(2009) 08 P&H CK 0251

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1742 of 2009 (O and M)

S.C. Goyal	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: Aug. 11, 2009

Acts Referred:

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

Citation: (2009) 31 CriminalCC 781

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Sameer Sachdev, for the Appellant; Ritu Punj, D.A.G., Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Rajesh Bindal, J.

The petitioner has filed the present revision before this Court challenging his conviction by the learned Chief Judicial Magistrate, Hisar, u/s 16 (1A) of the Prevention of Food Adulteration Act, 1954 (for short, "the Act"), which was upheld in appeal by the Additional Sessions Judge, Hisar. However, the sentence was reduced from one year to six months.

2. At the very outset, learned counsel appearing for the petitioner stated that he will not contest the conviction of petitioner as two Courts below are against him and finding of fact has been recorded. He has very fairly stated that there is no irregularity and infirmity, which can be pointed out by him.

3. Learned counsel stated he will make an alternative prayer that sentence of petitioner should be reduced as in the present case occurrence pertains to year 1997 and he had faced the agony of trial for about twelve years. He has further stated that in the last 12 years, the petitioner has committed no other offence. He has further stated that petitioner is now going to be more than 70 years of age and

no useful purpose will be served by keeping him behind the bars.

4. Taking the totality of circumstances in view of the fact that this Court since 1997 has held that speedy trial is a right vested in the accused and protracted trial in itself is a special reason to reduce the sentence.

5. In Mahavir v. State through Govt. Food Inspector, 2000 (4) RCR(Cri) 208, 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(Cri.) 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.

6. In Des Raj v. State of Haryana, 1996 (1) RCR(Cri.) 689 : 1995 (22) CLT (482), this court opined 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. Views expressed in another Single Bench by this Court in Mahabir v. State of Haryana, 1998 (2) RCR(Cri) 349, are as follows :

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) Ch CC 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. In another judgment of this Court in Mohinder Singh v. State (Chandigarh Administration), 1997 (2) RCR (Cri) 168, 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.

9. In Bihari Lal v. State of (U.T.) Chandigarh, 2000(1) RCR (Cri) 222, a single Judge of this Court 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 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.

10. 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 undergo and directed to pay a fine.

11. 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.

12. 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.

13. Same view has been expressed in Chander Bhan v. State of Haryana, 1996 (1) RCR (Cri.) 125; Sat Pal v. State of Haryana, 1998 (1) RCR (Cri.) 75; Ram Kishan v. State of Haryana, 2000 (1) RCR (Cri.) 196; Krishan Kumar Narang v. State (U.T.) Chandigarh, 2005 (3) RCR (Cri.) 592 (P&H), Tirath Ram v. State of Punjab, 2007 (4) RCR (Cri.) 69 (P&H) and Risala v. State of Haryana, 2008 (2) RCR (Cri.) 239 (P&H).

14. Since the petitioner has suffered protracted trial of 12 years, he being more than 70 years of age and having not repeated the offence in past, I find that he 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. 25,000/- to be deposited within three months. Non-deposit of fine shall render this revision petition as dismissed.

The present is allowed in above terms.