

**(1969) 11 GUJ CK 0001**  
**In the Gujarat High Court**

Chunilal Motiram Tamakuwala

APPELLANT

Vs

M.B. Shelat and Another

RESPONDENT

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**Date of Decision :** 13-11-1969

**Acts Referred:**

Prevention of Food Adulteration Act, 1954 — Section 20, 20  
Prevention of Food Adulteration Rules, 1955 — Rule 45

**Citation :** (1971) 12 GLR 213

**Hon'ble Judges :** S.N. Patel, J;A.D. Desai, J

**Bench :** Division Bench

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## Judgement

A.D. Desai, J.—These two criminal revision applications raise the same questions for our determination. The facts pertaining to these two applications are similar and they were argued together. Hence we shall dispose of them by this common judgment.

2. In Criminal Revision Application No. 293 of 1969, the facts are that the Food Inspector of Surat Municipal Corporation visited the shop of the petitioner and seized bottles containing material described as "Kashmir Madhu". The seizure of the bottles was made in the presence of two panchas. The seizure was effected because according to the Food Inspector the petitioner was selling the bottles as "honey" though in fact the bottles did not contain "honey". The petitioner was thus selling the bottles in contravention of Rule 45 of the Rules made under the Prevention of Food Adulteration Act. The Food Inspector then filed an application No. 1 of 1968 in the Court of the Judicial Magistrate, First Class, (Municipality), Surat producing the bottles which he had seized and requesting the Court to take proper action in respect of the said bottles. The learned Magistrate then issued a notice to the petitioner. The petitioner filed his written statement admitting that the bottles were seized by the Food Inspector from his shop. The petitioner contended that the bottles did not contain honey. The bottles seized did not fall within the definition of the word "food" as denned in the Prevention of Food Adulteration Act. The bottles seized contained Ayurvedic medicine and, there fore the contents thereof were not "honey" but were drug.

3. In Criminal Revision Application No. 294 of 1969, the Food Inspector seized bottles labelled as "Kashmir Madhu." The Food Inspector took possession of one of the bottles and the rest were allowed to remain with the petitioner No. 2 after a bond was taken from him. The Food Inspector thereafter filed an application No. 2 of 1968 in the Court of the Judicial Magistrate, First Class (Municipality), Surat alleging that he had seized the bottles labelled "Kashmir Madhu" from the shop of the petitioner No. 2". The bottles were sold as honey though in fact they did not contain honey. The bottles were seized by the Food Inspector in presence of the panchas. The Food Inspector requested the Court to pass proper orders with respect to the articles he had seized. The notice was served on the petitioner No. 1, who was the proprietor of Comet Fruits and Chemical Industries and the petitioner No. 2 from whose shop the bottles were seized. Both the petitioners filed their written statements contending that the bottles did not contain honey and that it contained Ayurvedic medicine and, therefore, the contents of the bottles were not the article of "food" as contemplated by the definition of the word "food" given in the Prevention of Food Adulteration Act. The learned Magistrate on the applications of the Food Inspectors ordered that the sample produced before the Court be sent for analysis to the Public Analyst.

4. In both the cases the Public Analyst reported that the samples were artificially prepared product containing dyes, sweetening agent, saccharin and gum. According to the report of the Public Analyst the sample did not conform to the standard fixed under the Food Adulteration Act for honey and were adulterated. The learned Magistrate relied upon the report of the Public Analyst and ordered that the bottles which were seized be destroyed as the product contained in the bottles was adulterated. He also ordered petitioner No. 2 to produce the bottles in his possession in the Court and the contents thereof be destroyed. Being aggrieved by the said judgments and orders passed by the learned Magistrate the petitioners filed separate Criminal Revision Applications in the Court of the Sessions Judge at Surat. The revision applications were heard by the Additional Sessions Judge, Surat who dismissed them. The petitioners have filed these revision applications challenging the orders passed by the learned Magistrate and the learned Additional Sessions Judge.

5. It was contended by Mr. Adhyaru appearing on behalf of the petitioner that the applications presented by the Food Inspectors to the learned Magistrate seeking appropriate orders in respect of the articles seized from the petitioners, were not maintainable in view of the provisions of Section 20 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) as no written consent of the appropriate authority was obtained prior to the institution of the proceedings as required by the said provisions. The argument was that the filing of the applications seeking appropriate orders in respect of the articles seized amounted to a prosecution for an offence under the Act and, therefore, were not maintainable unless previous written consent was obtained from the appropriate authority. Section 20 of the Act provides that no prosecution for an offence under this Act shall be instituted except by, or with the written consent of the authority

mentioned therein. It is necessary to refer to the provisions of the Act in order to understand this argument advanced at the bar. The Act, was enacted by the Legislature to make provisions for the prevention of adulteration of food. Section 5 of the Act prohibits import of certain articles of food. Section 7 prohibits manufacture, sale etc. of certain articles of food. Section 16 of the Act provides penalties for the contravention of the provisions of the Act including Sections 5 and 7. Sections 8 to 13 are contained in the Chapter, the heading of which is "Analysis of food." Section 8 relates to the appointment of the Public Analyst. Section 9 refers to the appointment of Food Inspectors. Section 10 defines the power of the Food Inspectors. Sub-section (1) of Section 10 provides that the Food Inspector shall have power to take samples of any article of food from any person selling such articles or any person who in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee or a consignee after delivery of any such article to him. The Sub-section further provides for sending of the sample for analysis to the Public Analyst. Sub-Section (2) of Section 10 empowers the Food Inspector to enter and inspect any place where any article of food is manufactured or stored or exposed for sale and take samples of such articles of food for analysis. Sub-section (3) of Section 10 of the Act provides for the payment of the value of sample taken under Sub-section (2). Sub-Section (4) of Section 10 provides that if any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with thereafter as may be provided. There is proviso to this Sub-section which provides that where the Food Inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Inspector deems fit and the vendor shall execute the bond accordingly. Sub-section (5) of Section 10 empowers the Food Inspector to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food is kept for sale. Sub-section (7) of Section 10 provides that where the Food Inspector takes any action under Clause (a) of Sub-section (1), Sub-section (2), Sub-section (4) or Sub-Section (6), he shall call one or more persons to be present at the time when such action is taken and take his or their signatures. It is not necessary to refer to other sub-sections of Section 10 of the Act. Section 11 of the Act provides the procedure to be followed by the Food Inspectors. Sub-section (4) and Sub-section (5) of the sec, 11 are material. Sub-section (4) of the section provides that any article of food seized under Sub-section (4) of Section 10, shall thereafter be produced before a Magistrate as soon as possible. There are two provisos to this sub-section but it is not necessary to reproduce them. Sub-section (5) of Section 11 provides that if it appears to the Magistrate on taking such evidence as he may deem necessary that the article of food produced before him under Sub-Section (4) is adulterated, he may order it (a) to be forfeited to the local authority, or (b) to be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food, or (c) to be so disposed of as to

prevent its being again exposed for sale or used for food under its deceptive name, or (d) to be returned back to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner. Section 12 of the Act provides that nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a Food Inspector from having such article analyzed by the Public Analyst. Section 13 of the Act provides for the report of the Public Analyst. A resume of the aforesaid provisions of the Act indicates that the Act prohibits selling, storing, etc. of certain articles of food and if a person contravenes any of these provisions then he is liable to a punishment u/s 16 of the Act. In short, the provisions of the Act make certain acts or omissions penal, that, is they create and define offences and provide for punishment thereof. Sub-section (4) and Sub-section (7) of Section 10 of the Act provide for seizure of an article which appears to Food Inspector to be adulterated or misbranded. Under the provisions of Sub-Section (4) of Section 11 of the Act the Food Inspector has to produce before a Magistrate as soon as possible the articles of food seized by him under the provisions of Sub-Sections (4) and (7) of Section 10 of the Act. Under the provisions of Sub-section (5) of Section 11 of the Act the Court after taking such evidence as it deems necessary may pass an order forfeiting or destroying or for the disposal of the articles seized by the Food Inspector. The provisions of Sub-section (4) and (7) of Section 10 and Sub-section (4) and (5) of Section 11 of the Act indicate that they are preventive in nature. It is in light of these provisions of the Act that we have to read Section 20 of the Act. As already discussed the provisions of the Act create new offences and also in the interest of public health make provisions for prevention of adulteration of food articles. The provisions of Sub-section (4) and (7) of Section 10 and Sub-section (4) and (5) of Section 11 of the Act are preventive in nature and do not create any offence. In the instant cases the Food Inspectors made applications seeking appropriate orders from the learned Magistrate in respect of the goods which they had seized from the petitioners. These applications filed by the Food Inspectors did not relate to a prosecution for an offence but were filed with a view to take preventive action. It was argued that these application filed by the Food Inspectors to obtain appropriate orders from the learned Magistrate were applications for prosecution in respect of the act or omission made punishable under the provisions of the Act and, therefore, required a previous written consent of the appropriate authority. Reliance was placed on Sub-clause (38) of Clause 3 of the General Clauses Act which defines "offence" as any act or omission made punishable by any law for the time being in force. As already indicated the provisions contained in Sub-section (4) and (7) of Section 10 and Sub-section (4) and (5) of Section 11 of the Act are purely preventive in nature and create no offence. Hence the applications made by the Food Inspectors seeking appropriate orders in respect of the articles seized by them cannot amount to a prosecution for an offence and no previous written consent is necessary under the provisions of Section 20 of the Act. Reliance was placed on the decision in *Abdoola Haroon and Co. Vs. Corporation of Calcutta*, , but the said decision cannot be of any assistance to decide the question at issue

before us as it only decided that the order for destruction of the seized articles was judicial and administrative.

6. It was next contended that Sub-section (7) of Section 10 provides as to how the articles are to be seized by the Food Inspector. As provided by the said Sub-section the Food Inspector is required to effect seizure in presence of one or more persons and of taking his or their signatures. It was argued that the provisions of Sub-section (7) of Section 10 are mandatory and were enacted to avoid tampering with the articles seized. It was further argued that in the present case there was no evidence to prove that the articles were seized in the presence of the panchas, or that the signatures of the panchas were taken as required by the provisions of Sub-Section (7) of Section 10 of the Act. Neither the Food Inspectors nor any of the panchas had been examined to prove that the seizure was made as required by the provisions of law. The consequence was that there was no evidence to prove the identity of the articles seized and which were produced before the Court or sent to the Public Analyst. It is to be noted that the Food Inspectors in their applications filed in the Court for obtaining proper orders stated that the bottles were seized by each of them in the presence of panchas. The panchnamas which were drawn by the Food Inspectors at the time of the search were produced with the applications. On the application of the Food Inspector in Criminal Revision Case No. 293 of 1969 the Court passed the following order:

Read the letter of intimation and the panchnama produced. The sealed packet produced by the applicant Food Inspector be kept in Court. Notice to the vendor of the said packet material. Fixed for further hearing. Sealed packet be kept in Court.

Similar order was also passed on the application of the Food Inspector in Criminal Revision Application No. 294 of 1969. In pursuance of these orders, notices were issued to the petitioners. It was mentioned in the notices that the articles were seized in the presence of panchas and the petitioners were called upon to explain the allegations made by the Food Inspectors in their applications. The petitioners after receipt of the notices filed their written statements. It is obvious from the written statements that the petitioners did not dispute that the seizure was not according to law or that the articles brought in the Court or sent to the Public Analyst were not those which were seized from the petitioners. The petitioners only contended that the articles seized from and brought before the Court were not articles of "food" as defined in the Act. During the inquiry before the learned Magistrate no such point was raised by the petitioners. Even in the revision applications filed in the Sessions Court no such point was argued. It was for the first time that such a contention is raised in this Court. The contention thus raised refers to a question of fact in respect of which no dispute was raised in the lower Courts. The provisions of Sub-sections (4) and (7) of Section 10 and Sub-section (4) and (5) of Section 11 of the Act are preventive in nature and the Court only holds an inquiry in order to decide what appropriate orders should be

passed in respect of the goods seized and produced in the Court. The proceedings under the said provisions are in the nature of an inquiry and not a trial of a criminal case. It was, therefore, open to the learned Magistrate to rely on the facts admitted by the petitioners as well as on the panchnamas produced by the Food Inspectors along with their applications. The learned Magistrate in these cases relied upon the panchnamas and the admissions of the petitioners in the written statements and proceeded with the inquiry on the basis that there was no dispute relating to the legality of the seizure or the identity of the articles, seized and produced before the Court or sent to the Public Analyst. For the aforesaid reasons it is not now open to Mr. Adhyaru to contend that there was no evidence prove that the articles were not seized according to law or to raise any question about the identity of the articles.

7. It was next argued that the learned Magistrate had no authority to send the articles to the Public Analyst for analysis. Sub-section (5) of Section 11 of the Act provides that if it appears to the Magistrate on taking such evidence as he may deem necessary that the article of food produced before him under Sub-Section (4) of Section 10 of the Act is adulterated he may pass appropriate order as stated in the sub-section. The provisions empower the Court to take evidence as the Court may deem necessary. In view of this specific provision, Mr. Adhyaru did not press his argument any further. The aforesaid provision clearly empowers the Magistrate to take such evidence as he may deem necessary and this would include the power or authority of the Magistrate to send the sample if, he deems necessary, to the Public Analyst for analysis,

8. It was further contended that the articles seized were not "food" as defined by Clause (1) of Sub-section (5) of Section 2 of the Act. "Food" as defined by the said clause means any article used as food or drink for human consumption other than drug and water and includes (a) any article which ordinarily enters into, or is used in the composition of human food, and (b) and flavoring matter or condiments. The contention of Mr. Adhyaru was that the articles seized were not "honey" but were "Ayurvedic Medicine" having trade name "Kashmir Madhu". Now there cannot be any dispute that "honey" is an article of food as defined in the Act. The label on the bottle seized indicates that at the top of the label the word "registered" is used in capital letters. Below this word there is the word "comment". Below the word "comment there is a stripe of red colour running across the label from one end to the other and the words in capital "Kashmir Madhu" are written. Below these the words "Kashmir Madhu" in Devnagri script are written. Below these words in Devnagari script, is mentioned the weight of the contents of the bottle. On one side of the weight is written the word "Ayurvedic" and on the other side the word "Aushadhi" is written. The words "Ayurvedic" and "Medicine" are also written in small types on either side of Devnagari script. On the; label it is written in small types as under: "Madhu is an ideal Ayurvedic Medicine and Ayurvedic Solvent Medium for Administration of Ayurvedic System of Medicine". Below this writing is mentioned the name of the manufacturer. It must be mentioned that the words "Kashmir Madhu" on the

label are very prominent. The word "Madhu" means honey. No explanation is given as to why word "Kashmir" is written but it is probable that the word is used to convey that the honey contained in the bottle was just like honey available from Kashmir. The expression, "Madhu is ideal Ayurvedic medicine and Ayurvedic solvent medium for administration of Ayurvedic system of medicine" indicates only the general use of honey. The expression does not refer to the words "Kashmir Madhu" but to "Madhu" generally. It is not written on the label that the contents of the bottles were meant only for the use in the Ayurvedic medicine. The words "Ayurvedic Medicine" convey the idea that the contents of the bottle are fit for use in Ayurvedic system of medicine. Only pure honey is used in such system of medicine. The label read as a whole creates an impression that the articles contain such pure honey that it can be used in Ayurvedic Medicine or as a solvent medium thereof. Rule 45 of the Prevention of Food Adulteration Rules provides that no person shall use the word honey or any word, mark, illustration, or device that suggests honey on the label or any package of, or in any advertisement for, any food that resembles honey but is not pure honey. There is no dispute that in the instant cases the reports of the Public Analyst clearly prove that the contents of the bottles seized and brought before the Court contained dye, a sweetening agent saccharin and gum. According to the reports of the Public Analyst, the contents of the seized bottles were not honey. The attempt of the petitioners was to sell the contents of the bottles as honey even though the contents of the bottles in fact were not honey. On the basis of this report of the Public Analyst, the learned Magistrate came to the conclusion that the articles seized were adulterated. It cannot be said that the said conclusion of the learned Magistrate is erroneous in law or fact. The aforesaid conclusion of the learned Magistrate is justified by the evidence on record and we do not see any reason to interfere with the said conclusion or the orders passed by the learned Magistrate or the Additional Sessions Judge.

The result is that the rule issued in each of these revision application is discharged.