(1998) 02 AHC CK 0116

Allahabad High Court

Case No: Criminal Revision No''s. 120, 2538 and 2534 of 1983 and 32 of 1984

Vidya Vinod alias Chunnulal		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Feb. 10, 1998

Acts Referred:

- Constitution of India, 1950 - Article 21
- Prevention of Food Adulteration Act, 1954 - Section 10(7), 13(2), 13(3), 16, 16(1)
- Prevention of Food Adulteration Rules, 1955 - Rule 44

Citation: (1998) CriLJ 3318 : (1998) 4 RCR(Criminal) 586

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

Bench: Single Bench

Advocate: R.B. Sahai, Murli Dhar and G.N. Shukla, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jain, J.

These four criminal revisions raise common question of law which is whether in view of the provisions of Section 16 of the-Prevention of Food Adulteration Act as amended by Amending Act No. 34 of 1976 lesser punishment can be awarded by the Courts if the accused has been deprived of his rights to have a speedy trial as enshrined in Article 21 of the Constitution of India. Therefore, all these revisions are being disposed of by common Judgment.

2.In Criminal Revision No. 120 of 1983 the facts are that the revisionist was convicted by the trial court under Sections 7/16 of the Food Adulteration Act (hereinafter called ''the Act'') and was sentenced to undergo rigorous imprisonment for. pine months and pay a fine of Rs. 1500/- and in default of payment of fine to

undergo further rigorous imprisonment for six months. In appeal against the Judgment and order dated 1,4-7-82 passed by the trial Court, the appellate Court affirmed the findings of guilt against the appellant but modified the order of sentence an4 he was sentenced to undergo six months'' rigorous imprisonment and pay a fine of Rs. 1000/- and in default of payment of fine to undergo further R. I. for three months.

3.The facts on which the revisionist was convicted were that on 12-7-80 he was found selling mustard oil. The Food Inspector had taken 375 grams of sample and had completed the formalities. The sample was sent for analysis by the Public Analyst and in his report dated 16-8-80 the Public Analyst reported that the sample contained 8.32 percent of ''Tisi oil and, therefore, it was adulterated. The plea of the accused was that no notice u/s 13(2) along with the report of the Public Analyst was served upon him. He did not sell any oil to the Food Inspector and the receipt and papers on which his signatures were obtained were blank. The premises consisted of oil mill, flour mill etc. The Food Inspector had taken sample from the crushed oil of one of the customers. The trial Court had found that the sample was taken by the Food Inspector and the receipt and other documents contained signatures of the accused and that there was proper compliance of the provisions of Section 13(2) of the Act. The appellate Court affirmed these findings.

4.In Criminal Revision No. 32 of 1984 the revisionist was convicted by the trial Court under Sections 7/16 of the Food Adulteration Act and was sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs. 1000/- and in default of payment of fine to undergo further R. I. for six months by Judgment and order, dated 29-7-83 passed by the Judicial Magistrate, Fatehpur. The appeal preferred by the revisionist was dismissed and order of conviction and sentence awarded by the trial Court was affirmed. In this case sample of . milk was taken from the revisionist on 23-6-81 and after completion of formalities one of the samples was sent to Public Analyst who on analysis found that the sample contained 6.7 per cent non-fatty solids and 6.7 percent fat. The non-fatty solids we deficient by 26 per cent and, therefore, the sample was adulterated. The defence plea was that the accused did not sell the milk, copy of the report of the public analyst along with notice was not sent to him as required u/s 13(3) of the Act and he was got falsely implicated by one Yaqoob of his village.

5.The trial Court did not find substance in the defence plea and, therefore, convicted and sentenced the accused. The appellate Court confirmed these findings and consequently dismissed the appeal.

6.In Criminal Revision No. 2538 of 1983 the facts are that the revisionist was convicted by the trial Court by Judgment and order, dated 28-1-83 and was sentenced to undergo R. I. for six months and pay fine of Rs. 1000/- and in default of payment of fine to further undergo imprisonment for three months. The appeal was dismissed by Judgment and order dated, 28-10-83 and the revision was filed in this

Court on 8-12-83. The occurrence had taken place on 18-8-79 when the Food Inspector had taken sample of 750 Grams ''Chanaki-Dal'' and the Public Analyst had reported that it contained Kesari Dal about 1.27% and extra rodent excreta. The defence plea of the revisionist was that the Dal from which sample was taken was not meant for sale, there was no compliance of the provisions of Section 10(7) of the Act and that on the basis of the Public Analyst''s report the sample in question cannot be treated as adulterated. Both the Courts below have repelled these contentions of the revisionist.

7.In Criminal Revision No. 2534 of 1983 the facts are that the revisionist was convicted by the trial Court by Judgment and order, dated 10-9-82 and was sentenced to undergo rigorous imprisonment for six months and pay fine of Rs. 1000/- and in default of payment of fine to further undergo R. I. for three months. The appellate Court affirmed the conviction of the appellant as well as the sentence awarded to him by Judgment and order dated 30-11-83. The revision was filed in this Court on 8-12-83. The incident had occurred on 31-12-79 and sample of mustard oil was taken. The public analyst had reported that the sample did not conform to the prescribed standard and, therefore, it was adulterated. Before the appellate Court the appeal was pressed on the question of sentence only.

8.I have heard Sri R. B. Sahai, learned counsel for the revisionists in Criminal Revision No. 120 of 1983 and Criminal Revision No. 32 of 1984, Sri Murli Dhar in Criminal Revision No. 2538 of 1983 and Sri G. N. Shukla in Criminal Revision No. 2534 of 1983 as well as the learned Additional Government Advocate.

9.The common question of law raised in all the four criminal revisions besides other grounds taken by the learned counsel in each of the revisions is that the revisionists were deprived of their right of speedy trial as enshrined under Article 21 of the Constitution of India, and, therefore, the revisions deserve to be allowed and in any case the sentence of imprisonment deserves to be converted to that of fine. In support of their submissions learned counsel for the revisionists have relied upon decisions of the Punjab and Haryana High Court in Nand Lal v. State of Haryana (1992) 1 Rec Cri R 82 which was followed by the said Court in the case of Ishwar Singh v. State of Haryana (1994) 1 Rec Cri R 161 (P & H) and Des Raj Vs. The State of Haryana, . On the other hand the learned Additional Government Advocate appearing on behalf of the State vehemently contends that in all these cases the offence was committed after the Food Adulteration Act was amended by the Amending Act 34 of 1976. Minimum sentence was provided and the Court has no discretion to award lesser sentence in view o/ the statutory provisions contained in Section 16 of the Act.

10. As already pointed out earlier in the first case the occurrence had taken place on 12-7-80. The trial concluded on 14-7-82 and thereafter the appeal was disposed of on 27-1-83. The revision was filed in this Court on 31 -1 -83 and it is pending in this, Court for more than fifteen years. In second case the offence was committed on

23-6-81. The trial concluded on 29-7-83 and the appeal was decided on 13-12-83. The revision is pending in this Court since 4-1 -84 i.e. for about 14 years. In third case (Criminal Revision No. 2538 of 1983) offence was committed on 12-8-79, trial concluded on 28-1-83 and appeal was disposed of on 28-10-83. Revision in this Court is pending since 25-12-83. In fourth case (Criminal Revision No. 2534 of 1983) offence was committed on 31-12-79, trial was concluded on 10-9-82 and appeal was disposed of on; 30-11-83. Revision in this Court is pending since 8-12-83.

11. Contention of the learned counsel for the revisionists is that the revisionists are not previous convicts. They have already undergone the agony of criminal trial for the last more than 14 to 17 years. Throughout this period they have suffered mental agony as the apprehension of being imprisoned on dismissal of revision was haunting in their minds and no useful purpose shall be served by sending them to jail after lapse of such a long time. The learned A.G.A. has invited the attention of this Court to the provisions contained in Section 16 of the Act which was amended by Amending Act 34 of 1976. Section 16(1)(a) 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 Clause (i) and (ii) of the proviso to Section 16(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. It is also contended that undisputably the samples of the articles were adulterated within the meaning of sub-section (i-a) of Section 2. Therefore, under the proviso the minimum sentence which can be awarded is three months'' rigorous imprisonment and fine of Rs. 500/-.

12.Fundamental right of speedy trial is enshrined in Article 21 of the Constitution of India which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Apex Court in a catena of decisions has held that the State is under obligation to provide speedy trial. Reference may be made to Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, and Kadra Pahadiya v. State of Bihar, AIR 1981 SC 939 . In Kadra Pahadiya''s case the Apex Court held that speedy trial is fundamental right implicitin the guarantee of life and personal liberty enshrined in Article 21 if any accused who has been deprived of this right of speedy trial is entitled to approach Supreme Court for the purpose of enforcing such right and the Court in discharge of its constitutional obligation has power to issue directions to the State Government and other appropriate authorities for securing this right to the accused. Reference may also be made to the case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., in which it was held that fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Thus 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 flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Courts have understood 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. It was held in Des Raj Vs. The State of Haryana, relied upon by the learned counsel for the revisionists that "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 statutes 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 protected trial due to the fault of the prosecution by this Court in the exercise of its extraordinary jurisdiction.".

13. The Apex Court in following cases under the Prevention of Food Adulteration Act reduced and converted the sentence of imprisonment to the period of imprisonment already undergone and fine on the ground of inordinate delay in disposal of the trial which includes appeal as well as revision.

1. Ramdas Bhikaji Chaudhari Vs. Sadanand and Others,

2f Municipal Corporation of Delhi Vs. Tek Chand Bhatia,

3. Braham Dass Vs. State of Himachal Pradesh, .

14.In Ramdas Bhikaji Chaudhari Vs. Sadanand and Others, the offence was committed prior to 1st April, 1976 i.e. prior to the coming in force of the Amending Act. The accused was convicted by the trial Court and the appellate Court upheld the conviction and modified the sentence. The High Court, however, acquitted the accused. In SLP filed by the complainant before the Supreme Court the Judgment of acquittal passed by the High Court was reversed: However, while considering the question of sentence the Supreme Court observed as follows (Para 6):-

The next question that remains for determination is as to what is the sentence which should be imposed on the respondents if their acquittal is reversed. In the instant case we find that the respondents were prosecuted in the year 1971 and ultimately acquitted by the High Court in 1976. After acquittal remained in force for three years the matter has come up before us. In these circumstances, therefore, the ends of justice do not require that the respondents should be sent back to jail. Mr. Ganpule pointed out that so far as respondent No. 1 Sadanand was concerned he had previous conviction to his credit and so he deserves a jail sentence. As the previous conviction was 7 years old and today it will be about 15 years old, we do not think that we should take those facts into consideration while imposing the sentence on the respondent. For the reasons, therefore, we would allow this appeal

and set aside the order of the High Court and convict the respondents u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act and sentence the respondents to fine of Rupees 2,000/- each, in default 6 months'' R.I.

15. In the second case of Municipal Corporation of Delhi Vs. Tek Chand Bhatia, . Bhatia the offence was committed in the year 1968 and the matter was finally disposed of by the Supreme Court in the year 1979. The Supreme Court while considering the question of sentence observed that adulteration of an article of food is a serious anti -social offence which must be visited with exemplary punishment, it would be rather harsh to pass a sentence of imprisonment in the facts and circumstances of the 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 Sec-tion 16 not to pass a sentence of imprisonment. After considering various circumstances the Supreme Court held that "we accordingly refrain from passing a substantive sentence of imprisonment and instead sentence the respondents to the period already undergone and to pay a fine of Rs. 2,000/- or in default to undergo rigorous imprisonment for a period of three months.

16. In the third case of Braham Dass Vs. State of Himachal Pradesh, the offence was committed in July, 1980. The trial concluded some time before 1984. The appellate Court acquitted the accused and in appeal against acquittal the High (''ourt convicted the accused some time in 1987, and the accused filed Special Appeal in the Supreme Court in the year 1988. While disposing of the appeal the Supreme Court upheld the conviction of the appellant but on the question of sentence held as follows (Para 5)

Coming to the question of sentence, we find (hat the appellant had been acquitted by the trial (otiri and High Court while reversing the Judgment of'' acquittal made by the appellate Judge has hoi made clear reference to Clause (f). The occurrence look place about more than 8 years back Records show that the appellant has already sup tired a part of the imprisonment. We do not ''Hidiiny useful purpose would be served in sending the appellant to jail at this point of time for uniicruoing the remaining period of the sentence, iluuigh ordinarily in an anti social offence pun isiuiMe under the Prevention of Food Adulteration Act the Court should take strict view of such .mailer

17.Thus, the Apex Court in the aforementioned three cases which arose under the Prevention of Food Adulteration Act held that when the ,11.. used was denied the right of speedy trial a lenient view in the matter of award of the sentence may be taken. Although the question Another such a view can be taken even though minimum penalty. Is provided under the statute was not raised and not considered but such a question was specifically raised in Nand Lal''s case 1992 (1) Rec Cri R 82) (supra) relied upon by the learned counsel for the revisionist which was followed in Ishwar Singh''s case 1994 (1) Rec Cri R 161) as well as Des Raj''s case referred to above and it was held that in view of the facts and circumstances of, the case and

the fact that the petitioner has already faced the agony; of protracted prosecution and menial harassujqnt for a long period, his sentence could be reduced to the period already undergone and to fine.

18.In the present case it may be argued on behalf of the State that so far as the first two cases, i.e. Ramdas Bhikaji Chaudhari Vs. Sadanand and Others, and Municipal Corporation of Delhi Vs. Tek Chand Bhatia, are concerned, the offence was committed prior to the coming in forge of the amendment by Amending Act 34 of 1976 and proviso to sub-section (I) of Section 16 clothed the Court with powers to award lesser sentence of fine in special circumstances which is not the case after amendment in the provisions of the Act by the Amending Act 34 of 1976 and now the minimum sentence which can be awarded is three months'' rigorous imprisonment and fine of Rs. 500/-. In the instant cases the offences were committed after 1976 and, therefore, the minimum sentence of imprisonment of three months as provided by the statute has to be awarded. It may be pointed out here that in the; third case (case of Draham Dass v. Stale of Himachal Pradesh) AIR I988SC 1789) (supra) the offence was committed in the year 1980 as in the instant cases. In that case the trial including the special appeal by the Hon''ble Supreme Court was disposed of within eight years of commission of the offence.

19.However, the Hon''ble Supreme Court subsequently decided two cases in which question of leniency in awarding sentence on account of delay in disposal of the criminal trial came up for consideration of the Court. These cases/are State of U.P. Vs. Hanif, and State of Orissa Vs. K. Rajeshwar Rao, : State of Orissa Vs. K. Rajeshwar Rao, . In the first case of State of U.P. v. Hanif (supra) the offence was committed in December, 1978 after Amending Act 34 of 1976 had been enforced. The question raised before the Supreme Court was (that after lapse of long time lenient view be taken in the matter of award of sentence. The Supreme Court observed as follows :-

It is next contended that the sale of adulterated milk was on December 3, 1978 and that the long lapse of time is a cause to take a lenient view in the matter. In view of the fact that after Amending Act 34 of 1976, the sentence imposed by the Courts below is minimum and that, therefore, there is no scope warranting interference.

20. In the second case of State of Orissa Vs. K. Rajeshwar Rao, , the offence was committed on 13th March 1976 i.e. before the amended provisions of Amending Act 34 of 1976 had come in operation. On the question of sentence the Supreme Court observed as follows (Para 6 of AIR):-

But what is the sentence to be imposed? The offence had occurred on March 13, 1976 before the Amending Act has come into force. Under the unamended Act it was not mandatory to impose the minimum sentence. For reasons to be recorded the Magistrate may impose the sentence fine or both for the first offence and it was mandatory to impose minimum sentence for second or subsequent offences. As stated, 15 years have passed by from the date of the offence and at this distance of

time the ends of justice may not be served by sending the respondent to imprisonment. It suffices that he has undergone, all these years, the agony of the prosecution. But, however, the sentence of fine of a sum of Rs. 500 is imposed upon the respondent and he shall pay the same. In default he shall undergo the imprisonment for a period of one month.

21.It would be quite evident from perusal of the above two pronouncements that in the case of State of Orissa Vs. K. Rajeshwar Rao, the Hon''ble Supreme Court accepted the plea on behalf of the respondents that after lapse of 15 years from the date of occurrence no useful purpose will be served by sending the respondent to imprisonment on the ground that the provisions of law as they were in force at the time of commission of the offence for sufficient reasons provided for lesser punishment and it was not mandatory to impose minimum sentence. However, in the case of State of U. P. v. Hanif 1992 All LJ 1125) the Hon''ble Court declined to accept the plea of the respondent that lenient view may be taken in the matter of award of sentence after lapse of about 14 years after the commission of the offence on the ground that the amending Act 34 of 1976 provided minimum sentence and the Courts below imposed minimum sentence provided by law and therefore there was no scope warranting interference. Therefore, where minimum sentence is provided by statute Courts have no discretion to award lesser punishment than the minimum provided by State.

22. In view of the foregoing discussions, the submission of the learned counsel for the revisionists that after lapse of 14 to 17 years no useful purpose will be served by sending the revisionists to jail and that they may be punished] with the sentence of fine only cannot be accepted.

23. In Criminal Revision No. 32 of 1984 a further submission has been made by the learned counsel for the revisionists that earlier this Court in some decisions had held that if the fat con tents in the milk are satisfactory, deficiency in non-fatty solids would not make the food or sample of milk to be adulterated. Learned counsel for the revisionists has relied upon the decision in Ramswarup v. State 1979 AFAJ 86 (All). That was a case in which sample was taken some time in the year 1972. As already pointed out earlier, the Act was amended by Amending Act 34 of 1976. Clause (m) to Section 2 (i-a) was added by the Amending Act which provides as follows :-

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health :

Provided that....

Explanation- ....

24. In view of this amending provision if the quality or purity of the article of food falls be-1 low the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, then such article shall be treated to be adulterated. The Supreme Court in the case of Kisan Trimbak Kothula and Others Vs. State of Maharashtra, , held that addition of water to milk also amounts to adulteration within the meaning of. Section 2 of the Act. The Supreme Court held as follows :-

11. There was much argument that addition of water to milk did not amount to ''adulteration'' within the meaning of Section 2(i), (b) or (c) or

(d). Plausible submissions were made in that behalf by Sri Gobind Das but obviously we do not agree. However, the details of the debate at the bar can be skirted because the appellants, inescapably, fall u/s 2(ix)(c) which reads....

25.Therefore, the submission of the learned counsel for the revisionists in Criminal Revision No. 32 of 1984 cannot be accepted.

26.In Criminal Revision No. 2538 of 1983 a further argument has been made that under Entry No. 18.06.12 to the Appendix to Prevention of Food Adulteration Rules, 1985 Foreign matter not more than 2 per cent by weight is permissible and as regards rodent excreta not more than 5 pieces per kg. is permissible. In the instant case Kesari Dal was found to be 1.27 per cent and rodent excreta was less than 5 pieces per kg. and, therefore, the sample should not be treated as adulterated. The trial Court has held that use of Kesari Dal as food was totally prohibited by the Act. There is no infirmity in this finding of the appellate Court. Even if the rodent excreta was (within the permissible limit yet since Kesari Dal was found mixed, use of which as food was totally prohibited under Rule 44-A, the sample was rightly treated by the Courts below as adulterated. Therefore, in my view the submission of the learned counsel for the revisionist cannot be laccepted.

27.No other point has been pressed in these revisions.

28. For the aforesaid reasons I do not find any merit in these revisions and all the four criminal revisions deserve to be dismissed.

29. All the four criminal revisions are hereby dismissed. Revisionists in all the criminal revisions are on bail. Their bail is cancelled and sureties discharged. The revisionists shall surrender before the Courts concerned for serving out the sentence awarded to them by the trial Courts as affirmed/modified by the appellate Courts.

30.Copy of this Judgment shall be placed on the file of Criminal Revision Nos. 32 of 1984, 2538 of 1983 and 2534 of 1983.