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**Bhukan Lal Vs. State**

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**Court** : Allahabad

**Decided On :** May-07-1981

**Reported in** : 1981CriLJ1078

**Judge** : H.N. Seth, J.

**Appellant** : Bhukan Lal

**Respondent** : State

**Judgement** :
ORDER

**H.N. Seth, J.**

1. Chief Judicial Magistrate, Rampur found that applicant Bhukan . Lai was, on 17th of November, 1977 at about 9.45 a. m. selling Jalebi, Bundi Ka Laddu, Barfi and other edible articles without any licence, and that he had exposed those article for sale in unsanitary condition without properly covering the same so as to avoid infection, dust and flies. In the result he held him guilty under Sections 7/16 of the Prevention of Food Adulteration Act on two counts for contravening the provisions of Rules 49 and 50 framed by the Central Government in exercise of its powers under Clause (g) of Sub-section (1-A) of Section 23 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act). As regards sentence, he observed that the applicant was petty hawker who could be dealt with leniently. In the result, he sentenced the applicant to reigorous imprisonment of three months

and to a fine of Rs. 500/-under each of the two counts.

2. Aggrieved, the applicant went up in appeal before Sessions Judge, Rampur, who affirmed the finding of the Chief Judicial Magistrate with regard to contravention of Rules 49 and 50 by the applicant. On question of sentence the learned Sessions Judge observed that sweetmeat etc., are articles of food, sale of which is prohibited without licence under Rule 50 of Prevention of Food Adulteration Rules. Accordingly, the case fell under Sub-clause (i) of Section 16(1)(a) of the Act. Sub-clause (ii) of Section 16(1)(a) related to residuary food articles not covered by Sub-clause (i). Accordingly, it was first proviso to Section 16(1)(a) and not the second proviso thereof which was applicable to the facts of the case. Under the first proviso minimum sentence of three months' rigorous imprisonment and fine of Rupees 500/- had been provided. As the learned Magistrate had, in the circumstances of the case, himself awarded the minimum sentence provided by law, the sentence awarded by him could not be reduced any further. Hands of the Court were tied and it had to enforce the law as enacted by Legislature and it had. no other option but to award at least the minimum sentence provided by law. In the result, he dismissed the appeal and upheld the sentence awarded by the trial Court. Aggrieved, the applicant has come up in revision before this Court.

3. learned Counsel for the applicant did not question the finding recorded by the two Courts below that on 17th of November, 1977 the applicant had been found selling articles of food in contravention of the provisions of Rs. 49 and 50 of the Rules. According to him, the learned Sessions Judge erred in holding that the instant case was covered by Sub-clause (i) of Section 16(1)(a) and by first proviso to Section 16(1)(a) according to which the Courts were precluded from imposing any sentence of less than three months' rigorous imprisonment and a fine of Rs. 500/-. He contended that the case was one which fell under Sub-clause (ii) of Section 16(1)(a) and as it concerned contravention of rules made under Clause (g) of Sub-section (1-A) of Section 23 of the Act, the second proviso under which it was open to the Court for special reasons to be recorded to impose a sentence of imprisonment which may be less than three months rigorous imprisonment and fine which may be less than Rs. 500/-, but which may extend to three months'

rigorous imprisonment and a fine of Rupees 500/-. The learned lower appellate Court was, therefore, clearly in error in holding that it was not possible for it to impose a sentence which was less than three months' rigorous imprisonment and a fine of Rs. 500/-. A perusal of the judgment shows that the two Courts below were satisfied that there were reasons for not awarding the minimum sentence provided by Section 16(1) of the Act, but then the appellate Court did not award a lesser sentence as it thought that it had no jurisdiction to do de and that it would have substantially reduced the sentence if it had the power to do so. He therefore, prayed that this Court should, in exercise of its revisional jurisdiction substantially reduce the sentence imposed upon the applicant.

4. Relevant portion of Section 16(1) runs thus:-

Subject to the provisions of Sub-section (1-A), 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 within the meaning of Sub-clause (m) of Clause (ia) of Section 2 or misbranded within the meaning of Clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(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, or

(b) & (c)...

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;

Provided that:-

(i) if the offence is under Sub-clause (i) of Clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is

with respect to an article of food which is misbranded within the meaning of Sub-clause (k) of Clause (ix) of Section 2, or

(ii) if an offence is under Sub-clause (ii) of Clause (a) but not being an offence with respect to the contravention of any Rule made under Clause (a) or Clause (g) of Sub-section (1-A) of Section 23 or under Clause (b) of Sub-section (2) of Section 24 the Court may, for any adequate and special reasons to be mentioned in the judgment, 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.Provided further that if the offence is under Sub-clause (ii) of Clause (a) and is with respect to the contravention of any Rule made under Clause (a) or Clause (g) of Sub-section (1-A) of Section 23 or under Clause (b) of Sub-section (2) of Section 24, the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees.

A perusal of Clause (a) of Section 16(1) of the Act shows that under Sub-clause (i) thereof what has been made punishable is the import into India or manufacture for sale or storing, selling or distribution of any articles of food which is :-

(a) adulterated within the meaning of Sub-clause (m) of Clause (ia) of Section 2, or

(b) which is misbranded within the meaning of Clause (ix) of Section 2, or (c) sale of which is prohibited under the provisions of the Act or Rules made thereunder or by an order of Food (Health) Authority.

5. Sub-clause (ii) of Section 16(1)(a) makes it penal to import, manufacture for sale or storage, sale or distribution of articles of food other than referred to above, if such import, manufacture for sale, storage, sale or distribution takes place in contravention of provisions of of the Act or any rule framed thereunder.

6. It is not in dispute that this case does not involve, any adulteration within the meaning of Sub-clause (m) of Clause (ia) of Section 2, or, selling of misbranded articles as denned by Clause (ix) of Section 2. The instant case would be covered

by Sub-clause (i) of Clause (a) of Sub-section (1) of Section 16 only if it can be shown that sale of Jalebi etc., that is sweetmeat, is prohibited under the Act or Rules framed thereunder.

7. The Sessions Judge appears to hold the view that inasmuch as Section 7 of the Act lays it down that no person shall himself sell or store for sale any article of food for the sale of which licence is prescribed, except in accordance with the conditions of licence and Rule 50(m) provides that sweetmeats can be sold only under and in accordance with the conditions of licence, sale of sweetmeats by the applicant who admittedly did not possess a licence was prohibited by the Rules, Thus the sweetmeats being sold by the applicant was an article of food covered by Sub-clause (i) of Section 16(1)(a) of the Act and no question of its being covered feither by Sub-clause (ii) or by the further proviso to the Sub-section arises.

8. In my opinion this view of the learned Sessions Judge is clearly erroneous. In the context the expression 'sale of which is prohibited under the provisions of this Act or any rule made thereunder' used in Sub-clause (i) of Clause (a) of Section 16(1) refers to an article of food which under the provisions of the Act or the Rules framed thereunder is prohibited from being sold. It does not refer to such articles of food, sale of which is countenanced by the Act or the Rules even if the person selling the same is permitted to do so after fulfilling certain conditions laid down in the Act or the Rules. Sale of food articles prohibited by the Rules can be illustrated by referring to Rules 44, 44A, 44AA- and 44 B of the Rules. The articles referred to in these rules cannot be sold by any person even after obtaining a licence or complying with the terms of licence. The prohibition in respect of these articles imposes a disability in respect of the articles themselves and not in respect of the person selling the same. In order to say that the sale of an article of food has been prohibited by the Act the concerned Rule should make such provision which disables the food articles from being sold as such. A disability which does not directly relate to the article of food but to the person who sells it, cannot be construed as constituting a prohibition on the sale of the food article. If an article of food can be sold by a person in certain circumstances, that is, after complying with the conditions laid down in the Act of the Rules, it cannot be said that the sale of such article is prohibited by the Act or the Rules framed thereunder. Accordingly

where the rules lay down that sweetmeat must not be sold without first obtaining a licence, it cannot be said that the Act or the Rules prohibit sale of sweetmeat, in such a case the Rules in so many words permit sale of sweetmeat after obtaining licence and in accordance with the conditions thereof.

9. In this view of the matter, it s clear that sale of sweetmeat was not prohibited by any provision contained in the Act or the Rules framed thereunder. The offence committed by the applicant, therefore, did not fall under Sub-clause (i) of Section 16(1)(a) of the Act.

10. As the article of food which was being sold by the applicant was neither adulterated within the meaning of Sub-clause (m) of Clause (ia) of Section 2 nor was it misbranded within the meaning of Clause (ix) of Section 2 and as its sale had also not been prohibited under the provisions of the Act or the Rules framed thereunder, it clearly was an article of food other than referred to in Sub-clause (i) of Clause (a) of Section 16(1) of the Act. As the article in question was being sold in contravention of Rules 49 and 50 the case was squarely covered by Sub-clause (ii) of Clause (a) of Section 16(1) of the Act.

11. As already mentioned, Rules 49 and 50 have been framed by the Central Government in exercise of its powers under Clause (g) of Sub-section (1-A) of Section 23 of the Act. Main proviso to Sub-section (1) of Section 16, on the face of it, applies to only two classes of offences (1) to an offence covered by Sub-clause (i) of Section 16(1)(a) and that too if it is in relation to a primary food which had been adulterated due to human agency or which was misbranded as defined in Sub-clause (k) of Clause (ix) of Section 2 (in view of the aforesaid discussion the present one is not a case covered by Sub-clause (i) of Section 16(1)(a) and does not fall in this category), and (2) if the offence is under Sub-clause (ii) of Clause (a) of Section 16(1) but it is not an offence with respect to contravention of a Rule made under Clause (a) or Clause (g) of Sub-section (1-A) of Section 23 of under Clause (b) of Sub-section (2) of Section 24 (as mentioned above, the present one is a case which amounts to an offence with respect to contravention of a rule made under Clause (g) of Sub-section (1-A) of Section 23; hence the present case does not fall in the category contemplated by this clause either). It, therefore,

follows that the present case is not covered by main proviso to Section 16(1) and nothing contained therein is to affect the amount of sentence that can be imposed upon the applicant.

12. As in the present case the offences committed by the applicant are of the type contemplated by Sub-clause (ii) of slause (a) of Section 16(1) of the Act and as they relate to contravention of Rules made under Clause (g) of Sub-section (1-A) of Section 23, they squarely fall under the further proviso to Section 16 which lays down that for any adequate and special reasons to be mentioned in the judgment a sentence of imprisonment for a term which may extend to three months' rigorous imprisonment and with a fine which may extend to Rs. 50O/-, may be imposed. As already observed, both the trial Court and the appellate Court have found that there are special and adequate reasons for not awarding the sentence imposed upon the applicant in accordance With the provisions of Section 16(1) of the Act. It, therefore, became open to them to punish the applicant by imposing a sentence of imprisonment for a term extending up to three months and with fine which may extend to Rs. 500/-. When a Court is enabled to impose sentence, of imprisonment which may extend to three months and with a fine which may extend to Rs. 500/- it can impose a sentence providing for imprisonment for a period of three months or for any period which may be less than three months and to a fine which may be Rs. 500/- qr to amount which may be less than that. In the circumstances, it was open to the Courts below to, in respect of offences committed by the applicant, for contravening the provisions of Rules 49 and 50 of the Prevention of Food Adulteration Rules, have sentenced him to imprisonment for a period less than three months and to a fine less than Rs. 500/-. As pointed out by the two Courts below, the applicant is a petty hawker. His case was that he had already paid the licence fee to the Inspector concerned. But then he could not produce any evidence to prove his assertion, The fact that the applicant could not produce any evidence to support his assertion does not necessarily mean that what he was saying was not correct. So far as the breach of Rule 49 is concerned, the allegation seems to be that the articles which were being sold by the applicant were not properly covered and it was also vaguely asserted that those articles were kept in dirty condition. Considering the entire circumstances of the case. I do not think that the case is such where the maximum of imprisonment and fine

contemplated by further proviso to Section 16(1) of the Act should be awarded to the applicant. I am informed that the applicant has already remained in jail for about 10-12 days. In my opinion, no useful purpose will be served by sending the applicant to jail for a short period after about 3$ years of the date on which the alleged offence is said to have been committed. Ends of justice would be sufficiently met if the sentence awarded to the applicant is reduced for each of the two offences committed by the applicant, for contravening Rules 49 and 50 to the period already undergone, and to a fine of Rs. 100/-.

13. In the result, the revision is allowed in part. Conviction of the applicant for committing offences punishable under Section 7/16 of the Prevention of Food Adulteration Act for contravention of Rules 49 and 50 of the Prevention of Food Adulteration Rules is maintained, but the sentence awarded to him is reduced to the period already undergone, and to a fine of Rs. 100/- in respect of each of the abovementioned two contraventions. In default of payment of fine the applicant is directed to Suffield rigorous imprisonment for a period of is months in respect of each of the two offences committed by him. The applicant shall pay the fine within two months of the date of receipt of the record in the Court below, failing which he shall be taken into custody to serve out the sentence awarded to him in default of payment of fine.

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