

(2010) 05 P&H CK 0316

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Revision No. 754 of 1991

Kuldip Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 4, 2010**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 16(1), 7

Hon'ble Judges: Tej Pratap Singh Mann, J**Bench:** Single Bench

Judgement

T.P.S. Mann, J.

The Petitioner, alongwith one Tarsem Lal was arraigned as accused for an offence u/s 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act. The presence of accused-Tarsem Lal could not be procured and he was declared as a proclaimed offender. However, the Petitioner was charged for the aforementioned offence and vide judgment and order dated 26/27.7.1989, Sub Divisional Judicial Magistrate, Jagadhri convicted him of the said offence and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-and in default of payment of fine, to undergo further rigorous imprisonment for three months. Aggrieved of his conviction and sentence, the Petitioner filed an appeal, but the same was dismissed by Additional Sessions Judge, Yamunanagar at Jagadhri on 3.12.1991. He then filed the present revision in this Court, which was admitted on 9.12.1991 and he was ordered to be released on bail.

2. According to the complaint filed by the Food Inspector, on 22.9.1983 at about 4.30 PM, he visited the shop of the Petitioner, situated at bus stand, Bilaspur, where Tarsem Lal, servant of the Petitioner was present. Ten kgs. of vanaspati ghee was kept there in a tin for public sale. The sample of vanaspati ghee drawn by the Food Inspector was analysed by the Public Analyst, who vide his report Ex.PD gave an opinion that it gave Butyro refractometer reading of 47.5 at 40°C. Vitamin "A" was absent and melting point 40°C against the minimum & maximum prescribed

standards of 48, 26 I.U. & 37◆ C, respectively. It also gave Baudouin test negative, whereas it should have been lighter than 2 red units. Accordingly, the sample was declared to be sub standard, exposing the Petitioner to liability for the offence u/s 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act.

3. Learned Counsel for the Petitioner has not challenged the impugned judgment whereby the Petitioner stands convicted u/s 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act. However, it has been submitted that the offence relates to the year 1983 and a period of about 27 years has elapsed since then. At the time of his trial, the Petitioner was 25 years of age. When he was examined by the trial Court on the quantum of sentence, he had stated that he was a poor person, his family consisted of small children and he was sole bread earner for the family. It has also been submitted that in the present revision, the Petitioner was granted the concession of bail on 9.12.1991 and the revision has remained pending in this Court for more than 18 years. The Petitioner has already deposited the fine imposed on him by the trial Court.

4. Therefore, substantive sentence of imprisonment of the Petitioner be reduced to that already undergone by him.

Learned State counsel has opposed the prayer made on behalf of the Petitioner by submitting that the offence entails minimum imprisonment for six months and, therefore, the Petitioner, who was found in possession of sub standard vanaspati ghee and meant for public sale does not deserve any leniency in the matter of sentence.

5. In *Harjeet Singh v. State of Haryana* 1993 (1) RCR 235, this Court while maintaining the conviction of the accused of the offence of adulteration found it to be a fit case for not sending the accused to jail at that stage for undergoing the remaining period of sentence, as he had remained in jail for sometime and for the last more than 9 years, he had faced the protracted litigation and, thus, had undergone sufficient mental harassment. While coming to such a conclusion the Court also relied upon *Braham Dass v. The State of Himachal Pradesh* 1988 AC 13. The relevant portion of the judgment in *Harjeet Singh's* case (*supra*) is reproduced here below:

4. The learned Counsel for the Petitioner did not address any arguments assailing the conviction of the Petitioner before me. His solitary contention was that speedy trial was the essence of justice and inordinate delay in disposal of a case itself caused sufficient agony to the Petitioner. So, it was a fit case where he should not be sent to jail at this stage and sentence awarded to him may be reduced to the period during which he remained confined. He contended that sample of milk from the Petitioner was taken in the year 1983 and more than 9 years have elapsed. The present revision petition is pending since 1986 and this prolonged litigation itself is a ground for treating the Petitioner in a lenient manner. In support of this contention the learned Counsel placed reliance on the case of *Braham Dass v. The*

State of Himachal Pradesh 1988 AC 13. In this case it was observed 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 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.

6. I find that in the instant case the sentence awarded to the Petitioner was modified in the year 1986 and thereafter he remained in jail for some time. For the last more than 9 years he faced this protracted litigation and had undergone sufficient mental harassment. So keeping in view the circumstances of the case, I find it a fit case where no useful purpose would be served by sending the Petitioner to jail at this stage for undergoing the remaining period of sentence."

7. Similarly, in *Joginder Singh v. State of Haryana* 1993 (2) RCR 590 and *Mahabir Parshad v. State of Haryana* 1993 (3) RCR 152, this Court again reduced the sentences of imprisonment to that already undergone by the convicts, facing charges of adulteration, keeping in view the fact that they had faced protracted litigation and had undergone sufficient mental harassment.

8. In the present case, the Petitioner was taken into custody on 3.12.1991 when his appeal was dismissed by Additional Sessions Judge, Yamunanagar at Jagadghri. The present revision filed by the Petitioner was admitted on 9.12.1991 and he was ordered to be released of bail. Thus, the Petitioner has already remained behind the bars for some time. He has been facing the agony of criminal prosecution since the year 1983. No useful purpose would be served by sending him behind the bars once again so as to serve the remainder of his sentence. Ends of justice would be amply met if his sentence of imprisonment is reduced to that already undergone by him. At the same time, the fine of Rs. 1,000/- imposed upon the Petitioner by the Courts below can be enhanced to Rs. 11,000/-.

9. Resultantly, the revision is partly allowed by maintaining the conviction of the Petitioner but reducing the substantive sentence of imprisonment to that already undergone by him. The fine of Rs. 1,000/-, imposed upon the Petitioner is enhanced to Rs. 11,000/-, which be deposited by the Petitioner with the trial Court, within three months from today, failing which he shall be required to undergo rigorous imprisonment for a period of three months.