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OM PRAKASH  
v.  
STATE (NCT) OF DELHI

JUNE 5, 2007

B

[DR. ARIJIT PASAYAT AND D. K. JAIN, JJ.]

*Prevention of Food Adulteration Act, 1954:—*

C

*s. 7(1) r/w s.16—Milk in 'Khoya' sold by accused found to be 19.075 as against minimum prescribed standard of 20%—Conviction by Trial Court and sentence of 6 months imprisonment and fine of Rs. 2000/—imposed by Trial Court—Plea for commutation of sentence on grounds of incident being of 1984 and margin of variation being very small—Held : Accused has already suffered custody for more than three months—On deposit of a sum of Rs.7,500/- as fine and an appropriate application being made, State Government may consider to pass an appropriate order u/s. 433(d) Cr. P.C.—Code of Criminal Procedure, 1973—s 433 (d).*

D

*Code of Criminal Procedure, 1973:*

E

*s. 433(d)—Power to commute sentence—Held: On deposit of fine and on application being made by accused as indicated in the judgment, the State Government may consider to pass an appropriate order under the provision.*

F

*Appellant faced trial for an offence punishable u/s. 7(1) read with s.16 of the Prevention of Food Adulteration Act, 1954. The prosecution case was that the sample of 'Khoya' purchased by Food Inspector from the appellant on 27-11-1984 was found containing milk fat 19.07% as against the minimum prescribed standard of 20%. The Trial Court convicted the appellant of the offence charged and sentenced him to imprisonment for six months and to pay a fine of Rs. 2000/-. The appeal was dismissed by the Additional Sessions Judge. As regards the plea for commutation of sentence u/s. 433, Cr. P.C., it was held that it was matter within the discretion of the State Government. The criminal revision having been dismissed by the High Court, the accused filed the instant appeal.*

G

H

**Disposing of the appeal, the Court**

**HELD:** The appellant has already suffered custody for more than three months. He is directed to deposit a sum of Rs. 7,500/- as fine. On the deposit of the amount being made within the stipulated time and the appropriate application being made by the appellant, the State Government may consider whether communication can be done in view of the peculiar facts of the case of passing an appropriate order under Clause (d) of Section 433 of the Cr. P.C. In the meantime, the appellant shall remain on bail.

[Para 5] [960-E, F, G]

*N. Sukumaran Nair v. Food Inspector, Mavehkhara*, [1997] 9 SCC 101 and *Santosh Kumar v. Municipal Corporation and Anr.*, [2000] 9 SCC 151, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 534 of 2001.

From the Order dated 22.11.2000 of the High Court of Delhi in Criminal Revision No. 531 of 2000.

Ghan Singh Vashisht. R.P. Kaushik, Om Prakash Mishra, Deepak Thukral and Amit Singh for the Appellant.

Ashok Bhan, S. Wasim A. Qadri for D.S. Mahra for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the order passed by a learned Single Judge of the Delhi High Court dismissing the Criminal Revision petition filed by the appellant. The learned Metropolitan Magistrate, New Delhi had found the accused-appellant guilty of offences punishable under Section 7(1) read with Section 16 of the Prevention of Food Adulteration Act, 1954 (in short 'the Act'). He had sentenced him to undergo imprisonment for six months and to pay a fine of Rs.2,000/- with default stipulations. An appeal was carried and the learned Additional Sessions Judge, New Delhi, in Criminal Appeal No.61 of 1999, dismissed the same holding that the offence was made out. As noted above, a revision petition was filed before the High Court which was dismissed summarily.

2. Background facts in a nutshell are as follows:

On 27.11.1984, the Food Inspector purchased a sample of Khoya from

A the appellant. The Public Analyst found that the milk fat of the finished product was 19.07% as against the minimum prescribed standard of 20%. The appellant exercised his right under Section 13(2) of the Act. The appellant faced trial. As noted above, the Metropolitan Magistrate convicted the appellant and sentenced him. The appeal filed before the learned Additional Sessions Judge, New Delhi, was dismissed. A stand was taken before the learned Additional Sessions Judge that in view of several decisions of this Court, there should be commutation of sentence. The learned Additional Sessions Judge held that the commutation of sentence under Section 433 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') was a matter within the discretion of State Government. The appellant filed criminal revision which was dismissed, as noted above.

3. Learned counsel for the appellant submitted that the High Court, by a non-reasoned order, dismissed the revision petition, though in similar cases it had passed orders following the decision of this Court in *N. Sukumaran Nair v. Food Inspector, Mavehkara*, [1997] 9 SCC 101. Learned counsel for the respondent submitted that the exercise of power under Section 433 Cr.P.C. is discretionary and no direction can be given to commute the sentence.

4. Learned counsel for the appellant made a plea for affording the benefit as given by this Court in *N. Sukumaran Nair's* case (supra) and *Santosh Kumar v. Municipal Corporation and Anr.*, [2000] 9 SCC 151. The plea is made on the ground that the occurrence took place in 1984 and the margin of variation is very small.

5. It is pointed out that the appellant has already suffered custody for more than three months. We direct that a sum of Rs.7,500/-, as fine, be deposited within a period of six weeks from today. The appellant shall move the appropriate Government for commutation of the custodial sentence. On the deposit of the above amount being made within the stipulated time and the appropriate application being made the State Government may consider whether commutation can be done in view of the peculiar facts of the case by passing an appropriate order under Clause (d) of Section 433 of the Cr.P.C. In the meantime, the appellant shall remain on bail.

6. With this end result, the appeal stands disposed of.

R.P.

Appeal disposed of.

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