DAYAL SINGH

v.

STATE OF RAJASTHAN

APRIL 13, 2004

[N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

Prevention of Food Adulteration Act, 1954—Sections 7 and 16—Prevention of Food Adulteration Rules, 1955 (as amended in 1988)—Appendix 'B'—Item No.25.01—Sugar confectionery—Presence of mineral oil amounted to adulteration under the Rules—Mineral oil found in confectionery recovered from shop of accused—Conviction—Rules amended permitting presence of mineral oil upto 0.2%—Accused seeking acquittal based on amended standard—Held, accused is not entitled to acquittal as the amendment does not grant full exemption to presence of mineral oil—It is permissible only upto 0.2%—Report of Public Analyst does not state the percentage of mineral oil as there was no such requirement during the relevant time—Stringent law is made to safeguard the health of consumers, hence court cannot take lenient view.

Sample of hard boiled sugar confectionery recovered from the shop of appellant was found to be adulterated due to presence of mineral oil and unpleasant smell and taste. Appellant was found guilty under Prevention of Food Adulteration Act and sentenced to 2 years R.I. He appealed to Sessions Judge. During pendency of appeal, the Rules were amended, by virtue of which presence of mineral oil was permitted subject to conditions, that mineral oil was of food grade and used as a lubricant, and did not exceed 0.2% by weight. Sessions Judge upheld conviction but reduced sentence to 6 months. Appellant unsuccessfully preferred revision before High Court. Hence the appeal.

Appellant contended that since the appeal was pending when the amended Rules came into force, the Court was bound to take notice of it and hold that the sample was not adulterated; that the report of the Public Analyst was defective inasmuch as it did not mention the percentage of mineral oil found in the sample and that any law mollifying the rigour of criminal law must be held to be retrospective in the sense that it must be

A held to be applicable to pending proceedings, including appeal.

Dismissing the appeal, the Court

HELD: 1.1. It is well-settled that no person shall be convicted of any offence except for violation of a law in force at the time of the commission
B of that act charged as an offence, nor be subjected to a penalty greater than with which he might have been inflicted under the law in force at the time of the commission of the offence. Penal statute which create new offence is always prospective and a person can be punished for an offence committed by him in accordance with law as it existed on the date on which
C an offence was committed. [110-E, G]

Rattan Lal v. *State of Punjab,* AIR (1965) SC 444, relied on.

2. At the relevant time, mere presence of mineral oil, being an unwholesome ingredient, amounted to adulteration and therefore, it was
D not necessary for the Public Analyst to mention the percentage of mineral oil found in the sample. Moreover under the modified standard the mineral oil found in the sample must be of food grade, if used as a lubricant. There is no report on this aspect of the matter by the Public Analyst, since he was not required to do so having regard to the standard then prescribed. It is not as if the amended Rules permit the presence of mineral oil in any
E quantity and of any quality in hard boiled sugar confectionary. Presence of mineral oil even after the amendment will amount to adulteration if it is not of food grade, and not used as a lubricant, and it is more than 0.2% by weight. In the instant case it was not disputed that for the offence charged, a minimum sentence of 6 months rigorous imprisonment is prescribed by law. The appellant has been sentenced to undergo 6 months
F rigorous imprisonment. Strict adherence to Prevention of Food Adulteration Act and the Rules framed thereunder is essential for safeguarding the interest of consumers of articles of food. Stringent laws will have no meaning if offenders could go away with mere fine.

[111-D-F; 112-A-C]

G

Municipal Corporation of Delhi v. *Mai Ram alias Bhaya Ram,* (1974) Prevention of Food Adulteration Cases; *Shyam Lal* v. *State,* AIR (1968) All. 392; *Krishan Gopal Sharma and anr.* v. *Govt. of N.C.T. of Delhi,* [1996] 4 SCC 513; *State of Orissa* v. *K. Rajehwar Rao,* [1992] 1 SCC 365 and *N. Sukumaran Nair* v. *Food Inspector, Mavelikara,* (1995) Crl. L.J. 3651,
H referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1042 of 1997

From the Judgment and Order dated 1.8.97 of the Rajasthan High Court in S.B. Crl. R.P. No. 200 of 1988.

M.N. Krishnanmani, S.P. Juneja, Soumyajit Pani and Baijyoanta Barooah for the Appellant.

Aruneshwar Gupta, Additional Advocate General for Rajasthan and Amarjit Singh Bedi for the Respondent.

The Judgment of the Court was delivered by

B.P. SINGH, J. The appellant herein was tried by the Chief Judicial Magistrate, Jodhpur, Rajasthan charged of the offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 since the sample of hard boiled sugar confectionary taken from the appellant was found to be adulterated in view of the presence of mineral oil, as also on account of its having a very unpleasant smell and taste. The learned Chief Judicial Magistrate by his judgment and order of April 25, 1986 found the appellant guilty of the offence charged and sentenced him to undergo rigorous imprisonment for 2 years and a fine of Rs. 2,000, in default of payment of fine to further undergo rigorous imprisonment for 6 months. The appeal preferred by the appellant was dismissed by the District and Sessions Judge, Jodhpur by his order dated August 4, 1988 who upheld the conviction but modified the sentence and reduced it to 6 months' rigorous imprisonment and a fine of Rs. 1,000, in default of payment of fine to further undergo rigorous imprisonment for 1 month. This was the minimum sentence which could be imposed under the Act for the charge proved against the appellant. The appellant thereafter preferred S.B. Criminal Revision No. 200 of 1988 before the High Court of Rajasthan at Jodhpur but the same was dismissed by the High Court by its judgment and order dated 1st August, 1997. The appellant is before us by special leave.

The facts of the case are not in dispute. On October 25, 1979 the Food Inspector took a sample of hard boiled sugar confectionary from the shop of the appellant. After complying with the requirements of the Act and the Rules the sample was sent to be Public Analyst and the report of the Public Analyst dated November 16, 1999 showed that the sample was not according to the prescribed standard as mineral oil was found present which was an

A unwholesome ingredient, and also that the sample had a very unpleasant smell and taste. The Food Inspector filed a complaint on January 29, 1980. After trial the learned Chief Judicial Magistrate by his judgment and order dated April 25, 1986 found the appellant guilty and sentenced him as earlier noticed.

B The appellant preferred an appeal before the Court of the District and Sessions Judge, Jodhpur. During the pendency of the appeal a Notification was issued on April 8, 1988 whereby the Central Government in exercise of powers conferred by sub-section (1) of Section 23 of the Prevention and Food Adulteration Act amended the Prevention of Food Adulteration Rules, C 1955. In Appendix 'B' item No.25.01 was amended and under the amended Rules, the presence of mineral oil was permitted subject to two conditions, namely - that the mineral oil was of food grade if used as a lubricant, and did not exceed 0.2 % by weight. It will thus be seen that the amendment brought about in the year 1988 did not unconditionally permit the presence of mineral oil in hard boiled sugar confectionary but permitted only 0.2 % D by weight provided it was of food grade and used as a lubricant.

The appeal preferred by the appellant was dismissed by the District and Sessions Judge, Jodhpur, by his judgment and order dated August 4, 1988 and as observed earlier while upholding the conviction the appellate court reduced his sentence to the minimum prescribed sentence of 6 months rigorous E imprisonment. Revision preferred by the appellant before the High Court was dismissed.

Shri Krishnamani, senior advocate appearing on behalf of the appellant argued before us with great vehemence that the courts below have committed F a clear error of law in not noticing the amended provisions of the Rules. Since the appeal was pending when the amended Rules came into force, the Court was bound to take notice of it and hold that the sample was not adulterated. He further submitted that the report of the Public Analyst was defective inasmuch as it did not mention the percentage of mineral oil found in the sample. He placed reliance on several decisions to support his submission G that any law mollifying the rigour of criminal law must be held to be retrospective in the sense that it must be held to be applicable to pending proceedings, including appeal. He submitted that the courts below were in error in holding that the amendment was only prospective in operation and did not benefit the appellant since the date on which the offence is alleged H to have been committed, the sample was adulterated as per the standard

prescribed.

Learned counsel for the appellant placed considerable reliance on a decision of the Division Bench of the Delhi High Court reported in 1974 Prevention of Food Adulteration Cases page 21 : *Sunder Lal* v. *Municipal Corporation of Delhi.* In that case it was urged before the High Court that during the pendency of the appeal before the High Court the standard of compounded *Hing* was changed by Notification dated March 9, 1966 and that the sample conformed to the new standard. Consequently, it was argued that the appellant was entitled to acquittal. While considering the submission, the learned Judges observed that the new standard having taken away the rigours of law and being in favour of the accused, it should be given a retrospective operation. For this proposition reliance was placed on a decision of the Division Bench of the Allahabad High Court in AIR 1968 All. 392 : *Shyam Lal* v. *State* wherein after quoting from Crawford's Construction of Statute (1940 Edition) at page 599, the Court observed :-

> "The above rule of construction is based on principle that until the proceedings have reached final judgment in the Court of last resort, that Court, when it comes to announce its decision, must conform to the law then existing".

It further quoted with approval the following passage from the judgment of the Allahabad High Court :-

> "It seems to us clear that the true rule of construction of a penal statute is that where the legislature evinces its intention to modify the law, in favour of the accused, so as to reduce the rigors of the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The Court trying an accused person has to take into consideration the law as it exists on the date of the judgment. It seems reasonable that an accused person cannot render himself liable to a higher punishment under a statute which has ceased to exist and has been substituted to be a new which favours him. Where the question as to the interpretation of a penal statute is concerned, the Court must construe its provisions beneficially in regard to their applicability to the accused. It would be violating the spirit of the law and the will of the Legislature as expressed in the amending statute

A to sentence an accused person on the basis of the original Act which has been considered by the Legislature to be harmful and harsh against public interest."

The High Court also relied upon the principle laid down by this Court in AIR (1965) SC 444 : *Rattan Lal* v. *State of Punjab.*

B

In our view the reliance placed on the judgment of this Court in *Rattan Lal* (supra) was clearly misplaced. Indeed the principle laid down in that judgment supports the case of the prosecution. In *Rattan Lal* (supra) this Court was not concerned with the retrospective operation of a penal statute. The question which arose for consideration by this Court was a question of C jurisdiction of an appellate court to exercise its powers under Section 6 of the Probation of Offenders Act, 1958. In that case the High Court did not act under Section 11 of the Probation of Offenders Act and failed to pass orders under Sections 3, 4 and 6 thereof granting benefit of probation to the accused. In that context a question arose whether the power under Section 11 of the D Act could be exercised by the High Court in an appeal pending before it, even if such a power could not be exercised by the trial court, since the offence was committed at a time when the Probation of Offenders Act had not been enacted. This Court observed :-

"The first question is whether the High Court, acting under S. 11 E of the Act, can exercise the power conferred on a court under S.6 of the Act. It is said that the jurisdiction of the High Court under S. 11(3) of the Act is confined only to a case that has been brought to its file by appeal or revision and, therefore, it can only exercise such jurisdiction as the trial court had, and in the present case the trial F court could not have made any order under S. 6 of the Act, as at the time it made the order the Act had not been extended to Gurgaon District. On this assumption, the argument proceeds, the Act should not be given retrospective operation, as, if so given, it would affect the criminal liability of a person for an act committed by him before the Act came into operation. In support of this contention a number G of decisions bearing on the question of retroactivity of a statute in the context of vested rights have been cited. Every law that takes away or impairs a vested right is retrospective. Every *ex post facto* law is necessarily retrospective. Under Art. 20 of the Constitution, no person shall be convicted of any offence except for violation of a law in H force at the time of the commission of that 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. A

But an *ex post facto* law which only mollifies the rigour of a criminal law does not fall within the said prohibition.

B

If a particular law makes a provisions to that effect, though retrospective in operation it will be valid. The question whether such a law is retrospective and, if so, to what extent depends upon the interpretation of a particular statute, having regard to the well settled rules of construction".

C

In the light of the principle enunciated, this Court proceeded to consider the question whether the High Court, as the appellate court, had the power under Section 11 to extend to the accused the benefit under the Act. In doing so this Court noticed that it was dealing not with a case where an act which was not an offence is made an offence under the Act ; nor was it a case where under the Act a punishment higher than that obtaining for an offence before D the Act is imposed. This Court further observed :-

"This is an instance where neither the ingredients of the offence nor the limits of the sentence are disturbed, but a provision is made to help the reformation of an accused through the agency of the court. Even so the statute affects an offence committed before it was E extended to the area in question. It is, therefore, a *post facto* law and has retrospective operation. In considering the scope of such a provision we must adopt the rule of beneficial construction as enunciated by the modern trend of judicial opinion without doing violence to the provisions of the relevant section. Section 11 (3) of F the Act, on the basis of which the learned counsel for the State advances most of his arguments, has no relevance to the present appeal, the said sub-section applies only to a case where no appeal lies or is preferred against the order of a court declining to deal with an accused under S. 3 or S. 4 of the Act, and in the instant case an appeal lay to the Sessions Judge and indeed an appeal was preferred G from the order of the Magistrate. The provision that directly applies to the present case is S. 11 (1) of the Act, whereunder an order under the Act may be made by any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision. The H

A sub-section *ex facie* does not circumscribe the jurisdiction of an appellate court to make an order under the Act only in a case where the trial court could have made that order. The phraseology used therein is wide enough to enable the appellate court or the High Court, when the case comes before it, to make such an order. It was purposely made comprehensive, as the Act was made to implement a social reform. As the Act does not change the quantum of the sentence, but only introduces a provision to reform the offender, there is no reason why the Legislature should have prohibited the exercise of such a power, even if the case was pending against the accused at one stage or other in the hierarchy of tribunals".

C The decision approves of the principle that *ex post* facto law which only mollifies the rigour of the criminal law, though retrospective in operation, will be valid. After enunciating this principle the Court interpreted Section 11 of the Probation of Offenders Act and came to the conclusion that on a true interpretation of the provision the High Court had jurisdiction to exercise the D power at the appellate stage, and this power was not confined to a case where the trial court could have made that order. The phraseology of the Section was wide enough to enable the appellate court or the High Court when the case came before it, to make such an order. We, therefore, do not find that *Rattan Lal* made a departure from the well settled principle that no person E shall be convicted of any offence except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than with which he might have been inflicted under the law in force at the time of the commission of the offence. This Court only laid down the principle that an *ex post facto* law which only mollifies the rigour of a criminal law did not fall within the said prohibition, and if a F particular law made a provision to that effect, though retrospective in operation, it will be valid. *Rattan Lal* was, therefore, decided on an interpretation of Section 11 of the Probation of Offenders Act which was not a penal statute in the sense that it did not create an offence and provide for punishment thereof. We, therefore, do not find that principles laid down in *Rattan Lal* G depart from the well settled principles that a penal statute which create new offences is always prospective and a person can be punished for an offence committed by him in accordance with law as it existed on the date on which an offence was committed.

In another decision of the Delhi High Court reported in the same volume H at page 19 : *Municipal Corporation of Delhi* v. *Mai Ram alias Bhaya Ram;*

Sunder Lal was followed and reference was made to the decision of this Court in *Rattan Lal* (supra). We have no doubt that the High Court of Delhi in *Sunder Lal* v. *Municipal Corporation of Delhi* (supra) and *Municipal Corporation of Delhi* v. *Mai Ram alias Bhaya Ram* (supra) and the Allahabad High Court in *Shyam Lal* v. *State* (supra) have erred in law in holding that Notification substituting new standards in place of the old under the Prevention of Food Adulteration Act must, while judging the guilt of an accused, be given retrospective operation. We are clearly of the view that this Court in *Rattan Lal* did not lay down such a proposition.

We also find that in such cases application of the modified standards to cases which arose before the amendment of the Rules, would be impracticable as is demonstrated by the facts of this case. As pointed out by the learned senior counsel appearing for the appellant, the report of the Public Analyst did not mention the percentage of mineral oil present in the sample. This was obviously for the reason that at the relevant time mere presence of mineral oil, being an unwholesome ingredient, amounted to adulteration and, therefore, it was not necessary for the Public Analyst to mention the percentage of mineral oil found in the sample. Moreover under the modified standard the mineral oil found in the sample must be of food grade, if used as a lubricant. There is no report on this aspect of the matter by the Public Analyst, obviously because he was not required to do so having regard to the standard then prescribed. On the record there is nothing to show that mineral oil found in the sample was of food grade and was used as a lubricant and did not exceed 0.2 % by weight as prescribed under the amended Rules. It is not as if the amended Rules permit the presence of mineral oil in any quantity and of any quality in hard boiled sugar confectionary. Presence of mineral oil even after the amendment will amount to adulteration if it is not of food grade, and not used as a lubricant, and if it is more than 0.2 % by weight.

Learned counsel for the appellant then cited before us several judgments in which, having regard to the long pendency of such cases, a lesser sentence was imposed. In [1996] 4 SCC 513 : *Krishan Gopal Sharma and anr.* v. *Govt. of N.C.T. of Delhi,* this Court having regard to the technical violation of the Rules, and having regard to the fact that no minimum sentence was prescribed at the time when the offence was committed, found that a deterrent punishment for imprisonment was not called for and imposition of fine will meet the ends of justice. Similar was the approach of this Court in [1992] 1 SCC 365 : *State of Orissa* v. *K. Rajehwar Rao,* and (1995) Crl. L. J. 3651: *N. Sukumaran Nair* v. *Food Inspector, Mavelikara.*

A In the instant case it was not disputed that for the offence charged a minimum sentence of 6 months rigorous imprisonment is prescribed by law. The appellant has been sentenced to undergo 6 months rigorous imprisonment which is the minimum sentence. We are not inclined to modify the sentence by passing an order of the nature passed in *N. Sukumaran Nair* (supra) where this Court in exercise of its extra ordinary jurisdiction imposed only a sentence B of fine and directed the State to exercise its powers under Section 433 of the Code of Criminal Procedure to commute the sentence of simple imprisonment for fine. In the instant case the appellant has been sentenced to undergo 6 months rigorous imprisonment. Moreover we are firmly of the view that strict adherence to Prevention of Food Adulteration Act and the Rules framed C thereunder is essential for safeguarding the interest of consumers of articles of food. Stringent laws will have no meaning if offenders could go away with mere fine. We, therefore, find no reason to interfere with the sentence imposed against the appellant.

Finding no merit, we dismiss this appeal.

D

D.G. Appeal dismissed.