

**Rakesh Kumar Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/689408](http://sooperkanoon.com/689408)

**Court :** Delhi

**Decided On :** Apr-10-2001

**Reported in :** 2001IVAD(Delhi)1111; 2001CriLJ2978; 91(2001)DLT86; 2001(58)DRJ664

**Judge :** Mr. S.K. Agarwal, J.

**Acts :** Criminal Procedure Act, 1973 - Sections 311, 313 and 433; Evidence Act, 1860 - Sections 114; PFA Act - Sections 20-AA

**Appeal No. :** Crl. R. 121 of 2001

**Appellant :** Rakesh Kumar

**Respondent :** State

**Advocate for Def. :** Ms. Richa Kapur

**Advocate for Pet/Ap. :** Mr. P.R. Thakur and ;Mr. Naveen Thakur, Advs.

**Judgement :**

ORDER

**S.K. Agarwal, J..**

1. Admit.

2. This revision petition is directed against the order dated 28th February, 2001 passed by the court of Shri H S Sharma, Additional Sessions Judge, New Delhi upholding the judgment of conviction and the order of sentence passed by the trial court ordering the petitioner to undergo Rigorous Imprisonment (for short RI) for one year and fine of Rs. 5,000/- in default to further undergo RI for three months. Learned counsel for the petitioner submitted that the point involved in this petition is very short; that the petitioner does not want to challenge his conviction on merits and that the revision be heard and disposed of at this stage itself.

3. Brief facts are that as per the prosecution case, the Food Inspector took the sample of 'Lal Mirch Powder' from the petitioner on 4-12-91 for analysis under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act). The sample was declared to be adulterated by the Public Analyst, Delhi vide his report dated 12-12-1991. Petitioner was prosecuted and was convicted Under Sections 7/16 of the Act by the Court of Shri M.K. Gupta, Metropolitan Magistrate, Delhi on 1-10-97 and was sentenced to undergo RI for one year and to pay fine of Rs. 5,000/- in default to further undergo RI for three months. The learned trial court refused to extend the benefit of the provisions of section 20AA of the Act and declined to release the petitioner on probation. Against the said judgment and order petitioner filed an appeal (Cr.Ano.69/99/1997). The court of Shri H.S. Sharma, the Additional Sessions Judge, New Delhi on 28-2-2001, upheld the conviction and the sentence awarded by the trial court. In appeal also petitioner did not challenge his conviction and only prayed for probation as he was less than 18 years of age on the date of the commission of the offence. Aggrieved against judgment of the Appellate Court, the petitioner has filed this revision petition.

4. I have heard learned counsel for the parties and have been taken through record.

5. Learned counsel for the petitioner argues that the learned lower courts erred in refusing to extend benefit of provision of Section 20AA of the Act and not releasing the petitioner on probation; that the petitioner was less than 18 years of age on the date of commission of the offence. It was further argued that the petitioner on 11th April, 1996 statement of the petitioner under section 313 of the Code of Criminal

Procedure (for short Cr.P.C.) was recorded wherein the petitioner gave his age as 22 years and stated that he born on 3.3.74; that learned trial court did no entertain any doubt about the age of the petitioner; DW-1 Tribhuvan Das Mishra was examined who proved horoscope(janampatri) of the petitioner showing that he was not less than 18 years of age and therefore, the petitioner was entitled to the benefit of section 20AA of the PFA Act. Learned counsel for the State argued to the contrary.

6. Law in this regard is well-settled by several authoritative pronouncements. If the age of a person convicted is less than 18 years, he would be entitled to the benefit of section 20AA of the Act. For the purpose of applicability of this section, relevant date is the date of commission of offence and not the date of conviction. Reference in this regard can be made to decisions of Supreme Court in *Rajbir vs. State of Haryana*, 1999 SCC 1142 and the decisions of this court in *MCD v. Tek Ram*, 1976 FAC 140 and *MCD v. Ved Ram* 1976 (2) FAC 155 and *Narinder Kumar v. State of Delhi* 1980 CCC 62 (Del.).

7. However, the question here is whether the petitioner was less than 18 years of age on the date of commission of offence? In order to appreciate the same, relevant portion of his statement u/s 313 Cr.P.C. is reproduced hereinbelow.

'Q. Have you anything else to say? Ans.: I am innocent. In the year 1991 I was a school student. My date of birth is 3.3.74. The shop in question belongs to Pawan Kumar. I had come to deliver lunch to Pawan Kumar who after taking the lunch, had gone for taking tea and I was asked to watch the shop. In the meantime, officials of PFA deptt. came and lifted the sample of lal mirch kutti under threat and pressure. There was no sale of lal mirch kutti. FI in connivance with LHA got the sample changed to lal mirch powder from lal mirch kutti.'

8. Perusal of the above statement reveals that the petitioner claimed that he was a school student in 1991; he gave his date of birth as 3.3.74. If the petitioner was studying in a school nothing prevented him from producing school certificate showing his date of birth. In fact, petitioner moved an application under section 311 Cr.P.C. before the trial court for examining his father in support of his defense, which was never pressed. Even during the course of hearing of this petition

learned counsel was specifically asked whether the petitioner would like the matter to be remanded back so as to enable him to produced the school leaving certificate showing his date of birth. The answer was in the negative stating that the same would not be now available. Admittedly, the petitioner did not produce on record either the birth certificate issued by Municipal Authorities or the school leaving certificate. He did not even examine his father. DW-1, admitted cross-examination that he had no personal knowledge about the date of birth of the petitioner and had prepared the horoscope on the basis of the information supplied to him. In the facts and circumstances of this case presumption under Section 114(g) of the Evidence Act is liable to be raised to the effect, if the petitioner had produced this evidence it would have gone against him.

9. In view of the above, petitioner has failed to proved that he was less than 18 years of age on the date of commission of offence even by the test of preponderance of probabilities.

10. Lastly it was next argued that the petitioner has suffered the pain and agony of trial for more than 9 years that he is in custody for the last about six weeks: he has two minor daughters aged about 5 years and two year: the fine imposed on the petitioner has already been deposited. It was prayed that the sentence of imprisonment of the petitioner be commuted to fine. Reliance was placed on the following decisions of the Apex Court.

(i) Haripada Das vs. State of West Bengal & Anr. 1998 (2) FAC 187, the Apex court has held:-

'Considering the facts and circumstances of the case and also considering that the appellant was released on bail by this Court long back and because of the protracted litigation up to this court he has also suffered a lot of mental agony and also financial hardship and also considering the fact that he had already undergone we feel that in the facts of the case the ends of justice will be met if the sentence of imprisonment is reduced to the period already undergone. We, however, direct the besides the fine imposed by the courts below, the appellant will have to pay a fine of Rs. 5,000/- within four weeks from today, in default he will have to undergo imprisonment for three months. The appeals are disposed of

accordingly. The bail bonds stand discharged'.

(ii) N Sukumaran Nair vs. Food Inspector Navalikara 1996 2 PFA Case 21 wherein it was held:-

'The offence took place in the year 1984. The appellant has been awarded six months simple imprisonment and has also 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 commutation of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial court a sum of Rs. 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 formalize the matter by passing appropriate orders under clause (d) of Section 433 of the Code of Criminal Procedure.'

(iii) Santosh Kumar vs. Municipal Corporation and another 2000 (2) FAC 76 wherein it was held :-

'4. This case seems to be almost on a parallel with the facts enumerated in the decision cited above. We are also persuaded to extend the same benefit which the appellant in the aforesaid decision was granted by this court, as this would be an appropriate case for commutation of sentence under Clause (d) of Section 433 of the Code of Criminal Procedure.

5. We, therefore, direct the appellant to deposit in the trial court a sum of Rupees 10,000/- as fine in commutation of the sentence of 6 months imprisonment within a period of 6 weeks from today and intimate to the appropriate Government that such fine has been deposited. On deposit of the fine the State Government may the matter by passing appropriate order under clause (d) of Section 433 of the Code of Criminal Procedure. In the meanwhile the appellant will remain on bail.'

11. Applying the law laid down by the Supreme Court in this case, admittedly, the offence was committed more than 9 years ago; in the sample nothing extraneous or injurious to health was found and the petitioner has already undergone a sentence of six weeks. Under the circumstances, it would be appropriate if the sentence of the petitioner is commuted to fine. Accordingly, the petitioner is directed to deposit a fine of Rs. 15,000/- in the trial court in commutation of unserved sentence of imprisonment within two weeks from today and to intimate the Government that such fine has been deposited. On the fine being deposited, the State Government may formalize the matter by passing an appropriate order under clause (c) of Section 433 Cr.PC.

12. In the meantime the sentence awarded to the petitioner is suspended for two months on his furnishing personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the trial court.

13. Petition stands disposed of.

14. dusty.