

(7) The learned counsel for the assessee also relied on a Supreme Court judgment in *Apporva Shantilal Shah v. Commissioner of Income-tax Gujarat-I* (7) and a judgment of the Allahabad High Court in *Commissioner of Income-tax v. Gobind Narain* (8) but we need not discuss these decisions in detail because both of them are distinguishable on facts. In each of these decisions, the HUF consisted of more than one coparcener or male member and as such any observation made herein has no bearing on the present case.

(8) In the result, the decision in *Narain Dass Wadhwa's case* (supra) is overruled and the question referred to us is answered in the affirmative, that is, against the assessee and in favour of the Revenue. No costs.

H.S.B.

FULL BENCH

Before K. S. Tiwana, S. S. Dewan and Pritpal Singh, JJ.

STATE OF HARYANA,—Appellant

versus

YAD RAM,—Respondent

Criminal Appeal No. 383-SB of 1984

October 14, 1986

Prevention of Food Adulteration Act, (XXXVII of 1954)—Sections 7, 16(1)(a) and 16(1)(a)(ii)—Accused found guilty under Section 16(1)(a)(ii) of the Act—Section 16(1)(a) providing for minimum sentence of six months for such offences—Proviso thereof providing for not less than three months sentence for adequate and special reasons—Court—Whether entitled to award a sentence of less than six months under Section 16(1)(a) in a case not covered by the proviso—Principles governing applicability of the proviso—Stated.

Held, that from a reading of the history of the amendments made from time to time in the Prevention of Food Adulteration Act the legislative intent becomes manifest that the legislature has every

(7) (1983) 141 ITR 558.

(8) (1975) 101 ITR 602.

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time gone in for stringent, harsh and strict measures in providing the punishments to the breakers of the law under the Act. In these days of inflation, everyone, including the persons dealing in food articles, is motivated by the profit incentive to indulge in various nefarious activities and anti-social acts. By experience offences injurious to the public health are being identified and stricter and harsher punishments are provided in accordance with the gravity of the situation. It is also to be noticed that the concept of minimum sentence is not new to our legal system. The recent trend in criminal law is in favour of harsh, deterrent as well as for prescription of minimum sentences for offences which are hazardous to the society. Whenever and wherever the legislature, in cases like economic offences and the criminal offences affecting the health of the society, thinks that the sentence has to be harsh so that it pinches the offender and acts as a deterrent than it provides it and any legislative measure for harsh and severe punishment has to be strictly enforced. For the enforcement of a mandate of a statute, leniency on the basis of soft ideas of an officer presiding a court before which a criminal is tried should not have any weight. When the legal provision is in a mandatory form and prescribes the doing of an act in a particular way then it is to be done only in that manner and not in any other way. As such in the case of a conviction of an accused under Section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954, where the minimum sentence has been prescribed, the Court is not entitled to award a sentence of less than the minimum prescribed under the Act.

(Paras 7 and 9)

Held, that in case falling under Section 16(1)(a)(ii) of the Act the applicability of the first part of the proviso to section 16(1) is ruled out. Only the second part of the aforesaid proviso will cover the case in the matter of sentence. On the aforesaid proviso the Court can after giving adequate and special reasons, sentence the accused to a term, which is less than the minimum prescribed in the main section. The word used in the proviso is 'may', which is prefixed to the passing of the sentence of less than the minimum prescribed in this section. The use of the word 'may' does not give discretion to the Court to even dispense with the giving of adequate and special reasons for awarding the punishments provided in the main section. The proviso has to be read with the main provision and both these provisions have to be harmoniously construed. The legislative history of the act would show that by successive amendments the provisions of the Act have been made most rigid and rigorous and as such it is also relevant to see the meaning and role to be played by the word 'may' in the proviso. The word 'may' in this context would mean 'shall' for all practical purposes otherwise it is going to erode the whole exercise the legislature did in making the penal provision to give a stringent effect. The language of the proviso is that reasons have to be adequate and special and the use of conjunction 'and' would mean that the reasons would be adequate as well

as special and both these reasons have to exist. The proviso further mandates that the reasons which are found by the Court as adequate and special have to be reflected from the judgment and the mere mention of these words cannot suffice. Reasons have to be advanced how these are adequate and in what manner they are special to influence the mind of the Court for awarding the penalty below the minimum i.e. six months prescribed under Section 16 of the Act. It is compulsory for the Court to find out these reasons to lean towards the leniency within the limits provided in the statute and unless these reasons are found to exist the proviso to section 16 of the Act does not come into force. It must also be borne in mind that the proviso indicates the minimum punishment provided in it and no Court can even for adequate and special reasons can reduce it further than the one given in the proviso itself.

(Paras 12, 13 and 14.)

State of Punjab vs. Jeet Singh
(1983) (1) C.L.R. 396.

State of Haryana vs. Ishar Dass
1985 P.L.R. 341.

State of Punjab vs. Mohan Lal
1983 (1) Prevention of Food Adulteration Cases, 195.

(Over-ruled)

Appeal from the order of Shri K. K. Doda, Additional Sessions Judge (II), Narnaul, dated 24th March, 1984 modifying that of Shri N. C. Nahata, Sub-Divisional Judicial Magistrate, Mohindergarh, dated 10th November, 1981/12th November, 1981. The Additional Sessions Judge has confirmed the conviction and sentence of fine but reduced the substantive sentence till the rising of the court.

NOTE:—The accused respondent Yad Ram was convicted under Section 7 read with Section 16(1)(a) of the Prevention of Food Adulteration Act and sentenced to R.I. for six months and a fine of Rs. 1,000. In default of payment of fine, further R.I. for four months by the Sub-Divisional Judicial Magistrate, Mohindergarh, but the Additional Sessions Judge, Narnaul, while maintaining his conviction, set aside the substantive sentence of the accused-respondent, confirmed the sentence of fines and sentenced him till the rising of the Court. The State of Haryana has come in appeal in this Hon'ble Court against the reduction of sentence by the Appellate Court and has prayed that the sentence be enhanced in accordance with law.

The case was referred to Full Bench by the Division Bench consisting of Hon'ble Mr. Justice K. S. Tiwana and Hon'ble Mr. Justice

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Pritpal Singh on 30th April, 1986 for deciding an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice K. S. Tiwana, Hon'ble Mr. Justice S. S. Dewan and Hon'ble Mr. Justice Pritpal Singh finally decided the case on 14th October, 1986.

B. S. Pawar, A.A.G. Haryana, for the Appellant.

D. S. Bali, Advocate, for the Respondent.

JUDGMENT

K. S. Tiwana, J.—

(1) Yad Ram was tried by the Sub-Divisional Judicial Magistrate, Mohindergarh, and convicted for committing an offence under section 7 read with section 16(1) (a) of the Prevention of Food Adulteration Act, hereinafter referred as the Act. He was sentenced to undergo rigorous imprisonment for six months and pay a fine of Rs. 1,000. In default of payment of fine he was further sentenced to undergo rigorous imprisonment for four months. Yad Ram filed appeal against the conviction, which was heard by learned Additional Sessions Judge, Narnaul. Before the learned Appellate Court Yad Ram did not contest his conviction under section 7 read with section 16(1) (a) of the Act but prayed for reduction in the substantive sentence only. In support of his prayer he urged that he sold milk only for a few days and was not a regular milk seller. He also urged that he was a first offender and had a large family to support. The lawyer representing Yad Ram in the first Appellate Court made a statement that he had nothing to say on merits of the case and joined his client to urge only for leniency in the punishment. The learned Additional Sessions Judge, Narnaul, affirming the order of conviction of Yad Ram respondent on merits reduced his sentence of imprisonment till the rising of the Court but maintained the sentence of fine with its default clause as was imposed by the trial Court. For the reduction of the sentence below the minimum prescribed for this offence under section 16 of the Act on the respondent, the learned Additional Sessions Judge relied on a Division Bench judgment of this Court reported as *State of Punjab vs. Jeet Singh*, (1).

(1) 1983 Food Adulteration Journal 233=1983(1) Ch. Law Reporter 396.

(2) The State of Haryana has come in appeal to this court for the enhancement of sentence of imprisonment. The appeal at the motion stage was admitted to a Division Bench.

(3) At the time of hearing before Division Bench it was urged that in view of the Full Bench decision of this Court in *The State of Haryana vs. Ishar Dass*, (2) in which it was held that the sentence below the minimum prescribed under section 16 of the Act can be awarded only in the cases covered by the proviso to that section and in no other cases, *Jeet Singh's case* was not a good law and in view of the Full Bench decision it requires to be over-ruled. The Division Bench referring the case to a larger Bench observed:—

“The observations in *Jeet Singh's case* (supra) on the question of sentence are in conflict with the decision of the Full Bench in *Ishar Dass's case* (supra). Sitting in a Division Bench, we, on the basis of the Full Bench in *Ishar Dass's case* (supra) cannot over-rule *Jeet Singh's case* (supra). So long as *Jeet Singh's case* (supra) is not over-ruled, it is likely to create difficulties for the subordinate Courts in the matter of sentence in cases under section 7 read with section 16(1)(a) of the Act.”

With these observations the Division Bench referred the case to the learned Chief Justice for constituting a larger Bench for the purpose indicated. This is how this case has come before us.

(4) Before us on behalf of Yad Ram respondent an effort was made by Shri D. S. Bali to urge that *Jeet Singh's case* was based on a decision of the Supreme Court and for that reason it was correctly decided. The question before us is whether the Court after conviction of the accused under section 7 read with section 16 of the Act can award the sentence lower than the minimum provided in the penal section.

(5) The statute under which this case falls is named as Prevention of Food Adulteration Act, and it was brought on the Statute Book in 1954. The objects of the enactment of this Act need not be emphasised. As adulteration of food is a menace to the public health, the Prevention of Food Adulteration Act has been

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enacted with the aim of eradication of this anti-social evil and for ensuring purity in the articles of food. At the time of the enactment of this Act it was stated:—

“Statements of objects and reasons.—Adulteration of food stuffs is so rampant and the evil has become so widespread and persistent that nothing short of a somewhat drastic remedy provided for in the Bill can hope to change the situation. Only a concerted and determined onslaught on this most anti-social behaviour can hope to bring relief to the nation. All remedies intended to be effective must be simple.”

Section 7 of this Act contains a prohibition to the manufacture for sale, or store, sell or distribute either by anyone himself or by somebody on his behalf of certain type of articles specified in that section. Section 16 is the penal section. After its amendment under section 12 of the Amending Act 34 of 1976, it read as:—

“Subject to the provisions of sub-section (1-A), if any person—

- (a) whether by himself, or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of food—
 - (i) which is adulterated within the meaning of sub-clause (m) of clause (i-a) of Section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;
 - (ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or
- (b) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any adulterant which is not injurious to health; or
- (c) prevents a food inspector from taking a sample as authorised by this Act; or

- (d) prevents a food inspector from exercising any other power conferred on him by or under this Act, or
 - (e) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or
 - (f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or
 - (g) whether by himself or by any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him,
- he shall, in addition to the penalty to which he may be liable under the provisions of Section 6 be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:

Provided that :—

- (i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of Section 2; or
- (ii) if the offence is under sub-clause (ii) of clause (a), but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1-A) of Section 23 or under clause (b) of sub-section (2) of Section 24,

the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees;

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Provided further that if the offence is under sub-clause (ii) of clause (a) and is with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1-A) of section 23 or under clause (b) of sub-section (2) of section 24, the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees."

We may also reproduce section 16(1-A) of the Act, which is referred in one of the provisos of this section :—

"(1-A) If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,—

(i) any article of food which is adulterated within the meaning of any of the sub-clause (e) to (i) (both inclusive) of clause (i-a) of section 2; or

(ii) any adulterant which is injurious to health, he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees:

Provided that if such article of food or adulterant, when consumed by any person is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees."

(6) Section 16 was not in this form in the original Act. Originally it was as under :—

"16. Penalties.—(1) If any person—

(a) whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores,

sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or

- (b) prevents a food inspector from taking a sample as authorised by this Act, or
- (c) prevents a food inspector from exercising any other power conferred on him by or under this Act, or
- (d) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purpose of adulteration, or
- (e) being a person in whose safe custody any article of food has been kept under sub-section (4) of section 10, tampers or in any other manner interferes with such article, or
- (f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory, or by a public analyst or any extract thereof for the purpose of advertising any article of food, or
- (g) whether by himself or by any person on his behalf gives to the purchaser a false warranty in writing in respect of any article of food sold by him,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6 be punishable—

- (i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;
- (ii) for a second offence with imprisonment for a term which may extend to two years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not

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be less than one year and such fine shall not be less than two thousand rupees;

- (iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

- (2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct. The expense of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine."

This provision as it stood in the Original Act was not thought adequate to achieve the purpose of the Act. The leniency in punishment provided in section 16 was seen as one of the causes which hampered the efficacious working of that statute. The Act was amended through Amending Act 49 of 1964. The reasons given for its amendment in 1964 were :—

"The administration of the Prevention of Food Adulteration Act, 1954, during the last about eight years has revealed that the machinery provided by the Act is inadequate and that to cope up with the increasing tendencies to indulge in adulteration, a revision of some of the provisions is necessary. The Central Council of Health at its meeting held in October, 1960, reviewed the position and recommended *inter alia* that the penal provisions of the Act should be made more deterrent."

"It is also considered that the penal provisions of the Act are inadequate and that they should be made more deterrent in order to have an effective check on the evil of adulteration."

After the Amending Act 49 of 1964, section 16 of the Act stood as under :

"16.—*Penalties.*—(1) If any person—

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any articles of food :

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) Authority in the interest of public health;

(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder ; or

(b) prevents a food inspector from taking a sample as authorised by this Act ; or

(c) prevents a food inspector from exercising any other power conferred on him by or under this Act ; or

(d) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him any material which may be employed for the purposes of adulteration; or

(e) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a Public Analyst or any extract thereof for the purpose of advertising any article of food ; or

(f) whether by himself or by any other person on his behalf gives to the vendor a false warranty in writing in respect of any article of food sold by him ;

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he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees :

Provided that :—

- (i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food which is adulterated under sub-clause (1) of clause (i) of section 2 or misbranded under sub-clause (k) of clause (ix) of that section ; or
- (ii) if the offence is under sub-clause (ii) of clause (a), the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.”

Even this amendment brought about by Act 49 of 1964 in the penal provisions of the Act was inadequate to check the menace of adulteration in food articles. No one can shut his eyes to the fact that there had been great decline in the moral standards of the people in the country in general and of the people indulging in some trades like articles of food in particular. We are now only to limit ourselves about the people engaged in the trade of food articles and not the other trades. Adulteration in food, misbranding of the food articles, marketing of substandard and production of these articles is on the increase. Even in 1954, when the Act was first enacted, the Parliament felt concerned with the ever-increasing tendency in adulteration in articles of food by the people indulging in this trade. The Law Commission also shared the concern of the Parliament in the matter of ever increasing tendency of the people engaged in this trade of food articles to adulterate these. The Law Commission in its 47th Report recommended to the Government for the exclusion of the application of the provisions of the Probation of Offenders Act to the cases under the Prevention of Food Adulteration Act. The Law Commission observed :—

“We appreciate that the suggested amendment would be in apparent conflict with current trends in sentencing. But

ultimately, the justification of all sentencing is the protection of society. There are occasions when an offender is so anti-social that his immediate and sometimes prolonged confinement is the best assurance of society's protection. The consideration of rehabilitation has to give way, because of the paramount need for the protection of society. We are, therefore, recommending suitable amendment in all the Acts, to exclude probation in the above cases."

The Supreme Court also expressed itself in favour of the exclusion of the provisions of the Probation of Offenders Act for application to this Act in its judgments reported in *Isher Dass v. The State of Punjab* (3), *Jai Narain v. The Municipal Corporation of Delhi* (4) and *Pyarali K. Tejani v. Mahadeo Ramchandra Dange and others* (5). In spite of the changing concept of penology when efforts are being made to reform the offender and rehabilitate him in society, by extending the benefit of beneficial legislation, the Parliament,—vide Amending Act 34 of 1976 enacted section 20-AA in the Act barring the application of section 360, Criminal Procedure Code, and the provisions of Probation of Offenders Act, 1958. By experience it was again felt that the measures provided in the Act in spite of the amendment in 1964 were not adequate and sufficient. More stringent provision was added in the penal section of the Act. The reasons given for amendment in 1976 in Parliament were as :—

"Adulteration of food articles is rampant in the country and has become a grave menace to the health and well being of the community. It makes a heavy dent in the already low nutritional standards, and the benefits of many, public health programmes on which large sums of money are spent are insidiously undermined. A major offensive against this evil is overdue. Keeping in view the gravity of the problem and the growing danger which it poses to the health of the nation, it has become necessary to amend the Prevention of Food Adulteration Act, 1954, so as to plug loopholes and to provide for more stringent and effective measures with a view to curb this menace."

(3) A.I.R. 1972 S.C. 1295.

(4) A.I.R. 1972 S.C. 2607.

(5) A.I.R. 1974 S.C. 228.

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The amended section with the latest amendments has been quoted in paragraph 5 above.

7. From the history of the amendments made in the Act, the legislative intent becomes manifest that the legislature has every time gone in for stringent, harsh and strict measures in providing the punishments to the breakers of the law under the Act. In these days of inflation, every one, including the persons dealing in food articles, is motivated by the profit incentive to indulge in various nefarious activities and anti-social acts. Every day new techniques of money spinning by questionable means are adopted for marketing and selling to the consumer adulterated, misbranded and spurious food articles. Crime detectors are making efforts to detect adulteration in food, which is increasing alarmingly. By experience offences injurious to the public health are being identified and stricter and harsher punishments are provided in accordance with the gravity of the situation.

8. Section 16 of the Act as it originally stood in the Act did not contain the minimum punishment. The sentence was in the alternative, that is, either imprisonment could be awarded or fine could be imposed only. The repeater of the offence was to get enhanced and minimum sentence. The amendment brought by section 9 of the Act 49 of 1964 brought changes. Change was made in the proviso. The first amendment in 1964 brought four changes in this provision, namely, (i) proviso was made applicable to all foods; (ii) sentence of imprisonment was enhanced to six years; (iii) limit for lower punishment was provided; and (iv) in the proviso no limit for minimum sentence was provided.

The other amendments were that sub-clause (i) of section 16(1)(a),—*vide* amendment in 1964 was split into two parts to include the definitions 'adulterated' and 'misbranded' articles of food. It included adulterated and misbranded food articles. These two items, 'adulterated food' and 'misbranded food' articles are defined in section 2(i) and (ix) of the Act.

The other amendments were that sub-clause (i) of section 16 of the Act. It has completely substituted section 16(1)(a). It has made distinction between persons committing one offence or the other, as is apparent from section 16(1)(a) and section 16(I-A). It has also brought a change in proviso by prescribing minimum sentence of three months and a fine of Rs. 500. Even the sentencing

pattern of section 16(I-A) has been changed in 1976. Prior to that amendment the sentence provided for the offence under section 16(I-A) was six months. The 1976 amendment has raised this sentence to one year. Section 2 also was amended to contain clauses (l) and (m), which are as under :—

“2(ia) Adulterated”—an article of food shall be deemed to be adulterated—

*	*	*	*
*	*	*	*
*	*	*	*

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability which renders it injurious to health ;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health;

Provided that.....

9. The concept of minimum sentence is not new to our legal system, but is very old. Quite a few offences under the Indian Penal Code carry minimum punishments. The recent trend in criminal law is in favour of harsh, deterrent as well as for prescription of minimum punishments for some offences, which are hazardous to the society. The latest in such enactments is the Narcotic Drugs and Psychotropic Substances Act, 1985 providing harsh and minimum sentences for some offences. Although in modern days the programmes of criminal reforms are on the increase and many beneficial legislations are enacted and ways and means are discussed and found out to reform a man treading on the path of crime, yet the law cannot be made lax in every branch of criminal offences. Whenever and wherever the legislature, in cases like economic offences and the criminal offences affecting the health of the society thinks that the sentence has to be harsh so that it pinches the offender and acts as a deterrent, then it provides it. Any legislative measure for harsh and severe punishment has to be

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strictly enforced. For the enforcement of a mandate of a statute, leniency on the basis of soft ideas of an officer presiding a court before which a criminal is tried should not have any weight. When the legal provision is in a mandatory form and prescribes the doing of an act in a particular way; may be by passing a sentence then it has to be done only in that manner and not in any other way. This is how the legislative measures is the matter of visiting the accused convicted under sections 7/16 of the Act with minimum sentences are to be enforced by the courts.

10. In the case in hand the sample was of milk, which has been held to be adulterated by the subordinate courts giving concurrent findings and which fact was not contested by Yad Ram respondent before the first Appellate Court. The question is whether the case falls under section 16(1)(a)(i) or section 16(1)(a)(ii) of the Act. Shri B. S. Pawar, learned Assistant Advocate General, Haryana, has argued that according to the findings the milk sample in the case was unquestionably adulterated. It was not found by the Public Analyst to be injurious to health. Sub-clause (m) of section 2(ia) of the Act prescribes that if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health, such article of food shall be deemed to be 'adulterated'. In this case the deficiency in the milk fat and milk solids not fat as noticed by the Public Analyst show that the sample taken from Yad Ram respondent was below the prescribed standards and was not within the prescribed standards of variability. It does fall within sub-clause (m) of clause (ia) of section 2 of the Act. According to him by virtue of this sub-clause (m), the case in hand falls within section 16(1)(a)(i) of the Act. Any other case which does not fall under section 16(1)(a)(i) of the Act will fall under section 16(1)(a)(ii) of the Act. He argued that the latter clause does not contain any reference to sub-clause (m) of section 2(ia).

11. Shri D. S. Bali, learned counsel for Yad Ram respondent urges that the case falls under section 16(1)(a)(ii) and not under section 16(1)(a)(i) of the Act. He has cited *State of Maharashtra v. Baburao Ravaji Mharulkar and others*, (6) (hereinafter referred as *Baburao case*), wherein the sample taken from the accused of that case was of Kulfi (ice-cream). It was held therein as:—

“Section 2(ia)(1) of the Prevention of Food Adulteration Act, 1954 provides that an article of food shall be deemed to

be adulterated if the quality or purity of the article of food falls below the prescribed standard, which renders it injurious to health. Section 2(ia)(m) provides that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard, but which does not render it injurious to health. In the case before us, there is nothing to show that the low percentage of milk fat renders the ice-cream injurious to health. Rule 5 of the Prevention of Food Adulteration Rules, 1955 provides that standard of quality of the various articles of food specified in Appendix B to these rules are to be as defined in that appendix. Paragraph A. 11.02.08 of Appendix B prescribed a minimum standard of 10 per cent milk fat in the case of ice-cream, kulfi and chocolate ice-cream. There cannot be the least doubt that the ice-cream sold by the first respondent was adulterated within the meaning of section 2(ia)(m) of the Prevention of Food Adulteration Act, 1954. The first and the fourth respondents are, therefore, liable to be convicted under section 16(1)(a)(ii) of the Food Adulteration Act, 1954."

In *Baburao case* (supra) the Supreme Court has held that in spite of the fact that the sample fell under section 2(ia)(m) of the Act, the case was covered by section 16(1)(a)(ii) of the Act. Shri Pawar, learned Assistant Advocate General, Haryana urges that no reasoning has been given in *Baburao case* as to why in spite of the application of section 2(ia)(m) of the Act, which is specifically mentioned in section 16(1)(a)(i) only and not in section 16(1)(a)(ii), the case fell under the latter provision. Though there appears to be some force behind the argument of Shri B. S. Pawar, Assistant Advocate General, Haryana, yet we cannot accept this in view of the decision of the Supreme Court that in spite of the fact that *kulfi* fell within the ambit of section 2(ia)(m) of the Act, the offence still fell within clause 16(1)(a)(ii) of the Act. We feel bound by the observation of the Supreme Court in *Baburao case* to hold that the case against Yad Ram fell within the ambit of section 16(1)(a)(ii) of the Act. The question whether the case in hand falls under section 16(1)(a)(i) or 16(1)(a)(ii) of the Act is only incidental as the main point before us is whether the sentence below the minimum provided by the Act can be awarded to an accused after conviction.

12. After finding that the case falls under section 16(1)(a)(ii) of the Act, the applicability of the first part of proviso to section

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16(1) is ruled out. Only the second part of this proviso will cover the case in the matter of sentence.

13. Under proviso to section 16 of the Act, the Court can, after giving adequate and special reasons, sentence the accused to a term, which is less than the minimum prescribed therein. The language of the proviso is:—

“— — — — the court may, for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees”;

The word used in the proviso is ‘may’, which is prefixed to the passing of the sentence of less than the minimum prescribed in this provision. The use of the word, ‘may’ does not give discretion to the court to even dispense with the giving of adequate and special reasons for awarding the punishment provided in the main section. The relevant provision of section 16 of the Act having a bearing on this aspect of the matter is again reproduced:—

“he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees.”

This sentence refers to an offence covered by any of the clauses (a) to (g) of section 16 of the Act. Proviso has to be read with the main provision. Both these provisions have to be harmoniously construed. We have in the earlier part of this judgment traced the history how these measures of punishment in cases under the Act were made stringent and rigorous. That is also relevant to see the meaning and role to be played by the word, ‘may’ in the proviso. We have no hesitation to say that it too means ‘shall’ for practical purposes; otherwise it is going to erode the whole exercise the legislature did in making the penal provisions to give a stringent effect. The language of the proviso is that reasons have to be adequate and special. It is not that the reasons have to be adequate only. The word used is ‘and’ which is a conjunction. The reasons should be adequate as well as special. Both these reasons have to exist and have to be spelled out from the judgment. Mere compliance of one of these two is not sufficient. In any case special reasons have to

be given for awarding the punishment lesser than the one provided under section 16 of the Act. The proviso further mandates that the reasons which are found by the court as adequate and special have to be reflected from the judgment. Mere mention of these words cannot suffice. Reasons have to be advanced how these are adequate and in what manner they are special to influence the mind of the court for awarding the penalty below the minimum, that is, six months prescribed under section 16 of the Act. It is compulsory for the court to find out these reasons to lean towards the leniency within the limits provided in the statute. Unless these reasons are found to exist the proviso to section 16 of the Act does not come into operation.

14. We know there cannot be any comprehensive definition of 'adequate' and 'special' reasons in the context these words are used in the Act. These can differ from case to case. Adequacy can be judged in the exigencies of the circumstances which may prevail in many cases and be of the same type. Special reasons imply that those have to be special in the circumstances of that case, which is under decision.

15. The language of the proviso to section 16 is unambiguous and clear. It softens the term of punishment if the existence of the reasons given by the court are sufficient to persuade the prudent and reasonable mind of the Judge deciding the case to take a view towards leniency of the punishment but within the frame-work of the proviso. It nowhere indicates that the minimum punishment provided in it can be further scaled down. When the statute has fixed the minimum sentence, no court can even for adequate and special reasons further reduce it than the one given in the Act itself. If such a thing is permitted then the policy of the strict punishment or the concept of minimum punishments, to check the growth of the criminal activities under the Act is likely to be defeated.

16. In the case in hand the Additional Sessions Judge, Narnaul, awarded the punishment, which is far below than even the minimum provided by the proviso to section 16 of the Act. On behalf of the respondent it was sought to be supported with reference to the judgment of the Supreme Court in *Umrao Singh v. State of Haryana*, (7) where the sentence of the accused was reduced to already undergone and fine which was paid was considered sufficient and the sentence was reduced to that level. In *Umrao Singh's case* (supra)

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the Supreme Court observed:—

“After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of section 16(1)(a) (i) and therefore for adequate and special reasons the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court.”

The necessity of giving adequate and special reasons was impressed in this case. The Supreme Court was satisfied with the adequate and special reasons given for reducing the sentence to lesser than the minimum provided by section 16. From the law report it is not known as to what was the quantum of sentence of imprisonment and fine awarded to Umrao Singh. It is also not known as to whether the sentence was lesser than the one provided in the main section or in the proviso. Since there is a reference of adequate and special reasons we have to infer that the sentence in *Umrao Singh's case* (supra) was in consonance with the sentence provided in the proviso. *Umrao Singh's case* (supra), therefore, is not an authority for the proposition that adequate and special reasons are not to be given or the sentence lesser than the provided in proviso to section 16 of the Act can be awarded. A Full Bench of this Court in *The State of Haryana v. Isher Dass* (8) considered this question for the purpose of awarding the sentence, though this question as is referred in this case was not involved in that case. It was held therein:—

“Section 16 provides for the minimum sentence, if an offence under the Act is made out. Court cannot opt to pass lesser sentence by devising reasons, which do not fall within the frame-work of the provisions of Section 16. The policy of the statute is to pass deterrent sentence against the adulterators of food, who are a risk to the public health. With this intent, the legislature barred the application of the provisions of the Probation of Offenders Act and Section 360 of the Code of Criminal Procedure to the cases tried under this Act. In spite of the changing concept of penology, the provisions of the Probation of Offenders Act have been excluded from application to the Act. This has been done and minimum sentence has been provided with an idea to deter the adulterators of food

from playing with the health of the people. Only those accused can be visited with lesser sentence whose cases fall within the purview of the provisos to Section 16 and to others, whose cases do not fall within its ambit, no leniency can be shown."

17. The learned Additional Sessions Judges, Narnaul, relied upon *Jeet Singh's case* (supra). The Division Bench accepting the appeal against acquittal convicted Jeet Singh and sentenced him to pay a fine of Rs. 500/-. In default of payment of fine he was sentenced to undergo rigorous imprisonment for three months. *Umrao Singh's case* (supra) was relied upon by the Division Bench to reduce the sentence of Jeet Singh. We in the preceding paragraph have considered that case and found that *Umrao Singh's case* (supra) does not lay down that in case under section 16 of the Act the sentence can be awarded even below the minimum provided by the proviso to this section.

In another case reported as *State of Punjab v. Mohan Lal* (9), a Division Bench of this court after setting aside the acquittal for an offence under section 7 read with section 16 of the act convicted Mohan Lal and considered the sentence which he had already undergone and payment of Rs. 500/- as fine sufficient to meet the ends of justice from the record of *Mohan Lal's case*, as available in this court, we find that the sentence which he had undergone was much below the minimum provided in the proviso to section 16 of the Act.

A Single Judge of this court in *Daulat Ram v. The State of Haryana* (10), reduced the sentence of imprisonment to one month and a fine of Rs. 1,000/-.

In another case a learned Single Judge of this Court in *Ram Kumar v. The State of Haryana* (11), reduced the sentence of imprisonment of the accused to two months' rigorous imprisonment, which Ram Kumar appellant had already undergone and enhanced the sentence of fine to Rs. 2,000/-.

There are various other Single Bench decisions of this court upholding the conviction of the accused under section 7/16 of the Act and reducing the sentence to less than the one even provided under the proviso to Section 16. We need not examine the reasoning advanced by the Division Benches and Single Benches of this

(9) 1983 (1) Prevention of Food Adulteration cases, 195.

(10) 1986 (1) F.A.C. 46.

(11) 1986 (1) F.A.C. 69.

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Court as to whether those were adequate and special, but one thing which is certain is that those cases noticed by us in this paragraph ignored the provisions of the statute by awarding the sentence under section 16 of the Act and its proviso. *Jeet Singh's case*, *Mohan Lal's case*, *Daulat Ram's case* and *Ram Kumar's case* being in conflict with the provision of the Act and the decision of *Ishar Dass's case* of the Full Bench are, therefore, overruled. Other Division Bench and Single Bench cases, which are not specifically referred in order to avoid the volume of the judgment or were not cited before us and which express the same view as in *Jeet Singh's case* are also to be treated to be over-ruled.

18. Now coming to the case in hand whether the reasons put forward by Yad Ram for asking the sentence lesser than the minimum provided under section 16 of the Act are adequate and special, we find that these do not satisfy the criteria. First offence does not mitigate the offence. We do not know how many times before the detection of the case Yad Ram had been selling adulterated milk though he says that he indulged in this business only for a few days. It is hardly an adequate ground to invoke the proviso to section 16. Similarly, it is no ground for leniency if the accused has large family to support or has abandoned the business of selling milk. Economic stringency of a person does not entitle him to play with the health of other people. At the cost of the health of the general public adulterators cannot be encouraged to rear their own families or provide them with comfortable living. Giving up of the business of selling milk does not condone the offence committed under the Act by an accused. These are not adequate grounds nor is anything special in these. The learned Additional Sessions Judge erred in law to let Yad Ram off with too lenient a sentence, towards which law looks with contempt. He had no power under the law to award any punishment lesser than the minimum provided under section 16 of the Act. Even if the proviso had applied, though we have held that it does not because of the lack of adequate and special reason, the sentence of less than three months and Rs. 500/- as fine could not be awarded. For these reasons the appeal is accepted and the order of sentence as indicated above is set aside.

19. We, therefore, sentence Yad Ram respondent to undergo rigorous imprisonment for six months and pay a fine of Rs. 1,000/- for the offences for which he has been convicted. In default of payment of fine he shall further undergo rigorous imprisonment for two months.

H.S.B.