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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

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CRIMINAL REVISION (CRLR) No. 187 of 1995

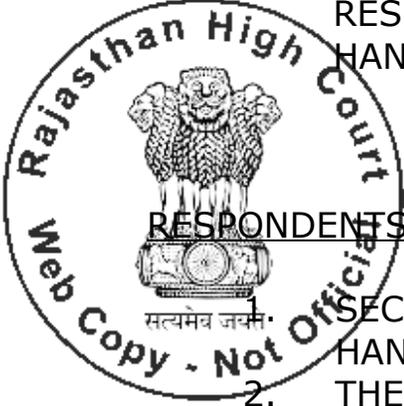
PETITIONER:

RAJENDRA KUMAR SON OF SHRI NAVRATAN MAL JI,  
BY CASTE KOTHARI, AGED ABOUT 50 YEARS,  
RESIDENT HANUMANGARH TOWN, DISTRICT  
HANUMANGARH.

VERSUS

RESPONDENTS:

1. SECRETARY, KRISHI UPAJ MANDI SAMITI,  
HANUMANGARH JUNCTION, HANUMANGARH.  
2. THE STATE OF RAJASTHAN



Date of Judgment : 1.9.2016

HON'BLE MR. GOVERDHAN BARDHAR,J.

MR. SHALENDRA KALA, for the Appellant / Petitioner

MR. LR UPADHYAYA, PP, for the Respondent

MR. VIPUL DHARNIA on behalf of MR. RAVI BHANSALI

JUDGMENT

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This criminal revision petition has been filed under Section 397/401 Cr.P.C. against the judgment and order dated 02.06.1995 passed by District & Sessions Judge, Hanumangarh (for short "the appellate court") in Criminal Appeal No.28/94 (34/88) whereby the learned appellate Court dismissed the appeal filed by the accused-petitioner and upheld the conviction and sentence of the accused-petitioner recorded by the learned Judicial Magistrate, First Class No.1, Hanumangarh (for short "the trial court") vide judgment and order 04.07.1988 passed in

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Criminal Case No.324/79. By the said judgment, the learned trial Court convicted the accused-petitioner for offence under Section 28(2) of Rajasthan Krishi Upaj Vipnan Act, 1961 (hereinafter "the Act of 1961") and awarded sentence of one month simple imprisonment with fine of Rs.200/- and in default of payment of fine, further ordered to undergo 15 days additional simple imprisonment. The trial court further directed the accused-petitioner to pay outstanding market fee of Rs.4897-76/- to the complainant—Krishi Upaj Mandi Samiti Hanumangarh. The trial court further imposed late fee of Rs.49 per day on the aforesaid outstanding market fee payable from the date when the said amount became due till the filing of the complaint.



The facts of the case are that the complainant—Secretary, Krishi Upaj Mandi Samiti, Hanumangarh submitted a written complaint before the Court against the accused-petitioner and two other accused under Section 28(2) of the Act of 1961 on 03.08.1979 alleging that between 28.11.1977 to 29.01.1979 they sold rice to various persons and firms. Upon the said sale, market fee at the rate of 1% was become due upon the accused-persons but despite notice the said market fee was not paid by them.

On the said complaint, the case was registered and the accused-persons were summoned. Thereafter, the learned trial court framed charge against accused-persons for offence under Section 28(2) the Act of 1961, they pleaded not guilty and claimed trial.

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At the trial, the prosecution examined one witness in support of its case. In defence, one witness was examined and 99 documents were got exhibited. Thereafter the statements of the accused-persons were recorded under section 313 Cr.P.C.

At the conclusion of the trial, the learned trial Court vide judgment and order dated 04.07.1988 convicted and sentenced the accused-petitioners for as aforesaid.

Being aggrieved by their conviction and sentence, the accused-persons, including the petitioner, preferred appeal before the learned District & Sessions Judge, Hanumangarh, who by his judgment dated 02.06.1995 acquitted two accused-persons but upheld the conviction and sentence of the accused-petitioner recorded by the learned trial Court, as aforesaid. Hence, this revision.

Mr. Shalendra Kala, appearing for the accused-petitioner has submitted that judgments passed by the courts below are incorrect, improper and illegal and therefore the same deserve to be quashed and set aside. It is further submitted that the learned courts below did not consider the evidence of the accused-petitioner while passing the impugned judgments. Further the appellate court has acquitted two other accused but convicted the accused-petitioner which is prima facie against the law. The petitioner is not liable to pay mandi fee on behalf of the firm as he was merely an agent and not a Trader. Merely on the basis of the statement of Prithvi Ram (PW-1) that the petitioner was not partner of the firm but he was its authorized dealer, the



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petitioner cannot be held guilty of offence under Section 28(2) of the Act of 1961. The learned counsel for the accused-petitioner has therefore prayed for acquittal of the accused-petitioner for the aforesaid offence. In the alternative, he has submitted that considering the facts and circumstances of the case, the sentence

awarded to the accused-petitioner be reduced to the period already undergone by him and further submitted that Section 28 (2) of the Act of 1961 does not provide imposition of late fee.

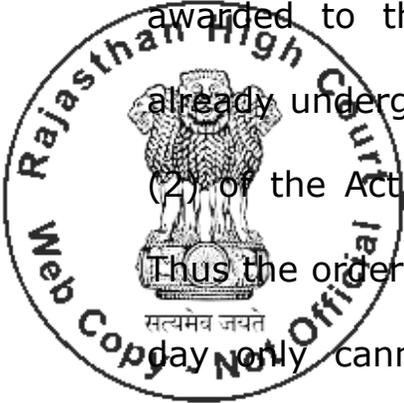
Thus the order of imposition of late fee to the tune of Rs.49/- per day only cannot be maintained. To buttress this contention,

counsel has placed reliance upon the judgment of this Court passed in the case of Devkinandan Vs. Krishi Upaj Mandi Samiti & Anr., SB Criminal Revision Petition No.1053/2009, decided on 16.01.2013.

On the other hand, counsel for the respondent-complainant and the learned Public Prosecutor have opposed the submissions made by the learned counsel for the accused-petitioner. They submitted that neither there is any occasion to interfere with the concurrent findings and the sentence awarded to the accused petitioner by the learned Courts below nor any compassion or sympathy is called for in the said case.

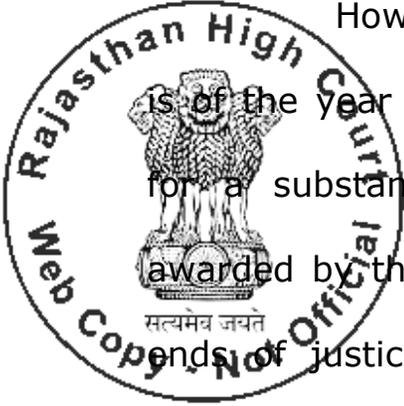
I have heard the counsel for the parties and perused the judgments of the courts below as also the evidence on record.

In view of the over all facts and circumstances of the case, this Court is of the view that the courts below have appreciated the evidence which came before them in proper and correct



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perspective and there is no reason to interfere with the said findings of Courts below and set aside the conviction recorded by the learned Courts below. The conviction of the accused-petitioner recorded by the trial court and affirmed by the appellate court below is confirmed and upheld.



However, taking into account the fact that the incident is of the year 1979 and the petitioner had remained in custody for a substantial period, looking to the period of sentence awarded by the trial court, this Court is of the opinion that the ends of justice would be met if the substantive sentence of imprisonment awarded by the trial court and affirmed by the appellate court is reduced to the period of imprisonment already undergone by the accused-petitioner.

In the result, the revision is partly allowed. While maintaining the conviction of accused-petitioner for offence under Section 28(2) of the Act of 1961, his sentence is reduced to the period already undergone by him. However, the fine imposed by the learned court below shall stand increased to Rs. 1,000/-, upon same condition imposed by the learned trial court in case of default of payment of fine. Vide impugned judgment the courts below have imposed late fee of Rs.49 per day. In the case of Devkinandan (Supra) it has been held that Section 28(2) of the Act of 1961 does not provide imposition of late fee and thus order of imposition of late fee cannot be maintained. Hence the order of imposition of late fee is hereby set aside. The petitioner is directed to pay a sum of Rs.10,000/- towards cost of

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prosecution. The petitioner is directed to deposit the aforesaid amount of fine and cost of prosecution within a period of three months from today and on deposition of the amount towards cost of prosecution, the Krishi Upaj Mandi Samiti, Hanumangarh shall be entitled to receive the same.

( GOVERDHAN BARDHAR ),J.

