2024 INSC 186

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.__________ of 2024
SPECIAL LEAVE PETITION (CRIMINAL) NO.6095 of 2018

M/S A.K. SARKAR & CO. & ANR. ...APPELLANTS

VERSUS

THE STATE OF WEST BENGAL & ORS. ...RESPONDENTS

SUDHANSHU DHULIA, J.

Leave granted.

2. The present appeal arises out of a proceeding under the Prevention of Food Adulteration Act, 1954 (for short 'the Act') where the present appellant no.1, its partners appellant no.2 and Amit Kumar Sarkar, were charged under Section 16(1)(a)(i) read with Section 7 of the Act and were convicted by the Trial court. Appellant no.2 and Amit Kumar Sarkar were sentenced to undergo simple imprisonment for a period of six months along with a fine of Rs.1,000/- each, whereas appellant no.1 was directed to pay a fine of Rs.2,000/-.

3. The appeal of the appellants against the order of conviction and sentence by the Trial Court was dismissed by the District and Sessions Judge but the conviction of Amit Kumar Sarkar, the third accused in the case, was set aside and he was acquitted. In Revision proceedings, the High Court of Calcutta though upheld the concurrent findings of conviction but reduced the sentence of appellant no.2 from 6 months to 3 months simple imprisonment.

4. Brief facts leading to this appeal are that on 06.12.2000, a food inspector while inspecting the shop/godown of the appellants at 71, Biplabi Rash Behari Basu Road, Calcutta took samples of some sugar boiled confectionaries, which were kept for sale and for human consumption. After payment, the food inspector purchased 1500 grams of sugar boiled confectionery contained in three packets of 500 grams each, and as per due process sent the samples for examination in a laboratory. The public analysis/Lab report shows that the food articles were not adulterated, but it said that the packets did not show the prescribed particulars such as complete address of the manufacturer and the date of manufacturing. Thus, there was violation of Rule 32(c)

and (f) of the Prevention of Food Adulteration Rules, 1955 (for short 'Rules'). In view of these findings, the inspector filed a complaint before the Trial Court under Section 16(1)(a)(i) read with Section 7 of the Act.

5. The plea of the appellants before the Trial Court was that they had not manufactured the food articles, instead Bose Confectionary, Calcutta had manufactured these items. All the same, the appellants could not show any valid proof of their contention and thus, the Trial Court and the Appellate Court (as well as the Revisional Court) did not accept this contention raised by the appellants. The appellant stood convicted of the offence under Section 16(1)(a)(i) read with Section 7 of the Act and appellant no.2 was sentenced to undergo 3 months simple imprisonment along with fine. While appellant no.1 was sentenced to pay a fine of Rs.2,000/-.

6. Before this Court, learned Counsel for the appellants would argue that the entire case of the prosecution is liable to be dismissed for the simple reason that the appellants were charged under Rule 32 (c) and (f) of the Rules but these

provisions were not related to misbranding and were regarding something else.

7. All the same, this contention is totally misconceived inasmuch on the date of occurrence i.e., 06.12.2000 when the samples were taken, the provisions which were applicable were Rule 32 (c) and (f) only (as the Rules had been amended vide G.S.R 422(E) dated 29.04.1987), and Rule 32 as per the Gazette Notification reads as under :-

> *"32. Package of food to carry a label: --*
>
> *(a)...........*
> *(b)...........*
> *(c) The name and complete address of the manufacturer or importer or vendor or packer.*
> *(d)..........*
> *(e)..........*
> *(f) The month and year in which the commodity is manufactured or prepacked."*

Therefore, this contention of the learned counsel for the appellant regarding non-applicability of the provision is not correct. There are concurrent findings of three Courts below and there is absolutely no question of us having any measure of doubt as to the findings, inasmuch as that the packets which were taken from shop/godown of the

appellants were misbranded as defined under Section 2(ix)(k) of the Act, as they were not labelled in accordance with the requirements of the Act or the Rules made thereunder. The only question which now remains is of sentence. The plea here is of reduction of sentence and if only fine can be imposed, which is permissible as per the law currently applicable.

8. Article 20(1) of the Constitution of India reads as under:

> *"(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*
>
> *(2) ……….*
>
> *(3) ………."*

The above provision has been interpretated several times by this Court and broadly the mandate here is that a person cannot be punished for an offence which was not an offence at the time it was committed, nor can he be subjected to a sentence which is greater than the sentence which was applicable at the relevant point of time. All the same, the above provision does not prohibit this Court, to award a

lesser punishment in a befitting case, when this Court is of the opinion that a lesser punishment may be awarded since the new law on the penal provision provides a lesser punishment i.e. lesser than what was actually applicable at the relevant time. The prohibition contained in Article 20 of the Constitution of India is on subjecting a person to a higher punishment than which was applicable for that crime at the time of the commission of the crime. There is no prohibition, for this Court to impose a lesser punishment which is now applicable for the same crime.

9. The Prevention of Food Adulteration Act, 1954 was repealed by the introduction of the Food Safety and Standards Act, 2006 where Section 52 provides a maximum penalty of Rs.3,00,000/- for misbranded food. There is no provision for imprisonment.

The provision, which is presently applicable, is as follows :

> *"52.* ***Penalty for misbranded food***. *(1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees. (2) The Adjudicating Officer may issue a direction*

> *to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed."*

Whether the appellant can be granted the benefit of the new legislation and be awarded a lesser punishment as is presently prescribed under the new law? This Court in ***T. Barai*** *v.* ***Henry Ah Hoe (1983) 1 SCC 177,*** had held that when an amendment is beneficial to the accused it can be applied even to cases pending in Courts where such a provision did not exist at the time of the commission of offence. It was said as under:-

> *"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no*

> *reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense."*

A reference to the above case was given by this Court in ***Nemi Chand*** *v.* ***State of Rajasthan (2018) 17 SCC 448*** where six months of imprisonment awarded under the Act was modified to only a fine of Rs.50,000/-.

The above principle was applied by this Court again in ***Trilok Chand*** *v.* ***State of Himachal Pradesh, (2020) 10 SCC 763*** and the sentence of three months of imprisonment and Rs.500/- of fine for misbranding under the Act, 1954 was modified to that of only a fine of Rs.5,000/-.

10. The present appellant no.2, at this stage, is about 60 years of age and the crime itself is of the year 2000, and twenty-four years have elapsed since the commission of the crime. Vide Order dated 06.08.2018, this Court had granted exemption from surrendering to appellant no.2. Considering all aspects, more particularly the nature of offence, though we uphold the findings of the Courts below regarding the

offence, but we hereby convert the sentence of appellant no.2 from three months of simple imprisonment along with fine of Rs.1,000/- to a fine of Rs.50,000/- (Rupees Fifty Thousand only). The sentence of appellant no.1 which is for a fine of Rs. 2000/- is upheld. The amount shall be deposited with the concerned Court within a period of three weeks from today. Accordingly, the appeal is partly allowed.

.......................................J.
(SUDHANSHU DHULIA)

.......................................J.
(PRASANNA B. VARALE)

New Delhi
March 7, 2024.