

Rameshwar Yadav Vs. State

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Court : Allahabad

Decided On : Nov-26-1997

Reported in : 1998CriLJ3859

Judge : Kundan Singh, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 17; Code of Criminal Procedure (CrPC) - Sections 433

Appeal No. : Criminal Revision No. 1303 of 1984

Appellant : Rameshwar Yadav

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Y.K. Shukla, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Kundan Singh, J.

1. This revision has been directed against the judgment and order dated 4th July 1984 passed by Sri Satya Narain, the then Special Judge (Economic

Offences)/Additional Sessions Judge, Jhansi, in Criminal Appeal No. 186 of 1981 (Rameshwar Yadav v. State of U.P.) dismissing the appeal, confirming the conviction and sentence of one year's rigorous imprisonment and a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment of six months under Section 7 read with Section 17 of the Food Adulteration Act, which were awarded by Sri U.N. Bansal, Judicial Magistrate I, Jhansi in Case No. 1416 of 1981 by his order dated 8-8-1983.

2. In the present case the sample of milk was taken by the Food Inspector at about 10.00 a.m. on 26-6-1981 in Mohalla Bazar Gursain, which was found adulterated and deficient in 44% in fatty material and 54% in non-fatty solids.

3. Heard learned counsel for the parties.

4. Learned counsel for the applicant pressed this revision on the quantum of sentence and prayed that the sentence of imprisonment may be reduced to the period already undergone, or the sentence of imprisonment may be converted into fine. In case the revision is dismissed, the learned counsel for the applicant submitted., the applicant will have to serve out the sentence in respect of the incident which had taken place about 16 years back. In support of his contention, learned counsel for the applicant placed reliance on the decision of the Supreme Court given in the case of Badri Prasad v. State of M.P. 1996 SCC (Criminal) 97, relevant portion of which is reproduced below

2. There is some scope, however, towards the sentence because this Court granted in 1989 leave and the appellant is on bail. We would rather now scale down the sentence of six months' RI to three months' simple imprisonment, while sustaining the fine of Rs. 1000 as awarded by the courts below. Subject to this modification in the sentence, the appeal otherwise fails. This has been made to enable the appellant to approach the State Government under Sub-clause (d) of Section 433 for conversion of simple imprisonment to fine. Since the adulteration was only by adding a colouring contents in the chillis powder and that was possibly done to please the customers' eye, we recommend that the State Government, release the appellant on the charging of Rs. 2 000 as fine and that an appropriate order be passed by the State Government to that effect within a

period of three months. The appellant shall deposit in the trial Court under two heads the fine imposed by the Court i.e. Rs. 1000 as also the alterable-fine of Rs. 2000 within a period of three weeks from today and apprise the State Government of his having discharged his obligation. On his doing so, the appellant need not be arrested.

5. Reliance was also placed by the learned counsel for the applicant in the case of *N. Sukumaran Nair v. Food Inspector* (1997) 9 SCC 101 : 1995 Cri LJ 3651 wherein the Supreme Court has said as under :

3. The offence took place in the year 1984. The appellant has been awarded six months' simple imprisonment and has been ordered to pay a fine of Rs. 1000/- under Clause (d) of Section 433 of the Code of Criminal Procedure, 'the appropriate Government' is empowered to commute the sentence of simple imprisonment for fine. We think that this would be an appropriate case for communication of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial Court a sum of Rupees 6000/- as fine in commutation of the sentence of six months' simple imprisonment within a period of six weeks from today and intimate to the appropriate Government that such fine has been deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate orders under Clause (d) of Section 433 of the Code of Criminal Procedure.

6. There could be no rule of law that the sentence awarded by the trial Court and affirmed in appeal must be reduced to a term already under gone or alter the sentence of imprisonment into a fine. In each and every case where the minimum sentence provided by the statute has been imposed, only on the ground of delay and/or passage of time of ten or twelve years in disposing of the revision. Of course, delay in disposing of the cases is one of the grounds for reduction of sentence where no minimum sentence is prescribed by the statute, the sentence already awarded by the trial Court and affirmed by the appellate Court can be reduced after looking into the facts or/and the extenuating circumstances and considering exigency in the interest of justice in any particular case. The case in which the apex Court has reduced the sentence in the cases (supra) are not

attracted to the present case. Hence, they are not applicable in the present case.

7. As the case of N. Sukumaran Nair and Badri Prasad (supra) do not apply in the facts and, circumstances of the present case and I am also not convinced that the Court has power to remit the sentence of imprisonment into a fine, where the minimum sentence is provided under the statute. In the present case the minimum sentence of six months' imprisonment and a fine of Rupees 1000/- has been provided for the offence committed by the appellant. In a particular case the apex Court can remit the sentence or direct the State Government for the remission of the sentence considering the facts and circumstances of that particular case. I do not find any special circumstances in the present case to direct the State Government to remit the sentence of imprisonment into the period already undergone or to convert it into a sentence of fine.

8. In view of the adulteration found by the public analyst, I do not find any substance in the submission of the learned counsel for the applicant to convert the sentence of rigorous imprisonment into simple one.

9. For the reasons stated in the above, the revision fails and is dismissed. The conviction and sentence awarded by the trial Court and affirmed by the appellate Court are maintained as it is. The applicant is on bail. He shall be taken into custody forthwith to serve out the sentence.