

(1964) 01 AHC CK 0035
In the Allahabad High Court
Case No : Criminal Appeal No. 1892 of 1962

Municipal Board

APPELLANT

Vs

Kanhaiya Lal and Another

RESPONDENT

Date of Decision : 01-01-1964

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 47

Citation : AIR 1964 All 455 : (1964) CriLJ 375

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : D. Sanyal, for the Appellant; D.P. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal u/s 417 (3), Cri. P. C. filed by the Municipal Board of Moradabad against an order of acquittal dated 31-7-1962 recorded by the Sub-Divisional Magistrate, Moradabad in a case u/s 7/16 of the Prevention of Food Adulteration Act.

2. Respondent No. 2 Girdhar Gopal was found selling aerated water at his shop on 1-1-5-1961 at about 10.15 A.M. This aerated water was manufactured by the R. K. Soda Water Factory, Guria Bazar, Moradabad, of which respondent No. 1 Kanhaiya Lal was the manager. Sample of the aerated water was taken by the Food. Inspector and sent to the Public Analyst whose report indicated that on laboratory test it was found to have been sweetened with sugar admixed with an added substance, viz., Saccharin. This was considered to be prohibited under the provisions of the Prevention of Food Adulteration Act, and hence both the respondents were tried on a complaint filed by the Food Inspector under the provisions of Section 7/16 of the Prevention of Food Adulteration Act.

3. The trial Court held that no offence has been made out against the respondents" and acquitted them.

4. Learned counsel for the appellant has contended that Rule 47 of the Prevention of Food Adulteration Rules, which provides:

"Saccharin may be added to any food if the container of such food is labelled with an adhesive declaratory label, which shall be in the form given below :

This.....contains an admixture (name of food) of saccharin.",

is not applicable in case of aerated water and, therefore, the trial court has gone wrong in giving benefit of that rule to the respondents. Learned counsel contends that the standards of quality of the various articles of food have been defined in appendix B to the Rules, which provides that aerated water shall be sweetened with sugar..... and shall not contain any other added substance. In the present case as Saccharin had been added, therefore, the aerated water had become adulterated.

5. From the report of the Public Analyst, it is clear that that aerated water was sweetened with sugar with an admixture of Saccharin. Ex. Ka 2, which was the receipt given by the Food Inspector, when he obtained the sample, to respondent No. 2, and also his deposition in Court, shows that the bottles of aerated water which were for sale were duly labelled and the labels clearly mentioned that they were manufactured by the respondent No. 1 and sweetened with an admixture of Saccharin. Learned counsel has conceded that all the requirements of Rule 47 had been complied with by the respondent.

6. In the circumstances I agree with the finding of the trial Court that no offence had been made out against the respondents and their prosecution was wholly misconceived.

7. I do not find anything either in the Act or in the Rules to suggest that Rule 47 of the Rules is not applicable in the case of aerated water.

8. Section 2(v) of the Act runs as follows : " "food" means any article used as food or drink for human consumption other than drugs and water and includes :

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments;"

From this definition it is clear that aerated water is also an article of food.

9. Rule 5 provides that "standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that appendix." Rule 47, which comes later, says that Saccharin may be added to any food if the container of such, food is labelled with an adhesive declaratory label. It is obvious that the provisions of Rules 5 and 47 are not mutually exclusive and Rule 5 is controlled by Rule 47. The argument of the learned counsel that Rule 47 is not applicable in the case of aerated water which is also an article of food, therefore, cannot be entertained.

10. It may be noted here that this is not a case where the aerated water has been sweetened by Saccharin alone. Saccharin has only been mixed with sugar for that purpose which, as I have held above, is permissible under the law.

There is no force in this appeal and it is dismissed.