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Court : Allahabad

Decided On : Apr-30-1973

Reported in : 1974CriLJ430

Judge : K.B. Srivastava and ;H.L. Capoor, JJ.

Appellant : Radha Krishna

Respondent : State of U.P.

Judgement :

K.B. Srivastava, J.

1. The petitioner Radha Krishna was convicted under Section 16(1)(a)(i). Prevention of Food Adulteration Act for contravention of Section 7(i) of that Act, and sentenced to pay a fine of Rs. 500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months. His appeal against that conviction and sentence was dismissed by the Third Temporary Civil and Sessions Judge, Kanpur. This revision before this Court, has arisen in the, said circumstances, with the prayer that either the conviction be set aside as the commission of the crime was not established, or the sentence, at any rate, should be reduced.

2. A learned Single Judge issued a notice for enhancement of the 'sentence on the ground that the minimum punishment prescribed by Section 16 is imprisonment for

a term which shall not be less than six months and with fine which shall not be less than Rs. 1000/- and consequently, the sentence passed by the learned Magistrate, and confirmed by the learned Sessions Judge was illegal and required enhancement. Both the matters, interlinked .as they are, are now before us.

3. In view of the notice for enhancement, the petitioner has become entitled under Section 439(6). Code of Criminal Procedure, to show that the conviction itself is bad. His learned Counsel has argued that the petitioner did not sell any Ghee; and if it was found that he did sell, there was no reliable evidence to show that the Food Inspector had demanded purchase of pure Ghee and the petitioner had sold the commodity as such. These two contentions relate to the appreciation of evidence. The prosecution examined P. W. 1 Abdul. Ghaffar, Food Inspector. P. W. 2 Hari Kishan and p. W. 3 Ganga Prasad in proof of its story. Their evidence shows that Abdul Ghaffar reached the Ghee market of Sheoraipur at about 2.30 p.m. on December 18, 1968 and found the petitioner exposing two canisters containing approximately 10 Seers of Ghee for sale. He disclosed his identity and Have notice in writing then and there of his intention to have the Ghee analysed. He purchased 300 grams on payment of Rs. 3.60 and separated the sample then and there into three Darts and marked and sealed each part and delivered one of the parts to the petitioner from whom the sample had been purchased and retained the two parts himself. Hari Kishan happened to be present in the market as he-also wanted to purchase Ghee. Ganga Prasad is a peon and has accompanied Abdul Ghaffar. The petitioner stated that he had, purchased the Ghee through the broker Dhani Ram P. W. 1 in connection with the funeral ceremonies of his wife and had. kept it with him so that, in the meantime, he may do some other purchases and when he returned, he found that the sample had already been taken forcibly and that, as a matter of fact, the Ghee was neither intended for sale, nor was it sold. Dhani Ram and Babu Ram D. Ws. 1 and 2 were examined in defence. According to them, no sample was taken and instead one of the two canisters itself was taken away. The trial Magistrate, as well as the learned Sessions Judee. believed the prosecution witnesses and discarded the evidence of the witnesses examined by the petitioner, and came to the conclusion that the petitioner was present and exposing Ghee for sale and a sample was actually purchased for the price aforesaid. We do not find any adequate reasons to

disagree with this finding of fact. The notice is on the record which shows that a sample of the Ghee was purchased for the purpose of analysis. The receipt is also on the record and shows that 300 grams were purchased for a price of Rs. 3.60 and that price was actually paid to the petitioner. Both these documents bear the signatures of the petitioner. That being so, it is apparent to us that the argument advanced has no substance. The next question is as to what was sold, that is to say. Ghee or some inferior cooking medium. There is a particular section in the market at Sheoraipur, where producers of Ghee congrgate. and sell it to retailers or wholesalers through the agency of brokers and weighmen. Pure Desi Ghee is generally known as Ghee and a vegetable product commonly goes by the name of Dalda or Vanaspati. No one who intends to purchase Dalda or Vanaspati, will demand Ghee. Besides, the price charged was Rs. 3.60 for 300 grams, that is to say, at the rate of Rs. 12/- per Kilogram which should have been the rate for pure Ghee and not for Dalda or Vanaspati or an admixture of Ghee and Dalda or Vanaspati. We may refer to rule 44, Prevention of Food Adulteration Rules, also in this connection. Rule 44 (c) says that no person shall either by himself or by any servant or asent sell Ghee which contains any added matter not exclusively derived from milk fat. This statutory rule thus places a total prohibition upon any addition in Ghee. Again, when a purchaser demands Ghee, he gives ample notice to the seller that the commodity that he wants is known as Ghee and the seller also understands what is demanded from him. Now, Section 23(i)(b) gives power to the Central Government to make rules defining the standards of duality for. and fixing the limits of variability permissible in respect of any article of food. Rule 5, appendix 1 relates to definitions and standards of duality and says that standards of Quality of the various articles of food specified in appendix B are as defined in that appendix. Item A 11.14 says that Ghee means the pure clarified fat derived solely from milk or from curd or from. Desi (cooking) butter or from cream to which no colouring matter or preservative had been added. Thus the statutory provision also defines what Ghee is and the petitioner ought to have known what it is. The well-known maxim ignorantia legis non excusat will toe applicable. That being so, this contention of the learned Counsel for the petitioner has no substance.

4. There can be no doubt that the Ghee in question was adulterated. The standard of duality of Ghee produced in our State has been specified in columns Nos. 3 4. 5

and 6 at serial No. 17 of the Table annexed to item A.11.14. The butyro refractometer reading was 44.7 instead of the maximum 43 : the minimum reichert value was 20.7 instead of 28 the limit of free fatty acids as oleic acid was 1.3 instead of the maximum limit of 3% the moisture limit was 0,1 instead of the maximum limit of 0.3. The Ghee was. therefore, undoubtedly adulterated under Section 2(i)(1) Which says that an article of food shall be deemed to be adulterated if the auality of purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability. The Public Analyst has given the excess variability in respect of the various constituents and has said that the sample contained a small proportion of vegetable fat or oil foreign to pure 'Ghee. The sale amounted therefore, to an offence punishable under Section 16(1)(a)(i).

5. The punishment for the commission of such an offence is imprisonment for a term which shall not be less than six months and with fine which shall not be less, than Rs. 1000/- There is, however, a proviso which says that if the offence is under Section 16(1)(a), as here, and is with respect 1o an article of food which is adulterated under Section 2(1)(i). as in the instant case 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 Rs. 1000/- or of both imprisonment for a term of less than six months and fine of less than Rs. 1000/-. A plain reading of the punishment clause alone with the proviso, will lead to. the following results:

(1) The mandate of Parliament is that the punishment for all offences under the Prevention of Food Adulteration Act shall be minimum six months imprisonment and a minimum fine of Rs. 1000/-, that is to say, not merely an imprisonment and not merely a fine, but both and to the extent of the limits aforementioned.

(2) An exception can be made in the quantum of punishment, whether regarding the imprisonment and fine or regarding both, that is to say a sentence of a term of less than six months or of fine of less than Rs. 1000/- can be awarded or of both imprisonment for a term of less than six months and fine of less than Rs. 1000/- can be regarded as appropriate.

(3) There are. however, three restrictions if a Court wants to resort to No. 2 above, namely.

(a) The departure can be made only if

(i) the offence is in respect of an artice of food which is adulterated and falls under Section 16(1)(a)(i) and is with respect to an article of food which is adulterated under Section 2(1)(i), or

(ii) if the offence is in respect of an article of food which is misbranded and falls within Section 16(1)(a)(i) and the misbranding is of the nature mentioned in Section 2(ix)(k). or

(iii) if the offence is one under Section 16(a)(ii), that is to say, if the article of food is one which is not covered by Section 16(1)(a)(i) but has been imported or manufactured for sale or stored, sold or distributed in contravention of any of the provisions of the Act or of any rule made thereunder.

(b) The Court, making the departure, has adequate and special reasons for it.

(c) and such adequate and special reasons are mentioned in the judgment.

6. The learned Magistrate has not mentioned at all what adequate or special reasons he had, for awarding a lesser sentence, even though a lesser sentence could have been awarded, in the instant case. It is thus a case in which it cannot be said that the award of a lesser sentence was illegal but surely the -judgment manifestly lacks in respect of the directory principles that a lesser punishment can be awarded only if adequate and special reasons -justify it and provided further that such adequate and special reasons are clearly stated in the judgment. To that extent, alone the learned Magistrate is blameworthy. The learned Sessions Judge was quite conscious of this fact and has made the following observations-

As regards the quantum of sentence the learned Magistrate had imposed a fine of Rs. 500/- only. He did not award substantive sentence of imprisonment. It may be noted that he did not assign any reason, for the same also. The sentence awarded cannot be said to be harsh or deterrent. In my opinion, it calls for no Interference.

7. We must emphasise that when a statute elves a discretion to a Court of law to. depart from the minimum sentence prescribed and award a sentence which is below that minimum but restricts the exercise of that power and hedges it with limitations, the power should be exercised only within the limits ordained by the statute, that is to say' a lesser sentence Can be awarded only if there are adequate and special reasons and not otherwise and that also when such adequate and special reasons are clearly stated in the judgment. We are emphasising this so that the subordinate judiciary should take note of the implications and mould their future judgments strictly in accordance with the law.

8. We may further say that one should be cautious in awarding a lesser sentence, and we say so for several reasons. Firstly, the Parliamentary mandate is for awarding the minimum prescribed punishment and for departing from it, in cases referred to above, the statute requires that the Court awarding .the lesser sentence should consider the pros and cons and must find adequate and special reasons and must mention them. This indicates that ordinarily the minimum prescribed sentence should be awarded, unless there are circumstances which impel a Court to depart from the direction. Secondly, the violation of the Food law is a widely prevalent menace and a social crime of great magnitude in the commission of which a few set richer by unlawful means at the cost of the community at large. Thirdly in violating the law. such a person usually resorts to the device of cheating by abstraction of genuine stuff and its substitution by inferior or spurious stuff, to their gain and to the injury of the health of the society in general. Fourthly as will be evident from Article 47 of the Constitution, the State has to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and it is obvious that if the food is adulterated and wholesome nourishment is denied to the society by such adulteration, the State's aim will stand thwarted to some extent. Fifthly, the adulterator spreads his net wide and although he may pinch one Individual in a small measure, the totality of the Pain that he makes becomes enormous when one takes into reckoning the feet that the act is repeated several times a day and continues for years that is to say, he commits the offence not once but several times a day and goes scot-free till he is detected but by then he has imperilled the health of a large number of persons by providing them with

unwholesome food of deficient nutrition. Such parasites should ordinarily not deserve any mercy in the matter of punishment. Society cannot be kept at the peril of such persons. In view of all these considerations, ordinarily, the minimum sentence ordained by the statute should be awarded and a departure should be made only in rare and special cases.

9. We have mentioned above as to what should be the quantum of sentence in such cases. The learned Deputy Government advocate has, however, contended that the adulteration in the instant case not only falls under clause (1) of Section 2(1) but also under clauses (a) to (A) of that section and, therefore, the learned Magistrate had no discretion with regard to the question of sentence as it is mandatory under the law that if the offence does not fall within the exceptions referred to above, the minimum sentence of imprisonment and fine must be imposed. He does not dispute that the adulteration in question falls fairly and squarely within the ambit of clause (i). However, he has urged that in addition to that, it also falls under clauses (a) to (d). Clauses (a) to (d) have relation to sales to the prejudice of purchasers of any food which is not of the nature, or not of the substance, or not of the quality demanded by the purchaser. or not of the nature, substance or quality which it purports or is represented to be : or if it contains extraneous matter which affects injuriously the nature, substance or quality thereof : or if any inferior or cheaper substance has been substituted wholly or in Part in the article of food so as to affect injuriously the nature, substance, or quality thereof; or if any constituent of the food has been wholly or in part abstracted so as to affect injuriously its nature, substance or quality. Such questions would arise only if there is no statutory or recognised standard, for when there is a statutory standard, the quality or purity of a particular food is fixed and variations are also statutorily prescribed. In a case where the standard is fixed, a Court has not to do anything except to find out (1) as to what is the standard fixed by statute, and (2) whether the food in question is upto that standard or below it or its constituents are in excess of the fixed variations. On the other hand, where the standard is not fixed, clauses (a) to (d) may become relevant. In the absence of a standard, the question whether an article sold is of the nature, substance or quality of the article demanded becomes a question of fact to be decided by the Court in each case. In this light, we are of the view that clauses (a) to (d) would be relevant only in a case

in which there is no statutory standard : and on the contrary, if there is such a standard, they would become inapplicable. Notwithstanding the power of Central Government to fix standards of articles of food, it may not always be possible to do So in respect of all kinds of food with scientific accuracy and, therefore the Legislature thought that in such cases the nature, substance and quality should be of a standard found reasonable by the court. In the result, we do not agree with the learned Deputy Government Advocate that an article of food in respect of which there is a statutory standard would fall under other clauses also, in addition to clause (i).

10. The adulteration in the instant case being of the nature specified in Clause (1), there can be no doubt that a lesser sentence of imprisonment or of fine or of both was permissible. It is not disputed that this Court acting on its revisional side may interfere and enhance the sentence or may refuse to interfere and keep the punishment awarded undisturbed even though it was awarded in disregard of the statutory directions. The learned Counsel for the petitioner placed reliance upon Bisheshar v. Rex : AIR1949 All213 for the proposition that this Court should not ordinarily interfere in the matter of punishments. In this case, there were certain persons who had actually beaten the complainant and there were still others who had merely surrounded him and had taken no part in the beating. It was held that a court sitting in revision is not bound to interfere even though an illegality has been committed by the trial court if it finds that substantial justice has been done. Accordingly, the sentence of mere fine under Section 325 I. P. C. was set aside in the case of those who had actually beaten the complainant and a substantive term of imprisonment was awarded but in the case Of the mere onlookers, the sentence of fine was allowed to remain undisturbed. The basis of the decision turned on the question of substantial justice. In Ram Dai! v. State : AIR1969 All109 the minimum sentence under Section 16 was awarded by the trial court. In revision in this Court, it was urged that the punishment was rather excessive but the court observed that those who indulge in adulteration of food are parasites to the Society and if an offence is made out against them, there is no reason why a punishment contemplated under the law may not be awarded to them. In Subbavyan v. State AIR 1968 Ker 330 : 1968 Cri LJ 1564. the trial Magistrate, taking a lenient view of the offence, awarded a sentence of Rs. 500/- under Section 16 of the Act and

when ultimately the matter came in re-vision before the Kerala High Court, a notice for enhancement was issued. It was urged that it was not a fit case for enhancing the punishment but the Kerala High Court observed thus:

We are unable to accede to this argument. If an inferior Court has imposed a sentence below the minimum prescribed by the law, it is the duty of this Court to correct the error. Otherwise, it is not only that an accused person would escape without adequate punishment, which would cause discrimination between persons found guilty of the same offence, but it would also lead to create a feeling, in the subordinate courts that they can with impunity disregard the statutory provisions and impose a punishment below the minimum prescribed for an offence.

11. In view of what we have observed as to the quantum of sentence in such cases, it is our duty to enhance the sentence, if adequate and special reasons do not exist, and have not been shown to exist in the instant case.

12. The revision is, therefore, dismissed. The sentence of the petitioner is enhanced to rigorous imprisonment for a period of six months and to payment of fine of Rs. 1000/-.; and in default of payment of fine to further rigorous imprisonment for a period of three months. The petitioner shall be taken into custody to serve out the sentence.