranding under the PFA Act by penalty and also placed reliance on a judgment of M. P. High Court, Indore Bench in

Purushottam v. State of M.P. passed in CRR No. 3324/2019 decided on 19.7.2019, in which the aforesaid case of Nemi Chand (supra) has been

relied upon and the sentence under the PFA Act with regard to adulteration and misbranding has been substituted by penalty and also placed reliance

on a judgment of High Court of Gujarat in Kasnab-hai v. State of Gujarat, passed in CRR No. 662/2013 decided on 22.09.2017; on a judgment of High

Court of Punjab and Haryana in Parveen Kapoor v. Food Inspector, Chandigarh, passed in CRR No.2975/2016 decided on 23.08.2018; on a judgment

of High Court of Delhi in State of NCT of Delhi v. Satish Kumar, (2018) 4 JCC 2111 and on a judgment of High Court of Punjab and Haryana in

Sanjay Agarwal v. Government Food Inspector, passed in CRR No.1275/2014 decided on 15.03.2019 with regard to substitution of the sentence by

penalty.

5. Learned Senior Counsel, in the light of the aforesaid judgments of the Supreme Court and the High Courts, has submitted that in the present case,

food item was not unsafe and it was only adulterated means substandard, for which, under Section 51 of the Food Safety and Standards Act, 2006,

penalty has been provided. Similarly, for misbranding under Section 52 of the Act, penalty has been provided and for containing extraneous matter

under Section 54 of the Act, penalty has also been provided and for not issuing warranty, no separate provisions for punishment has been made and

for violation of the Act and Rules, where no separate provision has been made, under Section 58 of the Act the provision of penalty has been

provided. Accordingly, the sentences be substituted by imposing appropriate penalty.

6. Learned Government Advocate has submitted that if the sentences are substituted by penalty then maximum penalty be imposed keeping in mind

the provisions of Section 49 of the Food Safety and Standards Act, 2006 as the company involved in the crime is a big multi-national company.

Therefore, the amount of gain or unfair advantage of contravention of the provisions ought to be considered and accordingly, higher penalty be

imposed.

7. Having considered the contentions of learned counsel for the parties and on perusal of the record, in view of the law laid down by the Apex court

and the High Court, considering the facts of the case, the applicant is entitled to get the benefit of changes in the law by substituting the sentence by

penalty and for the acts, the applicant has been convicted, penalty may be imposed under Sections 51, 52, 54 and 58 of the Food Safety and Standards

Act, 2006. Therefore, this revision is partly allowed confirming the conviction under the aforesaid offences of PFA Act and considering the unfair

advantage of the amount and the capacity of the applicant as representative of the Company, the sentence is substituted by imposing penalty of Rs.3

lacs (Rupees Three Lacs) for adulteration under Section 51 of the Act, Rs.2 lacs (Rupees Two Lacs) for misbranding of the food under Section 52 of

the Act and Rs.1 lac (Rupees one lac) for containing extraneous matter under Section 54 of the Act and Rs.1 lac for not issuing warranty under

Section 58 of the Act. The aforesaid amount shall be deposited by the applicant within fifteen days with the trial court. On deposit of the aforesaid

amount by the applicant within 15 days, he shall be released from jail immediately. If the amount is not deposited within stipulated period, the applicant

shall undergo the sentences as imposed by the courts below.

With the aforesaid, this criminal revision is disposed of.

CC as per rules.