

(1964) 08 AHC CK 0005
In the Allahabad High Court
Case No : Criminal Revision No. 1177 of 1963

Badshahmal

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 21-08-1964

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)
Prevention of Food Adulteration Rules, 1955 — Rule 44, 5

Citation : AIR 1965 All 486 : (1965) CriLJ 451

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : P.N. Tewari, for the Appellant; A.G.A, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—The Applicant has been convicted u/s 16(1)(a) of the Prevention of Food Adulteration Act and has been sentenced to a fine of Rs. 900/-

2. The applicant was selling aerated water named Vimto. The Public Analyst found that this stated water contained Saccharin though the exact quantity present was not determined. The applicant has been convicted mainly on the ground that addition of Saccharin to the aerated water was specifically "prohibited under the Act, and as such the aerated water was adulterated.

3. Two provisions of the Prevention of Food Adulteration Act are relevant to decide the controversy raised in this revision. Section 16(1)(a) of the Act, under which the applicant has been convicted, provides that if any person sells "any article of food" in contravention of any of the provisions of this Act" or any rule made thereunder, he shall be punished as prescribed by that section. Since the applicant has been convicted for selling aerated water called Vimto it is obvious that this aerated water is an "article of food" within meaning of the Act.

4. The allegation is that the applicant has contravened the provisions of Para. No. A.01.01 of Appendix B of the Rules. Rule 5 states that the standards of quality of

the various articles of food specified in Appendix B to these rules are as defined in that appendix. Paragraph A.01.01 of Appendix B runs as follows :--

""A.01.01 Aerated water, other than soda water, means potable water sweetened with sugar impregnated with carbon dioxide or oxygen or with both, under pressure, with or without admixture of salts of sodium, magnesium or calcium, single or in combination, with or without Citric Acid (and/or phosphoric acid) and of the permitted flavouring and colouring substances, if any and shall not contain tartaric acid or other mineral acid or any lead or other poisonous metal, or any other added substance.

Aerated water shall be deemed to be below the standard of purity if it is manufactured from water which is unfit for drinking purposes or if ice manufactured from such water is inserted in it."

Under this provision the prohibition is that the aerated water shall not contain tartaric acid or other mineral acid or any lead or other poisonous metal or any other added substance. The question is whether the prohibition contained in the phrase "shall not contain any other added substance" means and includes addition of saccharin. This provision, as it stands, would normally cover the addition of saccharin also.

5. Part VIII of the Rules is headed "prohibition and regulating of sales". It consists of Rule 44 to Rule 48-A. Rule 44 is relevant for our purposes. Rule 44 says :--

"..... no person shall either by himself or by any servant or agent sell-

(a)

(b).....

(c)

(d).....

(e)

(f)

(g) Any article of food which contains any artificial sweetener except saccharin, or in the preparation of which any such artificial sweetener has been used,

(h)

(i)_....."

6. Here the use of saccharin in any article of food is permitted. Admittedly aerated water is also an article of food.

7. We are thus faced with the situation that Rule 44 (g) permits the use of saccharin in aerated water whereas Para. A.01.01 of Appendix B of Rules, while

defining the standard of purity of aerated water seems to prohibit the use of saccharin. The object of Para. A.01.01 is to define the standards of purity of aerated water. It does not specifically deal with the question of prohibition of sales of articles of food. That is dealt with by Rule 44. An article of food, which does not come up to the standard prescribed by Para, A. 01.01, would by virtue of Rule 5, be said to be below the standard prescribed, but in so far as the deviation from the prescribed standard is permitted by Rule 44 the deviation will in my opinion, be not penal.

8. The two provisions of the Rule should be read in harmony with each other. It is possible to construe Rule 44 and Para A.01,01 of Appendix B without one conflicting with the other. So far as contravention of the provisions of the Act or the rules so as to create an offence u/s 16(1)(a) of the Act is concerned Rule 44 is a more material provision. It prohibits sale of the categories of articles mentioned in it but it makes an exemption in the case of saccharin. Paragraph A.01.01 directs that the certain mentioned acids, lead or other poisonous metal or any other added substance shall not be added to aerated water. The phrase "any other added substance" should be construed to mean a substance which has not been permitted by any other part of the Act or the Rules. Saccharin has been permitted by Rule 44. Its use should, therefore, not have the effect of bringing about a contravention of para. A. 01.01.

9. Thus read, there is, in the instant case, no contravention of any provision of the Act or any Rule made thereunder.

10. In the result the revision succeeds. The conviction and sentence of the applicant are set aside. The fine, if realised, shall be refunded to the applicant.