

Ram Bahadur Vs. State

Ram Bahadur Vs. State

SooperKanoon Citation : sooperkanoon.com/473431

Court : Allahabad

Decided On : Sep-30-1974

Reported in : 1975CriLJ1279

Judge : P.N. Bakshi, J.

Appellant : Ram Bahadur

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. The applicant was found selling, exposing and storing for sale coloured Barfi in Mela Tigri in premises No. 27, Sector No. 8. The Food Inspector after- serving a notice upon him purchased 650 grams of Barfi for Rs. 3/- from him. A receipt evidencing the purchase was duly obtained from the applicant. The sample was divided into three parts and sealed in clear and dry bottles. One of these sample bottles was sent to the Public Analyst Lucknow for analysis. The report of the Analyst disclosed that the Barfi was deficient in milk fat by 4.4. per cent, and it was coloured with one of the coal tar dyes, namely, Rhodamine B, the use of which was not permitted under the Prevention of Food Adulteration Act. On these allegations the applicant was prosecuted. Both the courts below relied upon the evidence tendered by the prosecution and held the guilt of the accused-applicant

established. The trial court convicted the applicant under Section 7 read with Section 16 of the Prevention of Food Adulteration Act and sentenced him to six months rigorous imprisonment and a fine of Rs. 1,500/-. The appellate court confirmed the conviction and sentence. Hence the present revision.

2. At the very outset it may be mentioned that this revision was admitted on the question of sentence only. It is, therefore, not necessary for me to deal with the facts of the case. The findings of fact, which have been recorded concurrently, have not been assailed. I shall, therefore, confine myself to the question of sentence only.

3. Learned Counsel for the applicant has submitted that this is a fit case in which the provisions of the First Offenders Probation Act should be applied. He has submitted that the applicant is a petty hawker, who had sold the Barfi in the Mela. There is nothing on the record to indicate that the Barfi sold was of a very large quantity. This is the first offence committed by the applicant. On these grounds he submits that a lenient sentence is called for and the provisions of the aforesaid Act should be applied.

4. Counsel for the State, on the other hand, has brought to my notice a decision of a Division Bench of this Court, Criminal Reference No. 440 of 1967 connected with Criminal Revision No. 1990 of 1967 (All), Raghbir v. State decided by this Court on 2nd April, 1969. Relying upon this decision the State Counsel submits that the facts of the present case do not attract the application of the proviso to Section 16 of the Prevention of Food Adulteration Act. I shall now analyse the respective submissions of the parties. The relevant portion of Section 16 of the Act runs as follows:

16 (1) if any person-

(a) Whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food-

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interests of public health;

(ii) other than an article of food referred to in Sub-clause (i) in contravention of any of the provisions of this Act or of any rule made thereunder...

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 six years, and with a fine which shall not be less than one thousand rupees:

Provided that-

(i) if the offence is under Sub-section (i) of Clause (a) and its with respect to an article of food which is adulterated under Sub-clause (1) of Clause (i) of Section 2 or mis-branded under Sub-clause (k) of Clause (ix) of that section; or

(ii) if the offence is under Sub-clause (ii) of Clause (a), the court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.

A bare reading of the aforesaid section makes it clear that in order to apply the proviso, which gives a discretion to the court to impose a lesser sentence for adequate and special reasons, it is necessary that the offence committed under this Act should be one under Sub-section (i) of Clause (a) of Section 16 of the Prevention of Food Adulteration Act in respect of an article of food which is adulterated under Sub-section (1) of Clause (i) of Section 2, or 'misbranded' under Sub-clause (k) of Clause (ix) of the Act. In the instant case the Barfi, which was found deficient in food contents, had been coloured with a prohibited coal tar dye, namely, Rhodamin B. Rule 28 lays down the various permissible Coal Tar Dyes which can be used for colouring purposes. A breach of this rule is covered by Section 2(ix)(j) of the Food Adulteration Act, which runs as follows:

2. (ix) 'Misbranded' - an article of food shall be deemed to be misbranded-(j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements

of this Act or rules made thereunder.

Thus it is clear that neither Sub-clause (1) of Clause (i) of Section 2 nor Sub-clause (k) of Clause (ix) of Section 2 of the Act are applicable to the facts of the present case. In this view of the matter, I am of the opinion that benefit of the proviso cannot be extended to the applicant. The above mentioned Division Bench case, with which I am in respectful agreement, has also expressed a similar view. This view has been reaffirmed in a subsequent Division Bench case reported in 1971 All LJ 1229 Nanak Chand v. State wherein it was observed that:

When an article of food is coloured by any matter other than the colouring, matter prescribed in respect thereof by the Prevention of Food Adulteration Act it is a clear case of the article being adulterated. A case of adulteration falls within the ambit of Sub-clause (i) of Sub-section (1) (a) of Section 16. In such a case the sentence to be awarded to the accused must be in conformity with the minimum sentence prescribed by Section 16 of the Act.

5. Counsel for the applicant has submitted that the applicant being a petty vendor, and there being no evidence to indicate that a very large amount of Barfi was sold by him, and that this offence being his first offence, and further that the sale in the Mela being just a casual one, the applicant should be extended the benefit of First Offenders Probation Act. He has relied upon a decision of the Supreme Court in : 1972 CriLJ874 . Ishar Das V. State of Punjab. That was a case in which ice-cream had been adulterated and was found deficient in milk fat contents to the extent of 77 per cent and total solid contents to the extent of 7 per cent. The applicant had been convicted under Section 7(1) of Prevention of Food Adulteration Act, 1954 (Act 37 of 1954) read with Section 16(1)(a)(i) of that Act. He was aged less than 20 years and was in a repentant mood. The Supreme Court gave the benefit of First Offenders Probation Act to the accused.

6. The aforesaid decision of the Supreme Court was again referred in a subsequent decision of that Court in : 1973 CriLJ49 Jai Narain v. Municipal Corporation of Delhi. In this case the earlier view of that Court was affirmed and it was held that:

The provisions of the Probation of Offenders Act apply to persons found guilty under the Prevention of Food Adulteration Act.

But it is significant to note that in the subsequent case even though the principle was accepted yet the benefit of the First Offenders Probation Act 1958 was not extended to the accused. In this case the accused was found to have contravened Section 2(i)(J) of the Food Adulteration Act by using a non-permissible colouring matter in the preparation of Patisa, thereby adulterating the article. It was observed by their Lordships as follows:

The 'proviso conferring discretion to the courts in the matter of sentence does not apply to sales of food which is adulterated under Section 2(i)(j). The policy of Section 16, therefore, is clearly to impose a sentence not less than that provided therein inter alia for sale of food articles adulterated as defined by Section 2(i)(j). Under R. 23 of the Prevention of Food Adulteration Rules, 1955, addition of a colouring matter to any article of food except as specifically permitted under the rules is prohibited. Rule 28 makes only the coal tar dyes specified therein permissible in the preparation or manufacture of articles of food set out in Rule 29.

7. From the aforesaid observations of the Supreme Court it is clear that even though the cases of the Allahabad High Court mentioned above were not cited before it, yet the principle of law laid down therein has been accepted by the Highest Court of this country. It is, therefore, clear from a perusal of the above decisions that the benefit of 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. For adequate and special reasons courts have been empowered to award a sentence lesser than the prescribed minimum in such cases. Even the provisions of the First Offenders Probation Act can be applied to such cases and the accused can be let off on their executing a bond and two sureties or even on admonition. But where the proviso is not attracted, as in the present case, the courts have no jurisdiction to award a sentence less than the minimum prescribed by law. Adulteration of an article of food is an extremely anti-social activity. Adulteration of food is becoming extremely rampant and is highly deleterious to public health. The Prevention of Food Adulteration Act has been passed with an object of eradicating

this anti-social evil and for ensuring purity of articles of food sold to the public. The Legislature has prescribed a minimum punishment of six months' imprisonment and a fine of Rs. 1,000/- for such an anti-social crime. Courts of justice are meant to advance the intention of the Legislature and not to render its terms nugatory by a liberal interpretation, which is not warranted by the provisions of the Act.

8. For the reasons given above, I am of the opinion that this is not a fit case in which the benefit of the First Offenders Probation Act can be legally extended to the applicant.

9. I have also been referred in this connection to another case of the Supreme Court in : 1973 CriLJ593 , (Ram Prakash v. State of Himachal Pradesh). In that case milk had been adulterated by the accused who was aged above 26 years of age. Benefit of the Probation of Offenders Act was not extended to the accused. The applicant in the present case is aged about 34 years. As such even on the ground of age, apart from other circumstances, which is not necessary for me to discuss in the view of the law I have taken above, the benefit of the First Offenders Probation Act cannot be extended.

10. Learned Counsel for the applicant has also placed reliance upon Section 360 of the Criminal P. C., 1973, which came into force on 1st April, 1974. Section 360, Cri. P. C. 1973 runs as follows:

360 (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment 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 or antecedents 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...

11. Learned Counsel for the applicant submits that the aforesaid section is applicable both to persons who are under 21 years of age but are convicted for an offence not punishable with death and transportation as well as to persons who are not 21 years of age, if they are convicted for an offence punishable with fine or imprisonment for a term extending to seven years. He submits that the maximum punishment provided in Section 16 of the Prevention of Food Adulteration Act is only six years and, therefore, the accused applicant should be extended the benefit of Section 360 of Act 2 of 1974. Learned Counsel for the applicant has also relied upon Section 361 of the Criminal P. C. 1973 which runs as follows:

361. Where in any case the Court could have dealt with,-

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958, or

(b) a youthful offender under the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders,

but has not done so, it shall record in its judgment the special reasons for not having done so.

The contention is that Sections 360 and 361 of the Criminal P. C. 1973 have further liberalised the imposition of sentence on youthful offenders. It requires the recording of special reasons for not granting the benefit of the First Offenders Probation Act to such accused persons.

12. Counsel for the State has submitted that the provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974) would not apply to a case which had commenced prior to the enforcement of the new Act. He has relied upon Section 484 which runs as follows:

484 (1) The Code of Criminal Procedure, 1898, is hereby repealed.

(2) Notwithstanding such repeal:

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure 1898, as in force immediately before such commencement, (hereinafter referred to as the Old Code), as if this Code had not come into force :Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code.

13. Prima facie from a perusal of Section 484, Criminal P. C. 1973 it appears that if any appeals, applications, trials, enquiries or investigations were pending on the date when the Code of Criminal Procedure. 1898 was repealed, such appeals, applications, trials, enquiries or investigations are to be disposed of in accordance with the provisions of the Criminal P. C, 1898. It is not necessary for me to express any final opinion on this question, for two reasons. In the first place, the power, that a court can exercise, in the circumstances mentioned in Section 360, Criminal P. C. 1973, is purely a discretionary power. The Court may, instead of sentencing the accused to any punishment, direct that he be released on probation on entering a bond with or without sureties. It is not mandatory for the Court to pass such an order. Even if Section 361 of the Act is interpreted to mean that the court has to give special reasons for not extending the benefit of Section 360, Criminal P. C. or the benefit of the First Offenders Probation Act, I am of the opinion, that in the present case special reasons have been given. I have already held above that the proviso to Section 16 of the Prevention of Food Adulteration Act is not applicable to the facts of the present case, inasmuch as the offence in question is covered by Section 2(ix)(j) of the said Act. The Court is thus left with no option but to impose the minimum sentence prescribed by law for an offence under the Prevention of Food Adulteration Act, 1954, if such an offence is not covered by the proviso.

14. For the reasons given above, I am of the opinion that the applicant is not entitled to the benefit of Sections 360 and 361, Criminal P. C. 1973, even if the same were made applicable to the facts of the present case.

15. However, having regard to all the facts and the circumstances of the present case, I am of the view that a sentence of six months' rigorous imprisonment and a fine of Rs. 1,000/- would meet the ends of justice. The courts below have imposed a fine of Rs. 1,500/- apart from the substantial sentence of imprisonment. I do not find any good reason for awarding more than the minimum prescribed by law.

16. This application in revision is, therefore, dismissed with this modification that while the sentence of six months' rigorous imprisonment, imposed upon the applicant, under Section 7/16 of the Prevention of Food Adulteration Act, is maintained, the sentence of fine of Rs. 1,500/- imposed upon him is reduced to a sum of Rs. 1,000/- only. With this modification in sentence, this revision is dismissed. The applicant is on bail. He shall surrender to his bail and serve out the sentence awarded to him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com