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MOHD. YASEEN

v

STATE OF U.P.

JULY 17, 2007

B

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

C

*Code of Criminal Procedure, 1973—s. 482—Appellant convicted under Prevention of Food Adulteration Act, 1954—Conviction upheld by Appellate Court—Revision rejected—Petition u/s. 482 to recall that order—High Court held that once the appeal has been decided on merits, it is not open to exercise power under s. 482—Held: High Court right in holding that the application under s. 482 is to be dismissed.*

D

*Prevention of Food Adulteration Act, 1954—s. 20AA—Adulteration in food—Accused raising plea of being under age of 18 years on the date of occurrence and seeking grant of probation—Question relating to age of the accused not considered in proper perspective by First Appellate Court and High Court—Held, the issue was vital—Hence matter remanded to High Court.*

E

Appellant was convicted under ss. 7 and 16 of the Prevention of Food Adulteration Act, 1954 and sentenced to rigorous imprisonment for one year. He filed appeal but the same was dismissed. Revision petition subsequently filed before the High Court was rejected. Petition under Section 482 CrPC was filed to recall the order. High Court dismissed the petition holding that once the appeal has been decided on merits, power u/s. 482 CrPC could not be exercised.

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In appeals to this Court it is contended that the High Court erred in holding that s.482, CrPC had no role to play and further that the age of Appellant being less than 18 years on the date of occurrence, s. 20AA of the Act was applicable and probation was to be granted.

Disposing of the appeals, the Court

HELD: 1. The High Court held that once the appeal has been decided on merits it is not open to exercise power under Section 482, CrPC. The High

H

**Court rightly observed that the application under Section 482, CrPC is to be dismissed. [Paras 5 and 9] [382-F, G; 383-F]** A

*State of Orissa v. Ram Chander Agrawal, AIR (1979) SC 87 and Hari Singh Mann v. Harbhajan Singh Bajwa and Ors., JT (2000) Supp 2 SC 394, relied on.*

2. However, it is a case where question relating to age of the accused-appellant has not been considered in the proper perspective by the first Appellate Court and the High Court. If the appellant succeeds in showing that he was less than 18 years of age on the date of occurrence the applicability of Section 20AA of the Act has to be considered. This plea was not specifically taken before the trial Court and only some documents were filed before the First Appellate Court. The trial Court did not get the opportunity to examine the same. The First Appellate Court did not find any substance in the plea as the documents were not proved. Since it is a vital issue which has substantial bearing on the subject matter of dispute, the matter is remanded to the High Court to consider acceptability of the plea relating to age and decide the matter afresh in accordance with law. [Para 11] [384-A, B, C] B C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1039 of 2001.

From the Judgment & Order dated 15.12.2000 & 27.7.2000 of the High Court of Judicature at Allahabad in Criminal Misc. Application No. 5720 of 2000. E

WITH

Crl. A. No. 1040 of 2001.

B.S. Jain, J.P. Singh and Goodwill Indeevar for the Appellant. F

S.W.A. Qadri and Pradeep Misra for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J. 1.** These two appeals are inter-linked. The order under challenge in Crl. A. No.1039 of 2001 relates to an order dated 15.12.2000 passed by a learned Single Judge of the Allahabad High Court dismissing the application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The said application was filed to recall the order dated 27.7.2000 passed in Criminal Revision No. 489 of 1986. The H

A said order is the subject matter of challenge in CrI. A. No.1040 of 2001. A brief reference to the factual aspects would suffice.

B 2. The appellant was convicted for an offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (in short the 'Act'). The learned Judicial Magistrate (Economic Offences), Bareilly, found the accused guilty and convicted him as afore-noted and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs. 2,000/- with default stipulation.

C 3. The appeal preferred was dismissed by the learned Additional Sessions Judge, Bareilly. A revision was filed before the High Court. On the date fixed i.e. 27.7.2000 none appeared for the appellant. Shri S.A.N. Shah, advocate who appeared stated that he has no instructions to conduct the case. The High Court perused the records and after hearing learned Government Advocate found that the appellate Court had elaborately dealt with the evidence on record and on perusal of the materials on record had rightly dismissed the petition. An application to recall the order was purportedly filed under Section 482 of the Code stating that Shri S.A.N. Shah was not the authorized lawyer. D The revision petition in fact had been filed by Shri U.N. Sharma whose name was not printed in the cause list.

E 4. When the appellant was not represented the High Court sent notice to the appellant to engage a counsel to defend his case, but no proof of service was there. It was further submitted that the High Court has erroneously held that Section 482 of the Code had no role to play. Additionally, it is submitted that the appellant had produced the certificate of his age and material in that regard has been placed before the appellate Court but it did not consider the same. F

G 5. It is to be noted that the appellant had taken a definite stand before the First Appellate Court about his age being less than 18 years. Reference was made to Section 20AA of the Act to contend that the probation was to be granted. The High Court did not accept the plea and held that once the appeal has been decided on merits it is not open to exercise power under Section 482 of the Code.

6. Learned counsel for the State on the other hand supported the order passed.

H 7. In *State of Orissa v. Ram Chander Agrawal*, AIR (1979) SC 87 it was

noted in paragraph 20 as follows:

“..This decision instead of supporting the respondent clearly lays down, following *U.J.S. Chopra v. State of Bombay*, AIR (1955) SC 633 that once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise the revisional jurisdiction.. The provisions of section 561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code.”

8. In *Hari Singh Mann v. Harbhajan Singh Bajwa and Ors.*, JT (2000) Supp 2 SC 394 the position was re-iterated in para 10 as follows:

“Section 362 of the Code mandates that no court, when it has signed it judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes *functus officio* and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes *functus officio* the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error....”

9. Therefore, the High Court rightly observed that the application under Section 482 of the Code is to be dismissed.

10. So far as the other appeal is concerned, it is to be noted that a specific plea was taken that the age of the accused is less than 18 years. Section 20AA of the Act reads as follows:

“20AA- *Application of the Probation of Offenders Act, 1958 and section 360 of the Code of Criminal Procedure, 1973-* Nothing contained in the Probation of Offenders Act, 1958 (20 of 1958), or Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.”

- A** 11. If therefore the appellant succeeds in showing that he was less than 18 years of age on the date of occurrence the applicability of Section 20AA has to be considered. This plea was not specifically taken before the trial Court and only some documents were filed before the First Appellate Court. The trial Court did not get the opportunity to examine the same. The First Appellate Court did not find any substance in the plea as the documents were not proved. A specific plea was taken before the High Court in the revision petition about unsustainability of the conclusion. It is a case where question relating to age of the accused has not been considered in the proper perspective by the first Appellate Court and the High Court. Since it is a vital issue which has substantial bearing on the subject matter of dispute, we remand the matter to the High Court to consider acceptability of the plea relating to age and decide the matter afresh in accordance with law.
- B**
- C**

12. The appeals are accordingly disposed of.

B.B.B.

Appeals disposed of.