

Badan Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-31-1976

Reported in : 1977CriLJ412

Judge : K.N. Seth and; M. Murtaza Husain, JJ.

Appellant : Badan Singh

Respondent : State of U.P.

Judgement :

K.N. Seth, J.

1. The following question has been referred to us for opinion:

Can benefit of the U.P. First Offenders' Probation Act, 1053(?) or the benefit of Section 260, Cr.P.C. (New) be allowed to an accused who is found guilty of an offence under the Prevention of Food Adulteration Act (Act No. XXXVII of 1954), to which the proviso to Section 16 of the Act does not apply?

2. It appears from the referring order that the accused Badan Singh was held guilty for an offence punishable under Section 7/16 of the Prevention of Food Adulteration Act as he was found keeping exposed for sale Haldi which was 100 per cent insect infected. The article was thus adulterated within the meaning of Clause (f) of Sub-section (1) of Section 2 of the Act. It was not disputed that the

proviso to Section 16 of the Act was not attracted and as such he was liable to be punished with imprisonment for a term not less than six months and with fine not less than Rs. 1,000/-. H.N. Kapoor, J. apparently found it difficult to agree with the view of Bakshi, J in Ram Bahadur v. State 1975 Cri LJ 1279 (All) to the effect that the benefit of U.P. First Offenders' Probation Act, 1938 can be granted only in that class of cases which fall within the proviso (i) or (ii) of Section 16 and referred the above noted question for consideration by a Bench. The question for consideration is whether the benefit of U.P. First Offenders' Probation Act could be extended in such a case.

3. The relevant portion of subsection (1) of Section 4 reads as under:

(1) When any person is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted regard being had to the age, character, antecedents or physical and mental condition of the offender and to the circumstances in which the offence was committed that it is expedient that (the offender should be released on probation of good conduct the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and in the meantime to keep the peace and be of good behaviour:

Provided...

Provided also that if a person under twenty-one years of age is convicted of any offence under the Indian Penal Code, or any other enactments prescribed in this behalf under rules made by the State Government, which is punishable with imprisonment not exceeding six months, the court shall take action under this section unless, for special reasons to be recorded in writing, it does not consider it proper to do so.

4. Sub-section (1) of Section 4 of the Act is applicable to persons of all ages subject to conditions which have been specified therein. It is applicable to a person convicted of an offence not punishable with death or transportation of life provided

that no previous conviction is proved against him and further if it appears to the court before which he is convicted that it is expedient that he be released on probation of good conduct regard being had to the age, character, antecedents or physical or mental condition of the offender and to the circumstances in which the offence was committed. Section 4(1) of the Act is applicable to all offences punishable with a less severe sentence than death or life imprisonment. It is clear that where the conviction is for an offence of less than a certain degree of gravity the degree of gravity being measured by maximum punishment which can be imposed for the offence, the benefit of the section can be extended to such an offender. No other exception with regard to the nature of the offence is contemplated by the provision.

5. The second proviso to Section 4(1) lays down that if a person under 21 years of age is convicted of any offence under the Indian Penal Code, or any other enactments prescribed in this behalf under rules made by the State Government and the maximum punishment provided for the offence does not exceed six months, the court shall extend the benefit of the section unless, for special reasons to be recorded in writing, the court does not consider it proper to extend the benefit of the provision to him. While in the case of offenders above the age of 21 years, absolute discretion is given to the Court, in the case of the offenders below the age of 21 years, an injunction is issued to the court not to sentence the young offenders to imprisonment unless the court for special reasons does not consider it proper to extend to him the benefit of the First (Menders' Probation Act.

6. Sub-section (1) of Section 18 of the Prevention of Food Adulteration Act provides the punishment which may be awarded to a person found guilty of the various offences under that Act. In addition to the penalty to which he may be liable under Section 6, he shall be punishable with imprisonment for a term which shall not be less than six months but it may extend to six years and with fine which shall not be less than Rupees 1,000/-. The proviso lays down that in case of the offences specified therein, a lesser sentence may be imposed for adequate and special reasons to be mentioned in the judgment

7. The question for consideration is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of Rs. 1,000/- has been prescribed by the Legislature for a person found guilty of the offence, the Court can resort to the provisions of the First Offenders' Probation Act. As observed earlier, Section 4 of the First Offenders Probation Act does not contemplate any exception other than those specifically mentioned therein i.e. (1) the offence is not punishable with death or transportation for life, (2) no previous conviction is proved against the offender, (3) the court finding him guilty is of the opinion that having regard to the age, character, antecedents or physical and mental condition of the offender and to the circumstances in which the offence was committed, it is expedient to release him on probation of good conduct and (4) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and in the meantime to keep the peace and be of good behaviour. In case of a person under 21 years of age, the proviso imposes a duty on the court not to sentence him to imprisonment unless for special reasons to be recorded in writing, it does not consider it proper to extend the benefit of the First Offenders' Probation Act. There is nothing in the Offenders Act to indicate that its operation is excluded in the case of persons found guilty of offences under the Prevention of Food Adulteration Act. In the absence of a clear indication to that effect, the provisions of the Offenders Act would be applicable to a person found guilty of offences under the Prevention of Food Adulteration Act in spite of the fact that a minimum sentence is provided for in respect of certain offences committed under that Act.

8. The question of the applicability of the Probation of Offenders Act, 1958, to the case of a person found guilty of an offence under the Prevention of Food Adulteration Act came up for consideration before the Supreme Court in *Isher Das v. State of Punjab* : 1972 CriLJ874 . The Supreme Court held that the provisions of the Probation of Offenders Act is not excluded in the case of the persons found guilty of the offences under the Prevention of Food Adulteration Act. No distinction was made between a case which entailed the minimum sentence prescribed under Section 1(c)(1) and a case to which the proviso to that section was attracted. The court, however, cautioned that the provisions of the Probation of

Offenders Act should not be lightly resorted to in view of the fact that the Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. It is true that the decision of the Supreme Court was influenced by the fact that Section 4(1) of the Probation of Offenders Act contained the non obstinate clause 'notwithstanding anything contained in any other law for the time being in force' and that Section 18 of the Act excluded from its operation only the offence under Sub-section (2) of Section 5 of the Prevention of Corruption Act and further that the First Offenders' Probation Act was enacted subsequent to the enactment of the Prevention of Food Adulteration Act, but that would make no difference in determining the question whether the operation of the Offenders Act is excluded in the case of persons found guilty of offences under the Prevention of Food Adulteration Act, The underlying object of both the Central and the State Acts obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associated with hardened criminals. That object is further emphasised in enacting that a person who is less than 21 years of age and is convicted for an offence punishable with imprisonment not exceeding six months, the court is under a duty not to sentence him to imprisonment unless there exists special reasons which justify such a course.

9. In *Jai Narain v. Municipal Corporation of Delhi* : 1973 CriLJ49 , the court reiterated the principle that the provisions of the Probation of Offenders Act apply to persons found guilty under the Prevention of Food Adulteration Act, although on the facts and circumstances of the case, the court came to the conclusion that it was neither expedient nor in consonance with the object with which the Prevention of Food Adulteration Act was passed to apply Section 4 of the Probation of Offenders Act to the case in hand. The principle laid down in *Isher Das's case* (1972 Cri LJ 874) (SC) (supra) was again affirmed in *Pyarali K, Tejani v. Mahadeo Ramchandra* : 1974 CriLJ313 .

In the words of Iyer, J.:

The rehabilitary purpose of the Probation of Offenders Act, 1958, is pervasive enough technically to take within its wing? an offence even under the Act

10. Guided by the principle that adulteration of food is a menace to public health and no chance can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents, the court did not consider it expedient to extend the benefit of the Probation of Offenders Act to the offender in that case.

11. The principle that emerges from these decisions is that the Probation of Offenders Act apply to offences under the Prevention of Food Adulteration Act, Its operation cannot be whittled down or circumscribed by the fact that a minimum sentence is provided for certain offences and no discretion is left to the court in that matter. The view expressed by Bakshi, J. in Ram Bahadur's case 1975 Cri LJ 1279 (All) (supra) to the effect that the benefit of the First Offenders' Probation Act can be granted only in that class of cases which fall within the proviso (i) or (ii) of Section 16 of the Act, cannot be held to be laying down the correct law.

12. In view of the fact that Section 360 of the Code of Criminal Procedure, 1973, has been repealed by U.P. Ordinance No. 38 of 1975, it is not necessary to express any opinion on the question referred with reference to Section 360 Criminal Procedure Code.

13. Our answer to the question referred is that the benefit of the First Offenders' Probation Act can be allowed to an accused who is found guilty of an offence under the Prevention of Food Adulteration Act (Act No. 37 of 1954) to which the proviso to Section 16 of the Act does not apply.

Reference answered in the affirmative.