

## Ashok Kumar and Another Vs State of U.P.

**Court:** Allahabad High Court (Lucknow Bench)

**Date of Decision:** Sept. 11, 1998

**Acts Referred:** Constitution of India, 1950 " Article 142  
Criminal Procedure Code, 1973 (CrPC) " Section 433  
Prevention of Food Adulteration Act, 1954 " Section 16, 6, 7

**Citation:** (1999) 1 ACR 413 : (1999) 3 UPLBEC 1984

**Hon'ble Judges:** Giridhar Malaviya, J

**Bench:** Single Bench

**Advocate:** S.B. Mathur, for the Appellant; G.A., for the Respondent

### Judgement

Giridhar Malaviya, J.

This revision and connected revisions arise against the orders of conviction and sentence imposed on the applicants

u/s 7/16 of the Prevention of Food Adulteration Act. All these revisions were filed in the High Court long back and to be specific, they are of the

years 1982, 1983, 1984 and 1985. In all these revisions, it has been contended that the applicants do not want to challenge the finding of

conviction but want that the sentence of imprisonment for jail term be waived and the sentence awarded to the applicants should be modified to the

period of imprisonment already undergone coupled with the fine which has been imposed on them.

2. Learned Government Advocate objected to this submission made by learned Counsel for the applicants on the ground that u/s 16 of the

Prevention of Food Adulteration Act, the minimum sentence prescribed in six months for the type of offences with which these cases are

concerned along with a minimum fine of Rs. 1,000. It will be proper to quote the relevant provision:

16. Penalties.-Subject to the provisions of Sub-section (1A), if any person:

(a)....

(b)....

(F)....

(g).....

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, 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.

3. The main contention of Sri S.B. Mathur who has argued Criminal Revision No. 13 of 1983. Le., the present case, and has also submitted his

written argument in the said revision is that the incident in all these cases had taken place almost 20 years back and the conviction had also been

recorded in all these cases almost 15 years back where after the applicants had been released on bail. The argument further is that now at this

belated stage to send the applicants again back to jail for six months would be too harsh a sentence as over the years these persons are not

reported to have committed any fresh offence of the same nature and, therefore, the punishment awarded to them has really resulted in reformation

of the applicants. It may be pointed out that the learned Government Advocate has not been able to indicate in any case that any of the applicants

were again involved in the commission of similar nature of offence after their conviction by the trial court.

4. Bombay High Court in the case of Hari Ram Bali Ram Pandey v. State of Maharashtra 1977 CriLJ 383, observed that passing an order of

sentence is a judicial discretion vested in a Court of law which has to be exercised not only with caution but also keeping in view the various

circumstances like prolongation of the trial, gravity of the offence, age of the accused, character of the accused and several other circumstances.

The Supreme Court has, in the cases of B.C. Goswami v. Delhi Administration. 1973 SCC 796; Balwan and Ors. v. State of Haryana 1983 SCC

318 ; Kedar Nath and Ors. v. State of M.P. 1993 SCC 276 and Bansropan Singh and Ors. v. State of Bihar 1983 SCC 183. taken the view that

if a person has remained on bail for many years during the tendency of " the appeal/revision then instead of sending such a person back to jail in

offences which are not of very serious nature his sentence should be modified with the sentence of fine. Viewed in this background it can be said

that except in the cases where the act of a person may be brutal, shocking to the conscience or of unusual nature indicating cruelty etc. in other

cases which are not punishable with imprisonment for life the superior court would be justified in modifying the sentence in a way that instead of

sending the applicant to jail the applicant should be asked to pay some fine. The offence under the Prevention of Food Adulteration Act, although

is an offence against the society, yet cannot be categorized to be an offence of brutal or cruel nature and consequently, it can be examined whether

in cases under the Prevention of Food Adulteration Act, the provisional court can or cannot modify the sentence of imprisonment despite the fact

that the section provides imposition of minimum sentence.

5. Sri S.B. Mathur in his written argument has cited the Supreme Court cases and a number of cases from other High Courts where despite the

abovementioned minimum sentence under the Prevention of Food Adulteration Act, the Courts did not consider it proper to send back the

accused to jail due to long lapse of time. The arguments of Sri Mathur have been adopted by all other counsel in the connected revisions.

However, Sri Arun Sinha, Sri N. Mohan and Sri R.P. Srivastava have also placed certain decisions of various Courts" in support of the same

contention. Sri R.P. Srivastava has actually filed written argument in Criminal Revision No. 413 of 1985. The written arguments have also, been

filed by learned Government Advocate in some of the criminal revisions.

It does not appear necessary to refer to all the cases which have been mentioned in written arguments in detail or which have been cited at the bar,

but reference to some of the cases is necessary to determine whether it will be proper to award a sentence lesser than the minimum prescribed u/s

16 of the aforesaid Act. In the case of Braham Dass Vs. State of Himachal Pradesh, the Supreme Court while maintaining the conviction of the

Appellant Brahma Das, observed as follows on the question of sentence:

5. 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 (J). 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. While dismissing the appeal, we would, however, limit the sentence of imprisonment to the period already undergone and sustain the fine along

with the default sentence.

7. Similarly against an order of acquittal, the Supreme Court while considering appeal in the case of Ram Das Bhikaji Chaudhary v. Sadanand and

Ors. 1980 SCC 268, found the Respondents guilty but did not consider it proper to send them back to jail but directed the Respondents to pay a

fine of Rs. 2,000 each and in default six months" rigorous imprisonment.

8. In the case of Municipal Corporation of Delhi v. Tek Chand Bhatia 1980 ACC 1, also while allowing the appeal of the Municipal Corporation

of Delhi, the Supreme Court refrained from passing a substantive sentence of imprisonment and instead sentenced the Respondents to the period

already undergone plus a fine of Rs. 2,000 or in default to undergo rigorous imprisonment for a period of three months on the ground that the

offence had been committed more than 11 years ago.

9. Learned Government Advocate strenuously contended that since there is a direct provision under the Act that the offence shall be punishable for

a term which cannot be less than six months, hence the High Court cannot award a sentence of less than six months. His contention is that the

Supreme Court under Article 142 of the Constitution is competent to pass such an order but such an order at the instance of the High Court would

not be justified. However, learned Government Advocate has not cited any judgment or observation of the Apex Court by which the Apex Court

might have indicated that despite a long gap from the date of the offence, almost 20 years, and thereafter a long gap of a period of 15 years from

the date of conviction, the High Court should still not pass an order on the pattern of the Supreme Court, as has been indicated in the

abovementioned judgments. On the other hand, learned Counsel for the parties placed the following judgments of the various High Courts whereby

the Courts instead of maintaining the minimum sentence of six months had modified the sentence to the period already undergone coupled with the

sentence of fine.

1. Bachchi Lal v. State of U P. 1996 ACC 251.

2. Bhageloo v. State of U.P. and Ors. 1996 ACC 567.

3. Chhotey Lal v. State of U.P. 1991 ACC 76.

4. Ram Nandan Kesarwani v. State of U.P.. 1991 ACC 562.

5. Ram Nandan Kesarwani v. State of U.P. 1990 ACC 60 (Hindi version) by Hon."ble K.K. Chaubey, J.)

6. Pramod kumar v. State of U.P. 1981 ACC 229.

7. Dawasgir v. State of Haryana. 1995 Cr U 357 (P. & H. High Court).

8. Deshrqj v. State of Haryana 1996 CrU 2720.

9. Nagar Swashthya Adhikari Nagar Mahapalika Kanpur v. Guru Prasad 1982 ACC 56.

10. Municipal Corporation of Delhi v. Ratti Ram. 1975 FAC 321.

11. Ramanjaneyulu Vs. K.M. Malloji Rao and Another, .

10. However, learned Government Advocate contended that after the amendment of Act of 1976, the Supreme Court had taken the view that the

Courts cannot interfere with the sentence and instead can direct the appropriate Government to commute the sentence as envisaged u/s 433(e) of

the Code of Criminal Procedure. Reference may also be made to the case of Badri Prasad v. State of U.P. 1996 (2) AFR 7 (SC) and N.

Sukumaran Nair v. Food Inspector 1995 Cr U 3651.

11. What, therefore, appears to be the pith and substance of all the views in the cases mentioned above is that all the Courts are very much

concerned that if such a long period has lapsed after the commission of a relatively less serious crime, then it is not desirable to send back a person

to jail. Most of the applicants are at the fag end of their lives. However, the Court will not be justified to reduce the minimum sentence of

imprisonment prescribed under the Act but in all these cases, a recommendation to the appropriate Government to exercise their power u/s

433(a). Code of Criminal Procedure and to remit the sentence of the applicants will be in the fitness of things and such an order would meet the

ends of justice. However, since the Government would necessarily take some time to pass appropriate orders in each of the cases, it becomes

desirable to protect the interest of the applicants so that they may not have to undergo the period of imprisonment.

12. Accordingly all these revisions are disposed of in the following terms:

The conviction and sentence awarded to the applicants are maintained. However, on the applicants depositing the amount of fine within a period

of four months from the date of this order and their intimating the appropriate Government through the District Magistrates of their districts that

such a fine has been deposited the State Government may formalise the matter by passing appropriate orders under Clause (e) of Section 433, of

the Code of Criminal Procedure. Meanwhile till decision by the State Government, the applicants shall not be arrested.