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Court : Kerala

Decided On : Jun-11-1976

Reported in : 1977CriLJ669

Judge : Kumari P. Janaki Amma, J.

Appellant : Abdul Razack

Respondent : Food Inspector

Judgement :

ORDER

Kumari P. Janaki Amma, J.

1. The revision petitioner was the Proprietor of Thevara Stores, Ernakulam. On 27-7-72 at 10 A.M., the Food Inspector, Cochin Corporation purchased 375 gram;; of tea from the petitioner following the formalities prescribed under the Prevention of Food Adulteration Act. A portion of the sample purchased was sent to the Public Analyst, Trivandrum, The report of analysis showed that the tea was adulterated and that it contained 40% of extraneous matter consisting of cashewnut endocarp and gram husk and also non-permitted coal-tar-dyes. A complaint was thereupon filed implicating the sister of the revision petitioner as the proprietor of the concern as the first accused and the revision petitioner as the salesman and the second accused. The trial court acquitted the first accused and convicted the revision petitioner for an offence punishable under Section 16 read with Section 7 of the

P.F.A. Act. He was sentenced to simple imprisonment for six months and a fine of Rs. 1000/- being the minimum prescribed for a first offender. Criminal Appeal No. 54 of 1975 was filed before the Sessions Judge, challenging the above conviction. The learned S.J. confirmed the conviction. Though a prayer was made that the revision petitioner be released on probation of good conduct, the appellate Judge held that in view of the minimum punishment prescribed for offences under the P.F.A. Act. it was not proper to apply the provisions of the Probation of Offenders Act unless there are exceptional circumstances. According to the learned Judge, the facts of the present case did not justify the application of the Probation of Offenders Act. The sentence passed by the trial court was accordingly confirmed. The revision petition is filed against the above order.

2. Shri Rama Shenoji appearing for the revision petitioner did not challenge the conviction entered by the courts below. The gamut of his attack was the observation of the learned Sessions Judge that since a minimum sentence is prescribed for offences under the Prevention of Food Adulteration Act, it would not be proper to apply the provisions of the Probation of Offenders Act. It is pointed out that neither the Prevention of Food Adulteration Act nor the Probation of Offenders Act restricts the application of the principles of probation to offences involving adulteration of food. The argument is that the revision petitioner in this case being a young man, detention in jail would only place him in the company of old offenders and there is always the risk of his returning from the jail as a confirmed criminal. The application of the provisions of the Probation of Offenders Act would only work to his reformation and would have also a beneficent effect on society.

3. The question of applying the provisions of the Probation of Offenders Act to offences involving a minimum, sentence came up before the Supreme Court in *A.M. Sinha v. A.K Biswas* : 1974 CriLJ885 . The offence involved in that case was under Section 135 of the Customs Act for being in possession of gold bars and sovereigns bearing foreign markings. The trial court convicted the accused for the offence charged, but directed them to be released on probation under Section 4(1) of the Probation of Offenders Act. The matter was taken in appeal by the Assistant Collector of Customs. The High Court held that though Rule 126-P (2) (ii) of the

Defence of India Rules prescribed & minimum sentence of imprisonment for a term of not less than 6 months, it did not override the provisions of the Probation of Offenders Act and, therefore, it was competent to the trial court to release the offenders under that Act. The Supreme Court after referring to the cases *Isher Das v. State of Punjab* : 1972 CriLJ874 and *Jai Narain v. Delhi Municipality* : 1973 CriLJ49 both of which arose under the P.F.A. Act confirmed the order of the High Court. The facts of the case as mentioned therein disclose that the accused were young boys normally engaged in agriculture, who were carriers of gold for small tips.

4. Another case which has been referred to by Sri Rama Shenoi is *Ghanshyam Das v. Delhi Municipality* : AIR 1975 SC845 . That was a case where a prosecution was launched in 1965 and the appellant therein had to face a protracted criminal proceedings which continued for about 10 years. The Supreme Court held without referring to the earlier-rulings that on the facts and circumstances of the case, it was a fit one for the application of Section 4(1) of the Probation of Offenders Act.

5. The above rulings, no doubt, indicate that there is no blanket ban over the application of the provisions of the Probation of Offenders Act to cases coming under the P.F.A. Act. But all the same, effect of several decisions of the Supreme Court is to hold that except in cases falling under Section 6 of the Probation of Offenders Act, the principles of probation should not as a general rule be applied to cases coming under the P.F.A. Act. In *Isher Das v. State of Punjab* : 1972 CriLJ874 the Offender was below 21 years of age. The trial court released the offender under Section 4 of the Probation of Offenders Act. The High Court in revision set aside the order and sentenced him to imprisonment as provided in Section 16 of the Act. The Supreme Court observed:

As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz., Prevention of Food Adulteration Act. Indeed, as mentioned earlier, the non obstante clause in Section

4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force. We may also in this context refer to the decision of this Court in the case of *Ramaji Missir v. State of Bihar* : AIR 1963 SC1088 wherein this Court while dealing with the Probation of Offenders Act observed that its beneficial provisions should receive wide interpretation and should not be read in a restricted sense.

10. Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act. As regards persons under 21 years of age, however, the policy of the law appears to be that such a person in spite of his conviction under the Prevention of Food Adulteration Act, should not be deprived of the advantage of Probation of Offenders Act which is a beneficent measure and reflects and incorporates the modern approach and latest trend in penology.

The above principles are reiterated and followed in *Jai Narain v. Delhi Municipality* : 1973 CriLJ49 . It was held, that adulteration of food being a menace to public health and the Act having been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food sold to the members of the public, the Courts should not lightly resort to the provisions of Section 4 of the Probation of Offenders Act which applies to offenders who are 21 years of age or above. The Court declined to apply the provisions to the facts of the particular case. *Ram Parkash v. State of Himachal Pradesh* : 1973 CriLJ593 is another case under the Prevention of Food Adulteration Act wherein also a request was made on behalf of the accused for the application of the Probation of Offenders Act. That was a case of sale of milk. The sample contained milk fat and milk solids-non-fat much lower than that prescribed for cow's milk or buffalo milk. The Supreme Court confirmed

the conviction and sentence passed by the trial court and declined to let the offender on probation of good conduct. The distinction pointed out in *Isher Das v. State of Punjab* : 1972 CriLJ874 between offenders above 21 years of age and those below that age was maintained in the above case. The matter came up again before The Supreme Court in *P.K. Tejani v. M.R. Dange* : 1974 CriLJ313 a case where the offence involved was sale of adulterated scented supari, Krishna Iyer J. after referring to the case *Isher Das v. State of Punjab* : 1972 CriLJ874 observed:

The kindly application of the probation principle is negatived by the imperatives of social defence and the improbabilities of moral proselytisation, No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive- not easily humanised by the therapeutic probationary measure. It is not without significance that the recent report (47th report) of the Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments. It observed:

We appreciate that the suggested amendment would be in apparent conflict with current trends in sentencing. But ultimately, the justification of all sentencing is the protection of society. There are occasions when an offender is so anti-social that his Immediate and sometime prolonged confinement is the best assurance of society's protection. The consideration of rehabilitation has to give way, because of the paramount need for the protection of society. We are, therefore, recommending suitable amendment in all the Acts, to exclude probation in the above cases, (p. 85).

In the current Indian conditions the probation movement has not yet attained sufficient strength to correct these intractables. May be, under more developed conditions a different approach may have to be made. For the present we cannot accede to the invitation to let off the accused on probation.

6. The Supreme Court had occasion to refer to the 47th report of the Central Law Commission in *Balkrishna v. State of West Bengal*, : 1974 CriLJ280 with the following observation:

It may not be out of place to notice in this context the observations of the Central Law Commission Forty-seventh Report on 'The Trial and punishment of social and economic offences' against light sentences on the score that (i) the case is one of first conviction; (ii) that the matter has been already dealt with by severe departmental penalty; (iii) that the convicted person is a young man. To the extent to which gold smugglers and other anti-social operators in the field of crime can be given an unhappy holiday in jail, the courts must help the process on conviction, if judicial institutions are not to be cynically viewed by the community.

7. The Probation of Offenders Act is no doubt described as a mile-stone in the progress of modern liberal trend and reform in the field of penology. At the same time, Courts should not be unmindful of the impact on society consequent on letting particular kinds of offenders on probation. Indiscriminate application of the provisions of the Act to anti-social and white-collar offenders may tell upon the security of the society and has to be discouraged. The stringent provisions of the Prevention of Food Adulteration Act meant for the good of the common man should not fail to achieve their object due to any halfhearted application of its provisions by the Courts of the country.

8. In the instant case, the circumstances, relied upon on behalf of the petitioner in support of his being let on probation are:

(i) there is no evidence that he himself was responsible for the adulteration.

(ii) he is a young man below 30 years. As regards the first ground, the Prevention of Food Adulteration Act does not say that the person who himself adulterates the article and sells it alone is punishable under the Act. It is always difficult to find out whether a person who sells adulterated food is himself responsible for the adulteration. To hold that only the person who adulterates the food article will be liable for the minimum punishment prescribed under the Act will make its provisions otiose and impracticable of application. The young age of the offender

by itself is not a ground for leniency or preferential treatment unless the case falls under Section 6 of the Probation of Offenders Act. Courts are expected to consider, before releasing an offender on probation, not only his age and character but also : the nature of the offence and the circumstances under which it was committed. The evidence in the case is that the tea that was sold contained 40% of extraneous matter namely cashewnut endocarp and gram husk. The nature of the adulteration shows that it could be done by the petitioner himself. No special circumstances are made out to justify interference with the discretion exercised by the trial court. The revision petition is, therefore, dismissed.

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