

RADHEY SHYAM AGGARWAL

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v.

STATE N.C.T. DELHI

(Criminal Appeal No.423 of 2002)

FEBRUARY 6, 2009

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**[DR. ARIJIT PASAYAT AND ASOK KUMAR  
GANGULY, JJ.]**

*PREVENTION OF FOOD ADULTERATION ACT, 1954:*

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*S.16-A – Provision for summary trial – Trial Court adopting warrant case procedure – Correctness of – Held: Plea raised for the first time in SLP – No prejudice shown – Hence no violation of requirements of s.16A – However, as the occurrence took place nearly two years back and infractions related to a small quantity, sentence reduced to the period already undergone – Constitution of India, 1950 – Article 136 – New plea.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.423 of 2002.

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From the final Order dated 22.2.2001 of the High Court of Delhi at New Delhi in CrI. Revision No. 77/2001.

S.K. Divakar and S.R. Seita for the Appellant.

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S. Wasim A. Qadri, Sudha Pal and Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.1.** The only point urged in this appeal is that the High Court ought to have held that the provisions of Section 16-A of the Prevention of Food Adulteration Act, 1954 (in short the 'Act') providing for summary trial are mandatory. While in the instant case the trial

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A Court adopted the warrant case procedure.

2. Learned counsel for the respondent, on the other hand, submitted that no prejudice has been shown by the appellant and in any event there is no absolute bar on the Court to adopting warrant procedure in a given case.

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3. Section 16-A of the Act reads as follows:

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“16-A. Power of Court to try cases summarily. – Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of Sec.16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sec. 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

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Provided that In the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year :

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Provided further that when at the commencement of, or in the course of a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.”

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4. From the order of the trial Court it is clear that the case was proceeded in the manner provided for trial of warrant cases and the prosecution was directed to lead pre charge evidence and such evidence was led. At no stage there was any

challenge to the procedure adopted. In fact second proviso to Section 16-A permits such a course to be adopted.

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5. It is the case of the appellant that the Magistrate had not heard the parties and/or recorded an order to the effect that the case was such that sentence of imprisonment for a term exceeding one year may have to be passed.

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6. As noted above, this was not the case of the appellant at any stage and for the first time in the Special Leave Petition such a stand was taken.

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7. Additionally, as rightly contended by learned counsel for the State no prejudice has been shown. In that view of the matter we are not inclined to accept the stand that there was any violation of the requirements of Section 16-A of the Act. However, we find that the occurrence took place nearly two decades back and the infractions related to a small quantity of 'lal mirch'. The sentence imposed is 15 months. It is accepted that the appellant has already suffered custody for more than a year. That being so, in the peculiar circumstances of the case we reduce the sentence to the period already undergone. Bail bonds executed for giving effect to the order for bail dated 11.2.2002 shall stand discharged. With the aforesaid modification of sentence the appeal is disposed of.

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Appeal disposed of.