

Des Raj Vs The State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 22, 1995

Acts Referred: Constitution of India, 1950 " Article 21
Criminal Procedure Code, 1973 (CrPC) " Section 313
Prevention of Food Adulteration Act, 1954 " Section 16, 16(1), 7

Citation: (1996) CriLJ 2720

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Advocate: H.S. Hooda and Ramesh Hooda, for the Appellant; Aparna Mahajan, for the Respondent

Judgement

P.K. Jain, J.

This Revision is directed against the judgment dated 17-11-1995, passed by the Additional Sessions Judge, Kaithal,

whereby the conviction and sentence of the petitioner for an offence u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954

(hereinafter referred to as the "Act") recorded by the Chief Judicial Magistrate, Kaithal, vide judgment/order dated November 7, 1992, has been

confirmed. The petitioner has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000/- and in

default, he shall further undergo imprisonment for a period of 3 months.

2. The facts, in brief, are that on 29-8-1987 at about 7.00 a.m. Government Food Inspector Sh. Shiv Dayal accompanied by Dr. S.C. Jindal.

intercepted the petitioner while carrying two drums, containing "10 Lts. and 11 Lts.cows" milk, respectively, for public sale. After giving proper

notice, the Food Inspector purchased a sample of 750 Mis. after mixing the whole contents properly and making" uniform for analysis. The

sample-milk was divided into 3 equal parts, and bottled into 3 dry clean and empty bottles after adding preservative as per Rules. One of the

samples was sent to the Public Analyst and the same was found to be adulterated as it contained milk solid not fat 22% deficient of the minimum

prescribed standard.

3. After complying with the necessary formalities, the said Food Inspector filed a complaint for an offence u/s 16 read with Section 7 of the Act

against the petitioner. In support of its case, the prosecution examined two witnesses. In his statement recorded u/s 313 of the Code of Criminal

Procedure, the petitioner denied the allegations and stated that the milk was not meant for sale but he had brought it for one Gaina Ram on account

of the marriage of his son. Gaina Ram was examined in defence as D.W. I. After appraisal of the evidence produced on the record, the Chief

Judicial Magistrate, by order dated 7-11-1992, convicted and sentenced the petitioner, as stated above. The appeal filed by the petitioner against

his conviction and sentence did not find favour with the appellate Court and the same was dismissed by the impugned judgment.

4. I have heard the learned counsel for the petitioner and the learned State counsel, and have also gone through the record of the trial Court which

has been summoned at the motion stage with the consent of the counsel for the parties.

5. It may be stated that there is a concurrent finding of facts by both the Courts below that on the date of occurrence the petitioner was carrying

milk for sale. A sample was purchased by the Food Inspector out of one drum after properly stirring the contents and having made uniform. It has

been further found that all the necessary procedural formalities were completed. One of the samples was sent to the public Analyst and according

to his report the sample was found to be adulterated as it contained milk solid not fat 22% deficient of the minimum of the prescribed standard.

6. Faced with the above concurrent finding of facts by the two Courts below, Shri H. S. Hooda, Senior Advocate, learned counsel for the

petitioner, has not seriously contested the conviction of the petitioner, but has confined his arguments only to the question of sentence. It has been

argued by the learned counsel that the petitioner is a young boy of 26 years of age and is not a previous convict. It has been further argued that the

petitioner has already undergone the agony of the criminal trial for the last more than 8 years. Thus, it is contended that the sentence imposed upon

the petitioner may be reduced to the period already undergone. In support of his contention, the learned counsel has placed reliance upon a

judgment of this Court in Ishwar Singh v. State of Haryana 1994 (1) RCR161, which in turn is based upon a judgment of the apex Court rendered

in Braham Dass v. State of Himachal Pradesh 1981 (II) FAC 13.

7. On the other hand, the learned State counsel has vehemently argued that the Act prescribes a minimum sentence to be imposed upon a convict

and the Court has got no power to impose sentence below the minimum prescribed by the statute. It has been further contended that the petitioner

has not undergone even the minimum prescribed sentence and as such the same cannot be reduced for the period already undergone.

8. The respective arguments have been considered carefully. It is not disputed that the sample in question was taken on 29-8-1987 and the

prosecution was launched against him on 9-10-1987. After a long and protracted trial the petitioner was convicted and sentenced by order dated

November 7, 1992 which has been confirmed by the appellate Court by order dated November 17, 1995. In other words, the petitioner has been

undergoing the turmoil of a criminal prosecution for the last about eight years.

9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the

Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and

reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of

the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of

the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal,

revision and retrial. This is how the Courts shall understand this right, and have gone to the extent of quashing the prosecution after such inordinate

delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8

years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to

be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the

interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the

mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary

jurisdiction.

10. An identical question had arisen before the apex Court in Braham Dass's case 1981 (2)FAC 13 (supra), wherein their Lordships were

pleased to observe as under:-

Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and High Court while reversing the judgment of

acquittal made by the appellate judge has not made clear reference to clause (0- The occurrence took place about more than 8 years back.

Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending

the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an antisocial offence punishable

under the Prevention of Food Adulteration Act the Court should take strict view of such matter.

This view was followed by this Court in *Nand Lal v. State of Haryana* 1992 (1) RCR 82 and *Ishwar Singh* case 1994 (1) RCR 161 (supra). The

present case is fully covered by the view expressed by the apex Court and by this Court in the judgments cited above and I have no reason to

differ therewith.

11. For the reasons mentioned above, the conviction of the petitioner for an offence u/s 16(1)(a)(i) read with Section 7 of the Act is hereby

maintained. However, keeping in view the facts and circumstances of the case and the fact that the petitioner has already faced the agony of the

protracted prosecution and suffered mental harassment for a long period of eight years, his sentence is reduced to the period of sentence already

undergone. Sentence of fine is, however, maintained along with its default clause.