

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 214 OF 2016
(Arising out of SLP (Criminal) No. 2148 of 2013)

NEMI CHAND ... Appellant

VERSUS

STATE OF RAJASTHAN ... Respondent

WITH

CRIMINAL APPEAL NO. 215 OF 2016
(Arising out of SLP (Criminal) No. 2029 of 2016)
(Arising out of SLP CRLMP No. 883 of 2015)

O R D E R

Criminal Appeal No. 214 of 2016
(Arising out of SLP (Criminal) No. 2148 of 2013)

Leave granted.

In the instant appeal, the appellant was tried and convicted for offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'Act') by the trial court vide judgment dated 19.10.1995 and was sentenced to undergo six months' Rigorous Imprisonment as well as fine of Rs.1,000/- and in default, further Rigorous Imprisonment for one month. This order was challenged by the appellant by filing appeal before the Sessions Judge which was dismissed on 11.09.1996, thereby confirming the order of the trial court. The appellant filed Revision Petition thereagainst in which also he failed as the said petition has been dismissed by the High Court vide the impugned judgment dated 06.11.2012.

It is not in dispute that the charge against the appellant was only of sub-standardization of goods. Mr. Sushil Kumar Jain, learned senior counsel appearing for the appellant, submits that though the appellant has some *prima facie* case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below. He has, in this behalf, argued that there has been an amendment in the Act by the Central Amendment Act 34 of 1976 whereby Section 16A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in '*T. Barai v. Henry Ah Hoe and Another*' [1983 (1) SCC 177] wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. In the said judgment, the Court held 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. This finds support in the following passage from *Craies on Statute Law*, 7th Edn., at pp. 388-89:

A retrospective statute is different from an ex post facto statute. "Every ex post facto law...." said Chase, J., in the American case of *Calder v. Bull* "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

From the facts of the present case, we have no doubt in mind that the aforesaid judgment squarely applies thereon. This appeal is, therefore, partly allowed and the sentence imposed upon the appellant is modified by imposing fine of Rs. 50,000/- which shall be deposited within two months with the trial court. On deposit of the aforesaid amount, the bail bonds furnished by the appellant shall be discharged.

Criminal Appeal No. 214/2016 etc.

Criminal Appeal No. 215 of 2016

(Arising out of SLP (Criminal) No. 2029 of 2016)

(Arising out of SLP CRLMP No. 883 of 2015)

Delay condoned.

Leave granted.

The facts of the case are almost similar as in the above Criminal Appeal No. 214 of 2016, except that it is a case of mis-branding.

This appeal is allowed in the identical terms as mentioned in the aforesaid order.

....., J.
[A.K. SIKRI]

....., J.
[R.K. AGRAWAL]

New Delhi;
March 10, 2016.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 2148/2013

(Arising out of impugned final judgment and order dated 06/11/2012 in CRLR No. 366/1996 passed by the High Court Of Rajasthan At Jodhpur)

NEMI CHAND

Petitioner(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

(With office report)

WITH

SLP(Crl.)...CRLMP No.883/2015

(With appln.(s) for c/delay in filing SLP, for c/delay in refiling SLP and Office Report)

Date : 10/03/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s)

Mr. Sushil Kumar Jain, Sr. Adv.
Mr. Puneet Jain, Adv.
Mr. Abhinav Gupta, Adv.
Mr. Manu Maheshwari, Adv.
Ms. Pratibha Jain, Adv.

For Respondent(s)

Mr. S. S. Shamsbery, AAG.
Mr. Amit Sharma, Adv.
Mr. S. Spandana Reddy, Adv.
Ms. Ishu Prayas, Adv.
Ms. Ruchi Kohli, Adv.

UPON hearing the counsel the Court made the following

O R D E R

SLP (Crl.) No. 2148/2013

Leave granted.

The appeal is partly allowed in terms of the signed

Criminal Appeal No. 214/2016 etc.

order.

SLP(Cr1.)...CRLMP No.883/2015

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order.

(Nidhi Ahuja)
Court Master

(Tapan Kr. Chakraborty)
Court Master

[Signed order is placed on the file.]