

(1997) 05 DEL CK 0060

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 169 of 1997 and Criminal Miscellaneous Appeal No. 329 of 1997

Murari Lal Gupta

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 27-05-1997

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 7

Citation : (1997) 4 AD 37 : (1997) CriLJ 4357 : (1997) 67 DLT 732 : (1997) 42 DRJ 266 : (1997) 4 RCR(Criminal) 199

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : M.C. Sanghi, M.S. Butalia and Sanjeev Khanna, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is a petition u/s 482 Cr.P.C. for quashing the complaint against the petitioners under Sections 7/16 Prevention of Food Adulteration Act and for quashing the order dated 4.11.1996 rejecting the application of the petitioners whereby the petitioners have prayed for dismissal of the complaint and levy of fine on the manufacturer of the sampled commodity.

(2) Briefly, the facts of the case are that a complaint was filed by respondent No. 1 on a sample of "Tasty Meetha Pan Masala" on the ground of violation of Rule 44(g) and Rule 47 of the Prevention of Food Adulteration Rules, 1955 (hereinafter called the Rules) as they stood on 10th December, 1987 as the sample contained saccharin to the extent of 4000 ppm which was not permitted at the relevant time under the Prevention of Food Adulteration Rules, 1955. After recording the pre-charge evidence, the lower court framed the charge under Sections 7/16 of the Act. During the course of evidence after charge having been framed, Rule 47 of the said Rules was amended, which permitted the use of saccharin up to 8,000 ppm. The petitioners inter-alia, contended that as they were not the manufacturers of the said Pan Masala, no punishment could be

imposed on them and also in view of the amendment of the Rule. It is submitted that the result of the amendment of the rules is that the offence is at best be described as a technical violation of Rule 47 of the said Rules and only fine could be imposed to meet the ends of justice. The manufacturer, M/s Tasty Products, who was arrayed as respondent No. 2 in the present petition, also moved an application before the Metropolitan Magistrate, paying that in view of the amendment in the Rule permitting use of saccharin to the extent of 8,000 ppm., a lenient view may be taken and only fine be imposed upon them. Respondent No. 1 contested the said application of the petitioner and of the manufacturer stating that the same were not maintainable and it further stated that the amended Rule 47 was not retrospectively in operation and the complaint made by the respondent and initiation of criminal cases before the said date of amendment are not without justification and the petitioners were liable for prosecution and punishment. After hearing the arguments, learned Metropolitan Magistrate directed the petitioners to face prosecution.

(3) Aggrieved by the said order the petitioners have filed the present petition challenging the said order. Learned counsel for the petitioner has strongly contended that the extent of Saccharin as found by the Public Analyst cannot be held as injurious to health because on the basis of further research, it has been ascertained that the presence of saccharin up to a reasonable level was not at all injurious to health and precisely for the same reason Rule 47 of the Rules has been amended which has permitted the use of saccharin up to 8000 ppm in a Pan Masala. He has further urged that the petitioners, in fact, had not committed any illegal act by using saccharin because such quantity of saccharin was not injurious to health at all. Hence he submitted that it cannot be reasonably contended that the said samples were adulterated food even at the time of collection of samples, Counsel further submitted that in view of the aforesaid facts, it will not be justified to prosecute the petitioners and to punish them for using saccharin in Pan Masala to an extent much below the permissible limit. The alleged violation being merely a misconception should not be countenanced by Court and the petitioners should not be made to face the trial for a criminal offence.

(4) Counsel for the respondent has however submitted that the restrictions imposed under Rule 47 of the Rules at the relevant time was not arbitrary and capricious as the same was based upon the existing knowledge about the effect of saccharin on human body. He further submitted that since Rule 47 having been made in proper exercise of powers consistent with the then available information, it must be held as valid and legal.

(5) Before dealing with the controversy in the present case, it is necessary to refer to Rule 47 of Prevention of Food Adulteration Rules which reads as under:-

"47.Addition of artificial sweetener to be mentioned on the label - Saccharin 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: @SUBPARA = This(name of food) contains an admixture of(name of the artificial sweetener)."

I have heard the arguments at length. The petitioners have relied upon the decision of Hon"ble Supreme Court in Krishan Gopal Sharma & Anr. Vs. Government of N.C.T. of Delhi, reported as 1996 (1) (Cr.) Sc 123 in support of their contention that in view of the amendment of Rule 47 of the Rules, use of saccharin to the extent of 8,000 ppm. in Pan Masala was permissible and no deterrent punishment of imprisonment was called for. Therefore, they pray for imposition of fine only.

AFTER careful consideration of the facts of the present case it appears that at the relevant time when the samples in question were taken the said samples of Pan Masala contained saccharin to the extent of 4000 ppm and the same were in violation of Rule 47. However, the validity of Rule 47 prior to its amendment cannot be challenged on the ground of arbitrary exercise of power by the Rule making authority nor could the initiation of prosecution on the basis of violation of the said rule as it existed at the material time could be faulted. The knowledge about the effect of saccharin on human body as accepted today may undergo a further change in future on the basis of further knowledge derived from research and analysis. If the rule making authority on the basis of knowledge widely accepted by the experts framed rule by imposing restriction on use of saccharin in Pan Masala at a particular point of time, such exercise of power must be held to be valid.

IN the case of Krishan Gopal Sharma (supra) the Hon"ble Supreme Court observed in paras 9, 10, 11 and 12.as under:-

"9.In the back drop of aforesaid exposition of law for offences under the Prevention of Food Adulteration Act, it is necessary to consider the facts and circumstances of the case. In these appeals, there is no dispute that saccharin was not added to Pan Masala and Mouth Freshener. It is contended that even if addition of saccharin to the extent as stated to have been correctly determined, such addition, as a matter of fact, was neither injurious effect on human system. But later on, it has been accepted by the Rule making authority that use of saccharin to the extent of 8000 ppm. in pan masala will not be harmful for human consumption and Rule 47 of the Rules has been amended. As use of saccharin to the extent of 2000 and 2450 ppm was not injurious to health at any point of time, it must be held that even before amendment of Rule 47, such use of saccharin to the above extent did not constitute an offence for adulterating food will substance injurious to health."

10.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.

11.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 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. 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. Conclusion of the criminal cases will also save time and expenditure of the respondent.

12.In that view of the matter, we direct for quashing the criminal cases in question on payment of costs at Rs. 7500.00 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.

Infact, a Division Bench of this Court has, following the above view of the Hon"ble Supreme Court, quashed the prosecution pending against the petitioners in the case of Nagin Chand and Kuthari and Others vs. Union of India and Another reported as (Civil Writ No. 2741/95 decided on 11th October, 1996.) The Division Bench following the Hon"ble Supreme Court had quashed the prosecution subject to each of the petitioners paying a cost of Rs. 7000.00 to the respondent within a period of six months from the date of decision and further directed that the learned Metropolitan Magistrate shall drop the criminal cases against petitioners and that the proceedings be closed on production of proof of payment of cost pursuant to that order.

IN view of the above discussion, it cannot be held that the complaint and initiation of criminal case against the petitioners are without any justification and it also cannot be contended that on the face of the complaint, no offence was prima facie made out. However, it appears to me that even if the complaint is accepted to be correct, the only offence committed is the technical violation of Rule 47 by using saccharin to the extent of 4000 ppm. Such addition of saccharin is not injurious to health in view of the amendment to Rule 47. There is no allegation that the Pan Masala in question was of inferior quality and sub standard. In the present case, the offence committed is on account of technical violation of Rule 47. In the special circumstances of the case, I am of the opinion that the deterrent punishment is not called for. The criminal case was initiated on the basis of the sample taken in the year 1987. The petitioners have already faced the ordeal of criminal trial for a number of years.

IN view of the above, I hereby quash the order dated 4.11.1996 and direct the prosecution pending against the petitioners and other accused to be quashed subject to the manufacturer paying a fine of Rs. 15,000.00 to the respondent within a period of two months from today. The learned Metropolitan Magistrate shall drop the criminal case against the petitioners and other accused herein and direct the proceedings to be closed on production of proof of payment of the aforesaid fine and the complaint against the petitioners and other accused u/s 17/16 of Prevention of Food Adulteration Act on payment of Rs. 15,000.00 as fine within two months from today, shall also stand quashed a such fine will meet the ends of justice.

THIS petition stands disposed of in the above terms.