(2009) 05 P&H CK 0218

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 211 of 2002

Satish Kumar	APPELLANT
Vs	
Union Territory, Chandigarh	RESPONDENT

Date of Decision: May 6, 2009

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16(1)(a)(i)

Citation: (2009) 3 RCR(Criminal) 325

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Atul Lakhanpal, with Mr. S.S. Rana, for the Appellant; Ram Pal Verma, Advocate for Mr. Rajiv Sharma, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Present revision petition has been preferred by Satish Kumar son of Raghu Nath. He was tried by the Court of Chief Judicial Magistrate, Chandigarh, and convicted & sentenced u/s 16(1) (a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-, in default whereof to further undergo rigorous imprisonment for two months.

2. Aggrieved against the same, petitioner had filed an appeal. The appeal was dismissed by the Court of the Additional Sessions Judge, Chandigarh.

3. Petitioner was prosecuted in the complaint filed by the Food Inspector, Chandigarh. On 9.5.1989, premises of the accused/petitioner was inspected by Vireshwar Singh, Government Food Inspector. 20 Kgs. of tea leaves were found in possession of the petitioner as they were kept for sale. Food Inspector purchased 450 grams of tea leaves and had drawn the samples in consonance with the provisions of the Act and Rules specified. The sample was sent to the Public Analyst. The Public Analyst found that the sample was not in consonance with the

specifications prescribed. Hence, petitioner was put to the trial.

4. Mr. Atul Lakhanpal, Senior Advocate, assisted by Mr. S.S. Rana, Advocate, has stated that he will not be assailing the conviction of the petitioner as two Courts below after appreciation of evidence have come to conclusion that petitioner is guilty of offence u/s 16(1)(a)(i) of the Act. Counsel further submits that petitioner has suffered a protracted trial of 20 years. In the order determining quantum of sentence, it was noticed that petitioner is a sole bread winner of his family and having young children and old aged parents. It has been further submitted that in the order it was also noticed that petitioner is first offender. Counsel further submits that after conviction, petitioner has committed no other offence. Counsel further submits that children of the petitioner are of marriageable age and in case petitioner is sent behind the bars, their matrimonial prospects will suffer. Counsel further submits that taking into consideration protracted trial, the antecedents, and the fact that petitioner has committed no offence after conviction, sentence awarded upon the petitioner be reduced to already undergone.

5. Counsel for the petitioner has placed reliance upon a judgment of this Court rendered in Sohan Lal v. State of Haryana (Criminal Revision No. 858 of 1996 decided on 22.2.2008) wherein this Court had taken into consideration protracted trial and had reduced the sentence to already undergone and fine was enhanced to Rs. 10,000/-. In Sohan Lal''s case (supra), it has been observed as under :-

...He has relied upon a Single Bench judgment of this Court in Mahavir v. State through Govt. Food Inspector, 2000 (4) RCR (Cri) 208, wherein it was held as under :

6. Learned counsel for the petitioner, however, further contends that the occurrence in this case pertains to the year 1984, to be precise, February 17, 1984 and a period of 16 years has already gone by. Petitioner has already suffered the agony of protracted trial, spanning over a period of one and half decades. Petitioner was 40 years of age at the time of occurrence and further that he was already undergone sentence for a period of 25 days. For the contention that petitioner should be dealt with leniently in these circumstances his counsel relies upon Manoj Kumar v. State of Haryana, 1998 (1) RCR 563. Learned State counsel has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the petitioner is concerned.

7. In totality of the facts and circumstances of this case, the Court is of the view that ends of justice would be met if sentence imposed upon the petitioner is reduced to the one already undergone by him. So ordered. Order of payment of fine and so also consequences in default thereof are, however, maintained. Learned counsel for the petitioner informs the Court that fine has already been paid.

He has also placed reliance upon another single Bench judgment Des Raj v. State of Haryana, 1995 22 Cri LT (482), which reads as under :

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 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 (supra), wherein their lordship 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 (f). 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 anti-social 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, and Ishwar Singh''s case (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.

He has further brought to my notice a judgment by another Single Bench of this Court in Mahabir v. State of Haryana, 1997 (3) RCR 649 : 1997 (3) RCC (469), wherein following view was taken :

The facts indicate that incident pertains to more than 14 years ago. The short question that thus arises for consideration is as to whether it would be appropriate to direct the petitioner to undergo the rest of the sentence. There is no over-emphasizing the fact that speedy trial which is the essence of justice has been lost. A reference of some of the precedents in this regard would make the position clear. In the case of Manjit Singh v. The State of Punjab, 1993(2) Prevention of Food Adulteration Cases 67, 11 years had expired before the revision petition was decided. Keeping in view the inordinate delay, the sentence was reduced to the one already undergone. The same question again was considered by this Court in the case of Pardeep Kumar v. State (U.T.) Chandigarh, 1994 (1) CCC 58. Therein the sample had been taken in the year 1984. 9 years had expired by the time the revision petition was heard. Once again the sentence was reduced to the one already undergone. The view point of the Delhi High Court is the same in the case of Vir Singh Chauhan v. State (Delhi), 1994 (2) CCC 253. When the revision came up for hearing, 7 years had expired. Learned Single Judge of the said Court reduced the sentence to the one already undergone. Before the Madhya Pradesh High Court in the case of Jamnalal v. The State of M.P., 1995(1) Prevention of Adulteration Cases 78, the same view prevailed.
8. All these decisions are based in the judgment of the Supreme Court in the case of Braham Dass Vs. State of Himachal Pradesh, . Therein the accused had been convicted for selling masur whole. The accused had been acquitted by the trial Court, but High Court held him guilty. 8 years were lost. Part of the sentence had been undergone. The Supreme Court reduced the sentence to the one already undergone.

9. The position in the present case is not different. As already noted above, 14 long years have expired, when the sample was taken. The petitioner has already undergone a part of the sentence. In these circumstances, it will not be in the ends of justice that petitioner again to undergo the rest of the sentence. Consequently, the sentence must be reduced to the one already undergone.

10. For these reasons, revision petition fails and is dismissed, but the sentence is reduced to the one already undergone.

Again, reliance has been placed upon a judgment of this Court in Mohinder Singh v. State (Chandigarh Administration), 1997 (2) RCR 168 : 1997 1 PLR 623, wherein it has been held as under :

8. The last submission made in this regard was pertaining to the sentence. It was argued that incident pertains to the year 1980 and the petitioner is facing the agony of a prolonged trial and thereafter appeal and the revision, 16 years have elapsed. The decision in the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, had set the law into motion. The scope of Article 21 was extended and it was held that expeditious disposal of the cases was an integral and essential part of the fundamental right to life and liberty. In paragraph 5 it was held :

`Now obviously procedure prescribed by law for depriving a person of his liberty cannot be `reasonable, fair and just'' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as `reasonable, fair or just'' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial and by speedy trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

The same question was considered by a Bench of the Patna High Court in State of Bihar Vs. Ramdaras Ahir and Others, . It was concluded that the word `trial'' would bring within its sweep, the appeal that would be pending against such an order. In paragraph 17 the Court had held :

Therefore, there seems to be no option, but to hold that the word `trial'' in the context of the constitutional guarantee of a speedy trial includes within its sweep a substantive appeal provided by the Code to the High Court - whether against conviction or against acquittal. Thus, it would follow that the constitutional right of speedy trial envisaged an equally expeditious conclusion of a substantive appeal and not merely a technical completion of the proceedings in the original Court alone.

Subsequently, the Full Bench of Patna High Court in Anurag Baitha Vs. State of Bihar, reiterated the same view and in paragraph 11 it was held :

`If Art.21 and the right to speedy public trial is not merely a twinkling star in the high heavens to be worshipped and rendered vociferous lip-service only but in deed is an actually meaningful protective provision, then a fortiori expeditious hearing of substantive appeals against convictions is fairly and squarely within the mandate of the said Article.''

9. Reverting back to the fact of the present case as already mentioned above, the incident pertains to a period of more than 16 years ago. The petitioner had already undergone nearly 2 months of the sentence. As pointed out above, fair, just and reasonable procedure is implicit in Article 21 of the Constitution. After such a prolonged period, though the petition is without merit, it would be inappropriate to insist that petitioner can well be sent to undergo the rest of the sentence. It would be unfair. Article 21 of the Constitution would bring within its sweep, not only

expeditious trial but disposal of appeals and revisions. The fairness to the accused petitioner, therefore, demands in the peculiar facts of this case that giving predominance to the said article, the sentence should be reduced to the one already undergone. Order is made accordingly.

In Bihari lal v. State of (U.T.) Chandigarh, 2000 (1) RCR 222, a single Judge of this Court also reiterated the same view and held as under :

5. Section 16 of the Prevention of Food Adulteration Act provides that the person found guilty of the offence shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees. The proviso further provides that in cases covered by Clauses (i) and (ii) to Section 15(1) of the Act, for adequate and special reasons to be mentioned in the judgment, the Court may 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. Fair, just and reasonable procedure implicit in Article 21 of the Constitution of India, creates a right in the accused to be tried speedily. It is now well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Right to speedy trial following from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

6. In Chander Bhan v. State of Haryana, 1996 (1) RCR 125, it has n held by this Court as under :-

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 a protracted trial due to the fault of the prosecution by this Court in the exercise of its extraordinary jurisdiction.

7. In Municipal Corporation of Delhi v. Tek Chand Bhatia, AIR 1980 SC 380 (360), the Apex Court held as under :-

Though adulteration of an article of food is a serious anti-social offence which must be visited with exemplary punishment, it will be rather harsh to pass a sentence of imprisonment in the facts and circumstances of the instant case. u/s 16 as in force at the material time, the Court had the discretion for special and adequate reasons under proviso to sub-section (1) of Section 16 not to pass a sentence of imprisonment. In the instant case, the accused is a man aged 75 years. The offence was committed more than 11 years ago. The order of acquittal was based on the decision of the High Court. The samples were taken from sealed tins. These are mitigating circumstances. Accordingly, instead of passing a substantive sentence of imprisonment, the accused could be sentenced to period already undergo and

directed to pay a fine.

8. In Braham Dass Vs. State of Himachal Pradesh, , the Supreme Court held as under :-

Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clauses (f). 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 period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act, the court should take strict view of such matter. While dismissing the appeal, we would, however, limit the sentence of imprisonment to be period already undergone and sustain the fine along with the default sentence.

9. All the three cases cited above were under the Prevention of Food Adulteration Act.

10. The mitigating circumstance in this case is that the petitioner is undergoing the agony of this protracted trial for the last more than 15 years and he can be compensated suitably by reducing the substance sentence imposed upon by him to the one already undergone by him.

11. For the fore-going reasons I reduce the substantive sentence of the petitioner to the one already undergone by him. However, the sentence of fine shall remain unaltered.

Same view has been reiterated in Chander Bhan v. State of Haryana, 1996 (1) RCR 125; Sat Pal v. State of Haryana, 1998 (1) RCR 75; Ram Kishan v. State of Haryana, 2000 (1) RCR 196; Krishan Kumar Narang v. State (U.T.) Chandigarh, 2005 (3) RCR 592 (P&H) and Tirath Ram v. State of Punjab, 2007 (4) RCR 69 (68) (P&H), relevant portion of which reads as under :

19. However, keeping in view the fact that the petitioner was 50 years of age at the time of recording of his statement u/s 313 of the Cr.P.C. and he would be, by now, fairly advanced in the age, as also the fact that he has faced the agony of criminal proceedings for the last more than 16-1/2 years, I am of the opinion that the sentence awarded to him deserves to be reduced to that of fine. For this view, I draw support from a judgment of the Supreme Court in Sri Krishan Gopal Sharma and another v. Government of N.C.T. of Delhi, 1996 (2) RCR(Crl.) 591 : 1996 (1) FAC 258 (SC) and also from the judgments of Allahabad High Court in Bhageloo v. State of U.P. and another, 1996 (2) F.A.C. 199 and of this Court in Mahavir v. State through Govt. Food Inspector, 2000 (4) RCR (Crl.) 208 (P&H).

6. Since in the present case, petitioner has suffered a protracted trial of about 20 years, I find that the petitioner is also entitled to the benefit of the consistent view taken by this Court. Therefore, sentence of petitioner is reduced to already undergone. However, sentence of fine is enhanced to Rs. 10,000/-. The same shall be deposited within a period of three months from receipt of certified copy of the order.

In case, the fine is not deposited, the benefit of reduction in sentence shall not accrue to the petitioner.

With the observations made above, the present petition is disposed off.