
(2016) 09 UK CK 0001
In the Uttarakhand High Court
Case No : Criminal Revision No. 263 of 2016

Krishna Prakash	Vs	APPELLANT
State of Uttarakhand		RESPONDENT

Date of Decision : 21-09-2016

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 23
Prevention of Food Adulteration Rules, 1955 — Rule 62

Citation : (2017) CriLJ 2570

Hon'ble Judges : Mr. Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. Aditya Singh, Advocate, for the Revisionists; Mr. P.S. Saun, Dy. Advocate General, for the State/Respondent

Final Decision : Disposed Off

Judgement

Servesh Kumar Gupta, J.—Having heard learned counsel for the parties, it is pertinent to mention here that Mr. N.K. Joshi, Chief Food Inspector, Pithoragarh, was directed to attend the Government Advocate to make him understand the instant controversy, a day before the case is listed.

2. Learned counsel on behalf of the State apprised the Court that notice was sent to Mr. Joshi through the Joint Director (Law) but he could not turn up for the reason best known to him.

3. Since, after 06.09.2016, the matter has been listed today so probably, in this short span period, the record has also not been reached to this Court.

4. However, learned counsel on behalf of the revisionist unfolded the controversy and the entire case has been heard by the Court.

5. The matter engulfs about the presence of Magnesium Carbonate (MgCo₃) to the extent of 2.70 percent in the product-Rajnigandha Pan Masala, which, in the opinion of the concerned Chief Medical Officer, could not have been found. Therefore, he granted the sanction to prosecute the revisionist Mr. Krishna

Prakash, who is the local nominee/manager of the manufacturing company having its head office at Assam.

6. Learned Magistrate, who convicted the revisionists, opined in the judgment that such chemical ($\text{MgCo}_2/\text{MgCo}_3$ whatever) is injurious to health.

7. Learned Presiding Officer, as he states in the impugned judgment, that he has studied the literature on this chemical himself, and found that this MgCo_3 is administered in order to remove weakness of bones and the whole body.

8. Otherwise also, its presence is found in the healthy edibles as well, but if it is consumed, in excess, then the risk of allergy cannot be ruled out. He has also opined that 2.70 percentage of such chemical in Rajnigandha Pan Masala would be an overdose but he has not disclosed as to on what analysis or hypothesis, he arrived at such a conclusion because, even under the provision of the Prevention of Food Adulteration Rules, 1955, under the mark A.30., Pan Masala has been defined which means the food generally taken as such or in conjunction with Pan, it may contain-

"Betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits mulathi, sabermusa, other aromatic herbs and spices, sugar, glycerine, glucose, permitted natural colours, menthol and non-prohibited flavours".

9. So, the above constituents have been laid down under the rules framed under the appropriate provisions of the Act of 1954.

10. Undoubtedly, the element of MgCo_3 is not found in the questioned product. But, at the same time, this is not the exhaustive list of all constituents of such Pan Masala, meaning thereby, certain other elements/constituents may be added by the manufacturer in such Pan Masala.

11. That apart, the Hon"ble Apex Court in the case of "Godawat Pan Masala Products I.P. Ltd. and another v. Union of India and others", (2004)7 SCC 68 has categorically opined in paragraph nos.43 & 44 of its judgment that: -

"There is no material on the basis of which it can be demonstrated that the very same magnesium carbonate would become injurious to health if it arises on account of mixing of traces of magnesium in arecanut and carbonate in lime. According to the learned counsel, this is a clear case of non-application of mind, notwithstanding the medical research papers and data made available in the affidavit filed by the State Govt."

44. We are unable to discern as to how the very same magnesium carbonate would become injurious as a result of combined chewing of arecanut and lime, particularly when it is not the case of the State Government that Rajnigandha Pan Masala itself contains magnesium carbonate. It is permissible under Article 19(6) to impose a reasonable restriction "in the interest of general public". Assuming that such a restriction can be imposed, even if by legislation intended to prohibit manufacture, sale or storage of articles harmful or injurious to health,

the restriction has to be commensurate with the danger posed. On a conspectus of the facts, we are unable to uphold the prohibition imposed by the impugned notification as a restriction which can pass the test of reasonableness under Article 19(6) of the Constitution of India for two reasons. Firstly, there is no demonstrated danger to the public health by magnesium carbonate by consumption of Rajnigandha Pan Masala; secondly, even if there were, the prohibition could only have extended to pan masala containing magnesium carbonate and could not be wider than that."

12. In addition to, it was further argued by learned counsel on behalf of the revisionists that the sample was taken on 24.08.2005 and such Pan Masala, where-from specimen was taken, was going to expire in December, 2005. Although, notice dated 26.12.2005 issued by the Chief Medical Officer, gave liberty to the revisionists to apply for re-testing, but such notice could be served upon him only on 05.01.2006, and by that time, the expiry date of such Pan Masala had already elapsed. So, he could not avail his right, as conferred on him under Section 13(2) of the Prevention of Food Adulteration Act.

13. So, in view of what has been set forth above, I find that it was a total non-application of mind on the part of the Food Inspector as well as for the Chief Medical Officer while permitting the prosecution of the revisionist-Company and its local nominee in the area, which is not less than causing unwanted harassment. Therefore, I instantly allow this revision, in to, and thus, set aside both the judgments and orders, passed by the courts below, and further, issue a direction that the revisionist/nominee-Krishan Prakash shall be released from the caption forthwith.

14. Bail application (CRMA 1442/2016) stands disposed of as such.