

Shayam Lal Vs. State

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Court : Delhi

Decided On : Dec-13-2012

Judge : Manmohan

Appellant : Shayam Lal

Respondent : State

Advocate for Def. : Ms. Jasbir Kaur

Advocate for Pet/Ap. : Mr. O.P. Saxena

Judgement :

19 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.REV.P. 326/2010 & Crl.M.(Bail) 845/2010 SHAYAM LAL Petitioner Through: Mr. O.P. Saxena, Advocate versus STATE Respondent Through: Ms. Jasbir Kaur, APP for State with SI Kamlesh, PS Moti Nagar Date of Decision :

13. h December, 2012 % CORAM: HON'BLE MR. JUSTICE MANMOHAN JUDGMENT MANMOHAN, J : (Oral) 1. Present criminal revision petition has been filed challenging the order dated 02nd June, 2010 passed by the Additional Sessions Judge (ASJ) confirming the order of conviction and sentence passed by the Metropolitan Magistrate (MM) convicting the petitioner under Section 16(1)(c) of the Prevention of Food Adulteration Act read with Sections 353/186 IPC.

2. It is pertinent to mention that the MM had sentenced the petitioner to six months rigorous imprisonment.

3. The relevant facts of the present case are that in the complaint filed by the Food Inspectors, it was stated that when they visited the petitioners shop for the purpose of collecting food samples, they were pushed out of the shop and the shutter was closed by the petitioner.

4. Mr. O.P. Saxena, learned counsel for the petitioner states that he has instructions not to challenge the conviction order but only to challenge the order on sentence.

5. Mr. Saxena further states that as the petitioner is today aged about 70 years and the offence is alleged to have been committed on 08 th August, 1989, that means, more than twenty three years ago, this Court should reduce the sentence to the period already undergone. In this regard, Mr. Saxena relies upon a judgment of the Supreme Court in Nand Lal v. State of Uttarakhand & Anr. 2010 [3] JCC 2088. The relevant portion of the said judgment is reproduced hereinbelow: 5. Having heard learned counsel for the parties and having regard to the fact that the incident had taken place almost 27 years ago and the Appellant is now more than 70 years of age, suffering from several medical ailments we are inclined to accept the submission made on behalf of the Appellant for reduction of his sentence. 6. In that view of the matter and in the circumstances mentioned hereinabove, we allow the request to the extent that while maintaining the conviction of the Appellant, we reduce his sentence, to the period already undergone.

6. On the other hand, Ms. Jasbir Kaur, learned APP for the State points out that the petitioner has not completed the minimum sentence of six months under Section 16(1)(c) of the Prevention of Food Adulteration Act.

7. Having heard learned counsel for the parties, this Court is of the view that the issue that arises for consideration is whether an accused can be sentenced to a period below the minimum prescribed period under the Prevention of Food Adulteration Act.

8. A learned Single Judge of this Court in Ram Shankar v. State 2010 [2] JCC 91. has held as under: 8. Learned counsel for the respondent contends that

minimum sentence under the PFA Act is six months, therefore, this Court cannot reduce the sentence to the period already undergone by the petitioner. 9.To rebut this contention, learned counsel for the petitioner, by placing reliance on Vir Singh Chauhan vs. State reported in 1996 (1) FAC 101.Rajesh Kumar vs. State reported in 2004 (1) JCC 322.Sita Ram vs. State reported in 2004 (1) JCC 321.Ashok Kumar vs. State reported in 2001(2) FAC 24.and Manohar Lal vs. State (Delhi Administration) reported in 2001(2) FAC 248.has contended that in peculiar facts of a case, sentence can be reduced even below the minimum prescribed period under the PFA Act. 10.I have considered the rival contentions of both the parties on the point of sentence and I have also perused the judgments rendered by this Court reliance whereupon has been placed by the petitioner.

11. Petitioner is aged about sixty years; his ailing wife is totally dependent upon him. Incident has become two decades old. Therefore, it would not be justifiable to send the petitioner to jail at this stage.

12. Accordingly, while upholding the conviction, I reduce the sentence of the petitioner to the period already undergone by him. So far as sentence and fine is concerned, same is maintained as it is.

13. Petition is disposed of in the above terms.

9. In Brij Bhushan v. State (Through PFA Department) 2011 (1) JCC 23.this Court has held as under:8. Learned APP opposes reduction of sentence on the ground that the Act provides minimum sentence of six months and the same cannot be reduced. Per contra counsel for the petitioner has contended that in the given facts of a case sentence can be reduced below the minimum prescribed in a statute. Reliance has been placed on Nand Lal V. State of Uttarakhand and another [2010 (1) FAC 346.Brahm Dass V. The State of Himachal Pradesh [1988 (II) FAC 13.Haripada Das Vs. State of West Bengal and another [1998 (2) FAC 187.Sri Krishan Gopal Sharma and another V. Govt. of NCT of Delhi [1996 (1) FAC 258.Ram Shankar Vs. State [2010 II AD (CrI.) (DHC) 448] (decided by Honble Mr. Justice A.K. Pathak) Vir Singh Chauhan Vs. State [1996 (1) FAC 100.(Decided by Honble Mr. justice V.B. Bansal) Rajesh Kumar Vs. State [2004 (1) JCC 32.(Decided by Honble Mr. justice R.S. Sodhi) 9. From the judicial

pronouncements, reliance whereupon has been placed, it is clear that sentence below the minimum prescribed under the statute can be handed down to an accused. In this case, petitioner has suffered ordeal of trial for about 18 years; he is now aged about 60 years; he is suffering from diabetes; his one daughter is mentally retarded as has been certified by the Institute of Human Behaviour and Allied Sciences, Shahdara; other daughter is of marriageable age. In these peculiar circumstances while upholding the conviction, his sentence is reduced to the period already undergone by him.

10. In view of the aforesaid judgments, it is apparent that this Court has the power to reduce the sentence even below the minimum prescribed period under the Prevention of Food Adulteration Act for some cogent reasons.

11. Since in the present case, the offence is alleged to have been committed nearly 23 years ago and the petitioner is now aged about 70 years with no criminal antecedents, this Court is of the view that the sentence in the present case needs to be reduced to the period already undergone. Ordered accordingly. With the aforesaid directions, the present petition and application stand disposed of. Order dasti. MANMOHAN, J DECEMBER 13 2012 NG

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