(1978) 11 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1627 of 19 (sic) 5

Municipal Committee, Amritsar — APPELLANT

Vs

Parma Nand — RESPONDENT

Date of Decision : 07-11-1978

Acts Referred:
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i)

Citation : (1978) 11 P&H CK 0016

Hon'ble Judges : Harbans Lal, J;C.S. Tiwana, J

Bench : Division Bench

Advocate : Harinder Singh Giani with Mr. R.K. Garg, for the Appellant; M.K. Mahajan, for the Respondent

Judgement

Harbans Lal, J.—Parma Nand accused-respondent was charged for the offence of keeping in his possession 400 pieces of adulterated ice candy for sale u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, (hereinafter called the Act) in the Court of the Judicial Magistrate First Class, Amritsar, and after trial acquitted by its judgment dated August 19, 1975. The Municipal Committee, Amritsar, (hereinafter called the Committee), on whose behalf the complaint had been filed by the Food Inspector, has challenged the said decision in the present appeal.

2. Dr. Joginder Singh (P.W. 1) Food Inspector of the Committee raided the factory of the respondent styled as ''Tip Top Milk Ices'' situate at Amritsar on April 5, 1973, at about 9 30 A.M. He was accompanied by Shri V.K. Kholi, Sanitary Inspector and Rattan Jamadar two witnesses from the locality, namely, Kanshi Ram and Fauja Singh were also joined. A sample of 900 gms. candy was purchased by the Food Inspector from the accused on payment of Rs. 2/- as price. After mixing the same in a Pateela (pan) with spoon the same was made into three equal parts and after complying with the formalities, as prescribed under the Act and the Rules in the presence of the witnesses, were put into three bottles and sealed. One sample was sent to the Public Analyst According to his

report Exhibit P.F. the same was opined to be adulterated under rule 47 of the Act as it contained saccharine. Consequently prosecution was launched against the accused. At the trial, the Food Inspector Dr. Joginder Singh and one of the recovery witnesses Kanshi Ram appeared as witnesses. The report of the Public Analyst Exhibit P.F. and the various memos relating to the recovery of the ice candy etc were also produced in evidence. One sample was also sent to the Director, Central Food Laboratory, Calcutta Its report dated May 26, 1975, also confirmed the report of the Food Inspector regarding adulteration.

3. The accused, in his statement u/s 342, Criminal Procedure Code, took up the plea that a false case due to defective procedure of sampling had been foisted on him and that the containers used by the Food Inspector for the purpose of mixing the candy were not clean and dry. Further plea was also taken that the accused used to prepare the ice-cream and ice-candies with saccharine on the special orders of the diabetic patients. For this purpose, solution of saccharine used to be mixed in the Pateela (pan). On April 3, 1975, that is, a day prior to the purchase of the ice-candy by the Food Inspector, he had prepared such solution as Mr. Gurpal and Mangat Ram had placed the order regarding ice-cream. In defence, Shri Ravinder Nath Buri, Public Analyst P.W. 3 was called for cross-examination. Shri Gurdial Singh D.W. 1 was also produced as a defence witness. According to the Public Analyst, he could not tell whether the sample tested by him in the present case contained. 0 per pent or .003 per cent of saccharine. He also agreed that even .003 per cent quantity will give a positive result but .003 per cent will not do so, the quantity being too small. He, however, could not give any definite opinion if use of saccharine was injurious to health or not and whether the same was allowed to be used in the preparation office candy or not under the rules. The defence witness Shri Gurpal D.W. 1 stated that his brother was suffering from diabetes and ice-candies with saccharine had been got prepared from the accused for him. It was further stated that the accused had prepared the Kulfie for him out of which some had been received by him and the rest had to be taken on the next day.

4. The Judicial Magistrate First Class, Amritsar, after trial of the case acquitted the accused after arriving at the following conclusions:--

10. Thus there is no evidence that saccharine is injurious to health. There is also no evidence as to what was the quantity of this sweetening agent present in the ice candy. Possibly, presence was in traces. Accused must, in this situation, get benefit of section 95, Indian Penal Code, and is accordingly acquitted of the charge against him.

5. The above conclusions have been challenged by the learned counsel for the appellant. According to the learned counsel, standards or quality of the various articles of food are specified in Appendix B to the rules under the Act. The ice-candy has been defined in A.07.04 in Appendix B at page 59 as under:--

Ice-candy means the frosen ice-produce containing sugar, with or without the addition of permitted coloring or flavoring substances.

6. Under rule 47, use of saccharine or any other artificial sweetener in the preparation of any article of food is prohibited except in those cases where artificial sweetener is permitted in accordance with the standards laid down in Appendix B In the the latter case, where artificial sweetner is used in accordance with permission, the container of such food shall be labeled as provided therein. Rule 47 is reproduced below:--

Addition of Artificial Sweetner to be mentioned on the label:--

Saccharine or any other artificial sweetener shall not be added to any article of food, except where the addition of such artificial sweetener is permitted in accordance with the standards laid down in Appendix ''B'' and where any artificial sweetener is added to any food, the container of such food shall be labelled with an adhesive declaratory label which shall be in the form given below:--

This....................contains an admixture of........(name of (name of food) the artificial sweetener).

7. The argument of the learned counsel is that in view of these two provisions, use of saccharine in the preparation of ice-candy was clearly and absolutely prohibited under law. Under these circumstances it was not essential for the Public Analyst or the Director of the Central Food Laboratory, Calcutta, as the case may be, to mention specifically the percentage of saccharine in the sample of ice candy regarding which the reports were sent by them. The mere presence of saccharine, as is clear from these reports, was enough to warrant the conclusion that the sample was adulterated under rule 47 nor was It necessary to adduce any evidence to show that the use of saccharine was injurious to health or not. In support of this proposition, reliance was placed on a Division Bench judgment of this Court in Municipal Corporation of Delhi Vs. Satpal Kapoor and Another, in which it was held that where the use of any foreign substance was absolutely prohibited under the Act and the I Rules it is not necessary for the Public Analyst to state the exact quantity of foreign substance in the sample and the mere presence of the foreign substance was enough to come to the conclusion that the article of food was adulterated.

8. In re. V.K. Abdul Asses and another 1973 Cri. L.J. 721, the same view was up held.

9. As against this, the learned counsel for the accused respondent has relied upon Municipal Committee, Amritsar v. Arjan Singh AIR 1264 Ker 107. A close perusal of this judgment however, shows that the ratio of the decision in Satpal Kapoor''s case (supra), referred to above, was in fact agreed to there in and was relied upon. The contention of learned defence counsel is that these decisions were applicable only in those cases where the use of particular foreign substance was absolutely prohibited. There can be no dispute with this proposition of law. In the present case, in view of rule 47 and the definition of ice-candy as given in

Appendix B as reproduced above, it cannot be disputed that the use of saccharine in the preparation of ice candy has been absolutely prohibited.

10. The learned defence counsel has not been able to support the conclusion of the trial Court that it was essential for the prosecution to produce evidence to show that saccharine is injurious to health. According to section 16(1)(a)(i) of the Act, any person is guilty if he himself or by any other person on his behalf sells any article of food which is prohibited under any provision of the Act or any rule made the sunder and there is no requirement to further prove that such an article of food was injurious to health The very fact that in respect of any article of food, the use of a particular foreign substance is absolutely prohibited under the rules is a proof positive that the same was considered to be injurious to the health of the citizens by the framers of the law and rules The operative part of the judgment under appeal, as reproduced above, shows that the trial Magistrate committed a number of errors in returning the finding of acquittal as the decision was based on untenable propositions of law. As discussed above, use of saccharine has been absolutely prohibited under the rules and as such the Public Analyst was not, called upon to mention the percentage of saccharine in the sample is his report and secondly no duty was cast on the prosecution to prove that the use of saccharine was injurious to ilea the or not. Strangely enough the trial Court concluded from the statement of the Public Analyst that perhaps the sample of ice-candy contained traces of saccharine only, I have closely perused the said statement. The Public Analyst nowhere stated that there were only traces of saccharine tested by him. His statement is only to the effect that he was not in a position to say as to what percentage of saccharine was present in the said sample. In reply to a question in cross examination he only stated that even .01 per cent or .003 per cent of saccharine will give the positive result, From this it is not possible to come to the conclusion that the sample in question contained only traces of saccharine.

11. The trial Court acquitted the accused relying on section 95, Indian Penal Code, presuming that the sample of ice candy had only traces of saccharine. I has been held by a Full Bench of this Court in The State of Punjab v. Teja Singh (1976) 78 P.L.R. 433 : (1976) 3 C. L.T. 302 that even negligible or marginal deviation from the prescribed standard laid down in this Act cannot be ignored and acquittal recorded on that basis. The following observations of the Supreme Court was relied upon for arriving at the conclusion:--

Food pollution, even if it be only to the slightest extent, if continued in practice would adversely affect the health of every man, woman and child in the country. Hence even marginal or borderline variations of the prescribed standards under the Act are matters of serious concern for all and as public interests arc involved in them, the maxim De Minimis Non Burate Lex.--Law does not, concern itself about trifles, does not apply to them.

12. Section 95 of the Indian Penal Code can be made applicable in these cases where the harm caused or intended to be caused by the offence is so slight that

no person of ordinary sense and temper would be expected to complain of the same. However, in cases pertaining to adulteration of articles of food, even slight adulteration cannot be ignored or disregarded under the said provisions where presence of a foreign substance causing such adulteration has been absolutely prohibited under the Act or the Rules Any such adulteration will also call for minimum punishment as provided in section 16 of the Act.

13. Once the trial Magistrate came to the conclusion that the recovery of adulterated ice-candy was proved against the accused he was not justified to acquit the accused on any of the grounds relied upon by him.

14. The learned counsel for the respondent made an attempt to defend the acquittal of the accused on grounds other than those on the basis of which the accused was acquitted. It was contended that it was not proved that the Pateela (pan) in which the sample of ice-candy purchased by the Food Inspector had been properly washed and dried and whether the spoon with which the same was mixed had been washed and cleaned or not. The case of the accused was that one day prior to the purchase of the sample by the Food Inspector ice candy had been prepared by him with saccharine and the solution of saccharine has been prepared in the Pateela some of which was still present therein when the sample of ice-candy was mixed by the Food Inspector As the proper pre cautions were not taken it was quite probable that the saccharine solution got mixed up with the ice-candy in question and hence the accused cannot be held guilty. This contention is bereft of any substance It is clear from the statements of the Food Inspector Dr. Joginder Singh P.W. 1 and the non-official witness Kanshi Ram P.W. 2 that both the Pateela and the span had been properly washed and cleaned with water and dried before the sample of ice-candy was mixed up Both these witnesses were subjected to thorough and long cross-examination, but no question was put to either of them if the Pateela (pan) used for the purpose contained any solution of saccharine. The defence version taken by the accused, in his statement, appears to be an after thought.

15. It was then contended that Kanshi Ram P.W. 2 was the only non-official witness produced by the prosecution. He was a trader and thus under the influence of the Food Inspector. No independent witness of the locality was associated. This contention is also without any force. The statement of Kanshi Ram P.W. 2 shows that he was carrying on business in the locality where the accused was running his factory He did not deal in the same business as the accused did. According to him he had never appeared as a witness in any such case earlier and thus had never come into contact with the Food Inspector. In these circumstances it is not possible to conclude that Kanshi Ram P.W. 2 was in any manner under the influence of the Food Inspector. Besides as held in Babu Lal Hargovindas v. The State of Gujarat 1972 F.A.C. 18, even the evidence of Food Inspector alone, if reliable, can be sufficient to warrant conviction In the present case, the statement of the Food Inspector is quite convincing and consistent which does not suffer from any infirmity.

16. Lastly, it was contended on behalf of the accused that the simple of ice-candy was purchased from the accused as far back as on April 5, 1973, and he was acquitted by the trial Magistrate on August 19, 1975, thus more than five years have elapsed after the alleged commission of the offence Besides, the accused was about 65 years of age at present and was not a previous convict under the Act. Keeping in view of all these circumstances and the antecedents of the accused the respondent should be released under the provisions of the Probation of Offenders Act However, it has been clearly laid down by their Lordships of the Supreme Court in Prem Ballab and Another Vs. The State (Delhi Admn.), that the offenders under the provisions of the Prevention of Food Adulteration Act are not entitled to the benefit of probation principle, It was categorically held as under:--

The imperative of social defence must discourage the applicability of the probation principle No chance can be taken by society with a man whose antisocial activities, in the guise of a respectable trade, jeopardise the health and well being of numerous innocent consumers. The adulterator is a social risk. It might be dangerous to leave him free to carry on his nefarious activities by applying the probation principle to him Moreover, it must be remembered that adulteration is an economic offence prompted by profit motive and it is not likely to lend itself easily to therapeutic treatment by the probationary measure.

17. In view of the above discussion, the judgment of the trial Magistrate acquitting the accused has to be set aside as it is based on untenable propositions of law. The offence regarding the possession and sale of adulterated ice-candy is clearly made out against the accused beyond any shadow of doubt. He is thus convicted u/s 16 (1) (e) (i) of the Act However, so far as the question of sentence to be imposed is concerned, the special circumstances of this case cannot be lost right of The alleged sample was purchased from the accused in April, 1973, and he was acquitted by the trial Magistrate in 1975. The accused is at present about 65 years of age. Keeping in view his old age and the factor of his acquittal by the trial Court it appears appropriate that the accused should not be sentenced to minimum sentence of six months as provided. In the interests of justice he is sentenced to rigorous imprisonment for one month and a fine of Rs. 1,000/-. In default of payment of fine, he will have to undergo further rigorous imprisonment for six months.

