

(1974) 08 DEL CK 0003

In the Delhi High Court

Case No : Criminal Revision Appeal No. 58 of 1973

Municipal Corporation of Delhi

APPELLANT

Vs

Bal Krishan Thaper

RESPONDENT

Date of Decision : 06-08-1974

Acts Referred:

Citation : (1975) 11 DLT 22

Hon'ble Judges : R.N. Aggarwal, J

Bench : Single Bench

Advocate : K.B. Kalra, N.K. Jain and O.P. Soni, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) On 20th August. 1971, at about 12.30 P. M. Food Inspectors A James, P. P. Sinha and K.S. Ahluwalia visited the shop of the respondent Bal Krishan Thaper at Tilak Bazar Khari Baoli, Delhi, Food Inspector A James (Public Witness 2) purchased three tins of Saccharin, each containing 400 grams, on payment of Rs. 27.00 as their price for purposes of analysis. The Food Inspector sealed the tins with his own seal and delivered one part of the sample to the respondent. One part was sent to the Public Analyst. Similarly Food Inspector P.P. Sinha (PW 3) purchased three packets of Saccharin from the respondent for the purposes of analysis. He also, after sealing the packets, delivered one packet of sample to the respondent and sent the second packet to the Public Analyst. The sample of Saccharin taken by P.P. Sinha, Food Inspector, bore number PPS-898 and the one taken by A. James bore number AJ-162.

(2) The Public Analyst on analysing the sample AJ-162 made the following report :-

"Date of analysis 24.8.71 Saccharine 17.21% Dugin Absent Selenic acid Absent Sodium Hexacyanide Absent Moisture at 105°C 8.59% Glucose 74.2% Lead Parts Per million : Nil.

Misbranded as the same is an admixture of Glucose and Saccharine." The Report as regards the second sample Pps 898 was as follows :-

"Date of analysis 25-8-1 Saccharine 9.94% Dulcin Absent Salicylic acid Absent Sodium Hex cyclamate Absent Moisture at 105°C 8.86% Glucose 81.2 Lead parts per million : Nil.

Misbranded as the same is an admixture of Glucose and Saccharine."

(3) On receipt of the reports of the Public Analyst, the Municipal Prosecutor filed two separate complaints against the respondent u/s 7 read with section 16 of the Prevention of Food Adulteration Act (hereinafter called the Act). However, the trial Magistrate consolidated the two complaints and framed one charge.

(4) The trial Magistrate found the articles of food to be misbranded within the definition of sub-clause (k) of clause (ix) of section 2 of the Act. The Magistrate was of the view that the offence is a technical one and the proviso to section 16(1) is applicable and accordingly sentenced the respondent to imprisonment till the rising of the court and a fine of Rs. 500.00 and in default of payment of fine to undergo R. 1. turn two months.

(5) The Municipal Corporation filed a revision petition in the Sessions for the enhancement of the sentence. It was contended before the Sessions Judge that the offence would fall under clause (a) of section 2(ix) and the proviso to section 16(1) is not applicable and the minimum sentence provided for u/s 16(1) should be imposed on the respondent. It was also contended that the labels on the packages bore statements which were deceptive, false and misleading on material particulars with respects to the contents. The revision petition was heard by Shri R. N. Mehrotra. Addl. Sessions Judge, who agreed with the conclusion of the trial Magistrate and dismissed the petition. Aggrieved with the order of the Addl. Sessions Judge, the Municipal Corporation has come further in revision to this Court.

(6) In order to comprehend the legal propositions involved in the case, it will be useful to set out in detail the statements contained on the labels of the samples. The front side of the label on sample No. PPS-898 bears the caption "United Para EXCELLENT". The right side of the label contains the following statement in English :-

UNITEDPARA-EXCELLENT Para Excellence Para Excellent is as sweet as any Saccharine It has not bitter after effect but tastes much like of sugar. It is prepared according to a special formula "and Therefore its Sweetness remains uniform. Directions :-Dissolve 1 tola Para-Saccharine in about 2 lbs. boiling water and then add cold water to make enough syrup for 6 dozens soda water bottles."

The label of the other sample contains the Statement :-

UNITEDPARA-ASLI Para Asli is as sweet as an Saccharin."

(7) A. James, Food Inspector, gave evidence at the trial that after disclosing his

identity to the accused he had purchased from him three tins of Saccharin each containing 400 grams, for the purposes of analysis. He further deposed that he had asked for saccharin from the accused and the accused had sold the tin containers holding out that they contained saccharin. In cross-examination it was suggested to the witness that the conversation deposed to above by him had not taken place. This was controverted by the witness. Public Witness PW3 P. P. Sinha, Food Inspector, stated that he had purchased three packets of Saccharin from the accused for the purposes of analysis. The witness stated that he had asked the accused to deliver him a sample of Saccharin and the accused had sold the packets in question. The above statement of the witness was not challenged by way of cross-examination. Public Witness Public Witness 5 K. S. Ahluwalia, Food Inspector, gave evidence that S/Shri A. James and P.P. Sinha had purchased two samples of Saccharin from the accused for the purposes of analysis.

(8) The Food Inspectors had prepared inventories Ex. PC/1 and Ex Pc in regard to the taking of the samples. The article of food of which the sample was taken mentioned in the inventories is Saccharin. The inventories are signed by the accused. The accused took no exception to the Food Inspectors describing the article of food of which the sample was taken as Saccharin. The accused in his statement u/s 342 Cr. P. C. stated that the declaration in the inventories that the samples are Saccharin were given by the Food inspectors of their own accord although the correct declarations were clearly printed on the labels of the containers and the packets. The above statement of the accused cannot be accepted. It is clear from the record that the accused had sold the article of food in question as Saccharin.

(9) On the facts found the question arises whether the samples in question are misbranded. The definition of the express "misbranded" consists of a number of clauses. The relevant clauses of the definition read as:-

"(IX)"misbranded"-an article of food shall be deemed to be misbranded-(a) if it is an imitation of, or in a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character; (c) if false claims are made for it upon the label or otherwise; (g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular or if the package is otherwise deceptive with respect to its contents; (k) if it is not labelled in accordance with the requirements of this Act or rules made there under;....."

(10) I have earlier found that what the respondent purported to sell was Saccharin-which in fact was not Saccharin but an admixture of Glucose and Saccharin. The quantity of Saccharin in the two samples was negligible. The labels on the packages are suggestive that the article of food is Saccharin or that the contents possess the qualities, including that of sweetness, of Saccharin. There can be little doubt that the labels on the samples did not indicate the true

nature of their contents. The statements on the labels could deceive or mislead a purchaser that the article of food is Saccharin or in any case a substitute for Saccharin. Rule 37 of the rules framed under the Act provides that a label shall not contain any statement, claims design, device fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food. In *Municipal Corporation of Delhi v. Thou Ram Jagjit Singh J.* and myself held that "an article of food shall be presumed to be misbranded if it resembles in a manner likely to deceive another article of food under the name of which it is sold and is not plainly and conspicuously labelled so as to indicate its true character. No general rule can be/laid down as to what is and what is not a colourable variation. All that can be said is to ascertain in every case whether there is such a resemblance as to deceive a purchaser using ordinary caution." It was further held that "the declaration by the respondent that "barfi" was prepared from "basin", sugar and "Khoa" was clearly false, and that the addition of small quantity of milk fat, if at all, was only a colourable variation to deceive a purchaser."

(11) In my view, the rule laid down in the above authority will apply in full force to the case in hand.

(12) In the above view, I have no hesitation in finding that the offence committed by the respondent would clearly fall under clauses (a) and (g) of section 2(ix) of the Act.

(13) It was not disputed before me that in case the offence fell under clause (a) the proviso to Section 16(1) will not be applicable. From the labels, the contents of which I have reproduced earlier in my Judgment, it is clear that the respondent had sold the samples as Saccharin. In sample No..... J-162, the strength of Saccharin was 17.21 percent and in the second sample 9.94 percent. The contents of glucose in the two samples were 74.2 percent and 81.2 percent respectively. The contents of Saccharin in the two samples were definitely negligible. The effort on the part of the respondent was to pass the goods as Saccharin and thereby cheat the purchasers. The respondent must be awarded the minimum sentence prescribed under the Act. I accordingly allow the revision petition and sentence the respondent to rigorous imprisonment for six months and a fine of Rs. 1000.00 and in default of payment of fine to undergo R.I. for two months. The Chief Judicial Magistrate would issue warrants for taking the respondent into custody to undergo the sentence awarded to him.