

Suresh Vs. State of Kerala

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Court : Kerala

Decided On : May-24-2006

Reported in : 2006CriLJ4562; 2006(3)KLT231

Judge : J.M. James, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 16 and 16(1); Code of Criminal Procedure (CrPC) - Sections 432, 433, 433A, 434 and 435; Prevention of Food Adulteration Rules, 1955 - Rules 5 and 50

Appeal No. : Crl. R.P. No. 471 of 2006

Appellant : Suresh

Respondent : State of Kerala

Advocate for Def. : Deepthi, Public Prosecutor

Advocate for Pet/Ap. : M. Balagovindan and; M.R. Sasith, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

J.M. James, J.

1. The question that arise for consideration in this Criminal Revision Petition is whether, the High Court, while exercising its revisional jurisdiction and confirming the conviction and sentence imposed by the courts below in a case under the [Prevention of Food Adulteration Act, 1954](#), in short 'the Act', could postpone the execution of the sentence, till such time as the revision petitioner, accused, moves the appropriate Government under Section 432 or 433 Cr.P.C., for remission or commutation of the sentence or order the Government to commute the sentence.

2. The revision petitioner, V. Suresh, the first accused in S.T. 861 of 1995 on the file of the Judicial First Class Magistrate Court-I, Neyyattinkara, was found guilty under Section 16(1)(a)(i), read with Section 7(i) and (iii) and Section 2(ia)(m) of the [Prevention of Food Adulteration Act, 1954](#), in short 'the Act', and under Rule 5, read with Appendix B, item A.05.09, as well as Rule 50 of the Prevention of Food Adulteration Rules, 1955, in short the Rules. He was, therefore, sentenced to undergo simple imprisonment for six months, and to pay a fine of Rs. 1,000/-, in default to undergo simple imprisonment for one month. The challenge of the same before the II Additional Sessions Court, Thiruvananthapuram, through Crl. Appeal 302 of 1998, was not successful. Hence, he came up before this Court, preferring this revision.

3. The brief facts of the case are that on 15-7-1995, at about 3.30 P.M., PW.1, Sudarsanan, the Food Inspector, visited the shop of the revision petitioner. After complying with the procedure, PW.1 purchased 450 grams of cumin, on paying an amount of Rs. 22/- to the revision petitioner as its cost. He also sampled out the same as per the procedure. The report of the Public Analyst revealed that the sample did not conform to the standard prescribed for cumin and was, therefore, adulterated. The revision petitioner was the salesman and the 2nd accused was the dealer. It was thereafter, the complaint was preferred before the court below.

4. The learned Counsel appearing for the revision petitioner argued the facts that had been urged and considered by the trial court, as well as the appellate court. On re-appreciation of the same, I find that both the courts below had legally appreciated the evidence on record and found that the revision petitioner had committed the offence as alleged against him. Hence, I sustain the conviction.

5. Section 16 of the Act prescribes a punishment of imprisonment for a term, which shall not be less than six months, but may extend to three years; and a fine, which shall not be less than one thousand rupees. The imprisonment for six months and the fine of Rs. 1,000/-, imposed by the trial court and confirmed by the appellate court, in such circumstances, is only the minimum and in conformity with the provisions of the Act. Therefore, I find no scope to reduce the sentence imposed by the courts below.

6. At this point, the learned Counsel for the revision petitioner submitted, relying on the decision in *N. Sukumaran Nair v. Food Inspector, Mavelikkara* (1997) 9 SCC 101, that considering the fact that the occurrence took place in the year 1995, and the sentence imposed, the revision petitioner be directed to deposit a sum within a specified period, and the Government be ordered to commute the sentence of simple imprisonment for six months as fine.

7. Section 432 Cr.P.C. is dealing with the power of the appropriate Government to suspend or remit sentences imposed by courts. Section 433 Cr.P.C. is dealing with the power of the appropriate Government to commute the sentences imposed by the courts. Sections 433A, 434 and 435 Cr.P.C. are also related provisions, while dealing with Sections 432 and 433 Cr.P.C.

8. Judicial power is exercised by the courts on judicial considerations, basing on the facts available on record. On the other hand, those facts, which are not known to the court and which are of extra judicial matters, are weighed by the executive, while considering the grounds of suspension, remission and commutation of the sentence, basing on the principles of public good and welfare, which the courts cannot consider, those being matters of public policy, outside the judicial purview (See *K.M. Nanavati v. State of Bombay* (now Maharashtra) : 1961 CriLJ173 .

9. In *Dineshchandra Jamnadas Gandhi v. State of Gujarat* : 1989 CriLJ889 the Apex Court was dealing with the offence committed by the appellant under Section 2(ia) and 16 of the Act. Considering the various principles of law laid down by the Apex Court on different occasions and also the sentence imposed, which was the statutory minimum, the Apex Court, however, directed the postponement of the sentence till the appellant's prayer for remission, which the appellant was directed

to make within a month from the date of the judgment, before the appropriate Government, or authority, and the same be considered and disposed of by the Government or authority, as per the observations in the judgment.

10. In fairness, counsel also placed reliance on State (Government of NCT Delhi) v. Premraj : (2003)7SCC121 , wherein a Division Bench of the Apex Court had held that 'the exercise of power under Section 433 was an executive discretion. The High Court in exercise of its revisional jurisdiction had no power conferred on it to commute the sentence imposed where a minimum sentence was provided for the offence.' The Apex Court also had relied on State of Punjab v. Kesar Singh : 1996 CriLJ3586 , wherein it was held that 'the right to exercise the power under Section 433 Cr.P.C. vests in the Government and has to be exercised by the Government in accordance with the rules and established principles.' Basing on the above legal principle's, the impugned order of the High Court was set aside by the Apex Court.

11. In the light of the decision in Premraj's case, cited above, the principles contained in N. Sukumaran Nair's case, cited above, cannot be relied and acted upon, Premraj's case being later in time.

12. In view of the legal principles discussed above, it is only to be concluded that courts, which are seized with the available facts on the records, placed before it, could only impose sentence as prescribed under the particular Act and cannot step in to the domain of the executive authority, who alone has got the power vested in it, under Sections 432 and 433 Cr.P.C. The learned Counsel for the revision petitioner has, however, submitted that in appropriate cases, the court could suggest the Government to consider remission, or commutation of the sentence, as the case may be, if an application is made, after appreciating the materials on record. With due respect to the counsel, I may state here that when a power is conferred on the executive authority to deal with a matter in a particular manner, as contained in the procedure, other than imposing the sentence prescribed under the Act, the court should not suggest and usurp the power of the executive authority, as held in State v. Premraj, cited above.

13. In the case at hand, as discussed above, there is no scope to interfere with the conviction and sentence. In such situation, it is for the revision petitioner to move the executive authority under the provisions of the Code of Criminal Procedure. No suggestion, or an order postponing the sentence, are contemplated under the Code. The question framed at the outset is answered accordingly.

Hence, this Criminal Revision fails and is dismissed.

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