

(1999) 07 DEL CK 0122

In the Delhi High Court

Case No : Criminal Misc. (M) No. 2841 of 1997

Ishwar Chand Jain

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16, 7
Prevention of Food Adulteration Rules, 1955 — Rule 47

Citation : (1999) 80 DLT 619

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : O.P. Soni and Neeta Thakur, for the Appellant; Neelam Grover, for the Respondent

Final Decision : Allowed

Judgement

M.S.A. Siddiqui, J.—The petitioner by way of this petition u/s 482, Cr.P.C. is seeking to set aside the order dated 6.9.1997 passed by the Additional Sessions Judge, New Delhi in Cr. Rev. No. 20/1997 and is also seeking for quashing the proceedings before the Metropolitan Magistrate, New Delhi.

2. The respondent has filed a complaint against the petitioner under Sections 7/16 of the Prevention of Food Adulteration Act. The subject matter of the prosecution is a seizure of sample of special khas SUPARI on 13.6.1991 by the Food Inspector. The sample on being examined by the Public Analyst was found to contain saccharin to the extent of 3506 P.P.M., which is vocative of Rule 47. During pendency of the criminal prosecution, Rule 47 was amended and the permissible limit of saccharin has been increased to 4000 P.P.M. as it has been found not to be harmful for human consumption.

3. Learned Counsel for the petitioner contended that since the Rule 47 has been amended raising the permissible limit of saccharin to 4000 P.P.M. and the violation is only a technical violation, the criminal proceedings pending on the file

of the Metropolitan Magistrate should be quashed. Reliance has been placed on the judgment of the Apex Court in *Sri Krishan Gopal Sharma and Anr. v. Government of N.C.T. of Delhi* J.T. 1996 (5) 102 in support of the said contention. Paras 13, 14 and 15 of the said judgment are relevant for the purpose of the present petition and they are extracted and reproduced hereunder :

"13. In our view, at the relevant time, saccharin content in Pan Masala and Mouth Freshener to the extent of 2000 and 2450 ppm as found by the Analyst was not permissible under the Prevention of Food Adulteration Rules. We have indicated that such rule was valid and operative at the relevant time. Hence, there had been violation of the Food Adulteration Act and the Rules framed there under in selling Pan Masala and Mouth Freshener with saccharin content to the extent of 2000 and 2450 ppm. Hence, the complaints made by the Health Department of Delhi Administration and initiation of criminal cases against the accused cannot be held to be without justification. It cannot also be contended that on the face of the complaint, no offence was *prima facie* committed. Hence, the impugned decision of the High Court in dismissing the applications u/s 482, Cr.P.C. cannot be held to be unjustified."

"14. It, however, appears to us that even if the complaint is accepted to be correct, the only offence committed by the appellants amounts to technical violation of the mandate of Rule 47 for adding saccharin to the extent of 2000 and 2450 ppm in the Chutki Pan Masala and Mouth Freshener. Such addition of saccharin cannot be held to be injurious to health because, considering later findings on research and analysis on the effect of saccharin on human system, addition of saccharin to the extent 8000 ppm in Pan Masala has been allowed by amending Rule 47. The articles sold are not alleged to be injurious to health and such allegations, even if made, cannot be accepted. There is no allegation that any other injurious substance was added to the articles sold making them potentially health hazards. It is also not the case that Pan Masala and Mouth Freshener were of inferior quality and sub-standard. In a case like this, the offence committed is on account of technical violation of Rule 47. It should be emphasised that strict adherence to Prevention of Food Adulteration Act and Rules framed there under should be insisted and enforced for safeguarding the interest of consumers of articles of food. In the Constitution Bench decision in *Tejani's case* (supra) it has been indicated that in order to prevent unmerited leniency in the matter of awarding sentence for an offence under the Prevention of Food Adulteration Act, the Legislature by amendment has incorporated the provision of minimum sentence. But it has also been indicated that the Court, for adequate and special reasons, may bring down the minimum sentence. The Constitution Bench has also observed that all violations of provisions of the Act and Rules need not be treated alike because "there are violations and violations". In the special facts of these cases, it appears to us that a deterrent punishment of imprisonment is not called for and imposition of fine will meet the ends of justice. The criminal cases were initiated on the basis of samples taken in 1987.

The accused appellants have already faced the ordeal of criminal trials for a number of years. In the aforesaid circumstances, further agony of criminal trials need not be prolonged. Conclusions of the criminal cases will also save time and expenditure of the respondent."

"15. In that view of the matter, we direct for quashing the criminal cases in question on payment of costs at Rs. 7,500/- in each of these appeals as in our view, on conviction of the appellants in the criminal cases initiated against them, such fine would have met the ends of justice. The appeals are accordingly disposed of."

4. Learned Counsel for the respondent has fairly conceded that the matter is squarely covered by the law laid down by the Apex Court in the case of Sri Krishan Gopal Sharma (*supra*).

5. For the foregoing reasons, the petition is allowed and the prosecution pending against the petitioner is directed to be quashed subject to the petitioner's paying a cost of Rs. 7,500/- to the respondent within a period of six weeks from today. The learned Metropolitan Magistrate shall drop the criminal case against the petitioner herein and direct the proceedings to be closed on production of proof of payment of cost pursuant to this order.