

(2008) 02 P&H CK 0333

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 448 of 1996

Krishan Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Feb. 25, 2008

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Food Adulteration Act, 1954 - Section 15(1), 16, 16(1)(a)(i), 7

Citation: (2008) 3 RCR(Criminal) 338

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Atul Lakhanpal, with Mr. R.S. Chahar, for the Appellant; Man Mohan Sikka, AAG, Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

The present revision petition has been filed by Krishan Kumar son of Harsukh, resident of Geeta Colony, Kaimri Road, Hisar assailing his conviction and sentence by the Court of Additional Chief Judicial Magistrate, Hisar, which has been affirmed in appeal by the Court of Additional Sessions Judge, Hisar.

2. On a complaint filed by Mr. Teja Singh, Govt. Food Inspector, the petitioner was prosecuted for keeping in his possession adulterated cow milk for public sale. He was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/-, in default of payment of fine, to further undergo rigorous imprisonment for three months by the Court of Additional Chief Judicial Magistrate, Hisar. The sentence was upheld by the Additional Sessions Judge, Hisar.

3. Briefly stated that the case of the prosecution is that on 03.06.1988, PW1 Teja Singh, Govt. Food Inspector along with Dr. Suresh Goyal PW3 apprehended the petitioner in Urban Estate Hisar. It is stated that he was carrying 10 kg. of cow milk in a drum on his cycle for public sale. 750 mls. of milk was purchased on payment of Rs. 3/-. The samples were drawn in consonance with the provisions and rules of the Prevention of Food Adulteration Act 1954 and were sent to the Public Analyst. Public Analyst vide his report Exhibit PF found the sample adulterated by 6.0% deficient in milk fat.

4. Before the Courts below, two arguments were raised. Firstly, Mr. P.K. Nayar, Public Analyst was not duly appointed as a Public Analyst and was not competent to analyse the milk. Secondly, being the marginal deficiency, the report of the Public Analyst should be ignored.

5. Mr. Atul Lakhanpal appearing on behalf of the petitioner has very fairly stated that so far two arguments are concerned, he will not be able to advance these arguments as same were raised before the two Courts below. He has further stated that in view of the findings of fact returned by the two Courts below against him, he will accept his conviction but in alternate prays for reduction in the sentence. It is stated that occurrence pertains to 03.06.1988 and about 20 years are going to lapse.

6. Opening line of the trial Court judgment reveals that the petitioner was 30 years old when he was prosecuted. It has been stated that in the last 20 years, the petitioner has fastened many liabilities of the family and his children are in marriageable age and he has not committed any offence in the last 20 years. It has further been stated that the appeal of the petitioner was dismissed on 05.07.1996 and he was taken into custody on the same day. His sentence was suspended by this Court vide order dated 16.07.1996 and he was released three/four days later from the Jail and he has undergone 15 days of his actual sentence. Petitioner has already suffered a protracted trial and he has undergone about 15 days of his actual sentence and that sentence may be reduced to already undergone taking into consideration the fact that in the last 20 years he has been in the corridors of the Court and much misery has been inflicted upon him. He has relied upon a single Bench judgment of this Court in Mahavir v. State through Govt. Food Inspector, 2000 (4) RCR (Criminal) 208 (P&H), 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 (Crl.) 563 (P&H). 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*, 1996 (1) RCR (Criminal) 689 : 1995 12 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."

7. He has further brought to my notice a judgment by another Single Bench of this Court in Mahabir v. State of Haryana, 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) PFAC 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) PAC 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."

8. Again, reliance has been placed upon a judgment of this Court in *Mohinder Singh v. State (Chandigarh Administration)*, 1997 (2) RCR(Criminal) 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 [Anuraq 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 worshiped 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."

9. In *Bihari Lal v. State of (U.T.) Chandigarh*, 2000 (1) RCR (Criminal) 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 judgement, 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 been 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 extra-ordinary jurisdiction."

7. In *Municipal Corporation of Delhi v. Tek Chand Bhatia*, AIR 1980 SC 380, 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 undergone 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 judgement 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."

10. Same view has been reiterated in *Sat Pal v. State of Haryana*, 1998(1) RCR (Criminal) 75 ; *Ram Kishan v. State of Haryana*, 2000 (1) RCR(Criminal) 196; *Krishan Kumar Narang v. State (U.T.) Chandigarh*, 2005 (3) RCR(CrI.) 592 (P&H) and *Tirath Ram v. State of Punjab*, 2007 (4) RCR(Criminal) 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(Criminal 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.

11. Since in the present case, petitioner has suffered a protracted trial of 20 years and has undergone about 15 days, I find that petitioner is also entitled to the benefit of the consistent view taken by this Court. Therefore, sentence of the petitioner is reduced to already undergone. However, sentence of fine is enhanced to Rs. 10000/-. The same shall be deposited within a period of three months from today.

Non deposit of fine by the petitioner shall render the present revision petition as dismissed.

With these modifications, the instant revision petition is disposed off.