
(1984) 03 GAU CK 0008
In the Gauhati High Court

State of Assam

APPELLANT

Vs

Sundar Das Arora

RESPONDENT

Date of Decision : 28-03-1984

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 11, 16, 7

Citation : (1986) CriLJ 341

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Judgement

K. Lahiri, J.—About 11 years back, precisely on 2-8-72 the District Food Inspector of Jorhat, visited the Ice Candy factory of Gopi Chand Agarwalla in Golaghat town and purchased 900 grams of ice-candy from the Manager Sundar Das Agarwalla for the purpose of analysis. It was divided in three equal parts, one part was sent for analysis by the Public Analyst. The Public Analyst found that the sample of ice-candy was mixed with "saccharin" as sweetening element, which was violative of Item No. A.07.04 of Appendix B to the Prevention of Food Adulteration Rules. Learned trial Court rightly reached the conclusion that the Ice-candy was an article of food for human consumption. Naturally so, as it is one of the items enumerated in Appendix B of the Prevention of Food Adulteration Rules, 1955, for short "the Rules". Rule 44(g) of the Rules provides that any article of food which contains any artificial "sweetener" except where such artificial sweetener is permitted in accordance with the standards laid down in Appendix B to the Rules, amounts to admixture of prohibited materials in that food. It goes without saying that saccharin is permissible to be used in some of the items in accordance with the standard laid down in Appendix "B" However, when the artificial sweetener is permitted to be used in any food under "the Rules", the container of such food must be labelled with an adhesive declaratory label stating that the food contains admixture of artificial sweetener. Rule 47 clearly sets out that 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 standard laid down in Appendix

"B". In the instant case Sundar Das Arora was the Manager of the Ice Candy Factory. The trial Court rightly reached the conclusion that the addition of "saccharin" in ice candy was violative of Rule 44(g) read with Rule 47 of the Rules and that a person violating the provisions was liable to be convicted u/s 16 of the Prevention of Food Adulteration Act for violating the provisions of Section 7(v) of "the Act". However, learned trial Court acquitted the accused on the ground that the District Food Inspector contravened Rule 22 of the Rules in sending lesser quantity of sample to the Public Analyst than what was specified in the Rule. Of course, learned Magistrate was fortified in his conclusion by a decision of the Supreme Court reported in Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra, Rajaldas G. Pamnani v. State of Maharashtra.

2. The relevant extracts of Rule 22 of "the Rules" are set out below:

22. Quantity of sample to be sent to the Public Analyst. The quantity of sample of food to be sent to the Public Analyst/Director for analysis shall be as specified below:

Articles of Food Approximate
quantity to be
supplied

1. * * * * *

* * * * *

14. Prepared food 500 grams

* * * * *

22. Ice Cream & mixed

Ice Cream 300 grams

* * * * *

3. There was a general impression at all relevant time, that the Rule was mandatory in the sense breach of the rule by itself was fatal, so much so that any deviation or breach of the rule must result in acquittal of the accused. It will be seen on perusal of Rule 22 that the Rule making authority has prescribed the quantum of food which is required to be sent to the Public Analyst.

4. The Trial Court reached the conclusion that the Food Inspector purchased 900 grams of Ice Candy, divided it into three parts and sent 300 grams of the sample to the Public Analyst. Learned Magistrate held that Ice Candy was "a prepared food", and therefore it was covered by Item No. 14 and, therefore, held that the Food Inspector was required to send atleast 500 grams to the Public Analyst. He held that the Food Inspector sent only 300 grams in breach of Item 14 of Rule 22

of "the Rules". We are constrained to hold that the Trial Court made fatal error in overlooking Item 22 of Rule 22, which is a special provision for "Ice Cream and mixed Ice Cream". When an specific article of food is specified by name and/or description, the Food must be understood according to the clear language used therein. When the Rule making authority specified the approximate quantity of ice cream required to be sent to the Public Analyst, the quantity required to be sent must be as prescribed in the Item. When the food has been specifically mentioned in Item 22 it cannot be treated as "a prepared food" covered by Item 14. As such, we have no hesitation in reaching the conclusion that the Trial Court committed a, manifest error apparent on the face of the record in holding that Ice Cream was covered by Item 14 in overlooking Item 22 of Rule 22. In the result, we hold that there was no contravention made by the Food Inspector in sending 300 grams of sample to the Public Analyst and, as such, the order of acquittal based on the findings must be set aside. We are glad to record that Mr. P.K. Goswami, learned Counsel appearing on behalf of the accused-respondent, at the commencement of the hearing has rightly pointed out to us that the trial Court had committed the error.

5. Learned Counsel for the respondent has also helped us in pointing out the decision of the Supreme Court in *Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra*, has since been overruled by the Supreme Court in *State of Kerala and Others Vs. Alasserry Mohammed and Others*, Indeed it is so. In *State of Punjab Vs. Devinder Kumar and Others*, the Supreme Court has also expressed the view that mere breach of Rule 22 by itself is not fatal and on that ground alone the accused is not entitled to acquittal.

6. We are of the opinion that Rule 22 is merely a guiding provision meant for the Food Inspectors and others who take samples of food for analysis under "the Act" and "the Rules". A minimum quantity of sample of food to be sent to Public Analyst has been specified in Rule 22. If a report can be submitted by the Public Analyst on the basis of the sample sent, then merely because the quantity sent is less than what has been actually prescribed under Rule 22, cannot be fatal and on that count the prosecution case does not fall. If on the basis of the sample sent, the Public Analyst can affirmatively and positively submit his report without expressing any doubt it would be sufficient compliance of Rule 22 of the Rules. However, if the Public Analyst cannot submit his report or expresses doubt as to the result of his analysis in view of inadequate quantity of sample sent to him, naturally the prosecution case will fail. Of course, there may be cases in which the Court may reach the conclusion upon evidence on record that the Public Analyst's report is inconclusive in view of furnishing less quantity of food for analysis than that prescribed in R; 22. However, we are not on that. In the instant case the Public Analyst submitted a clear report stating that he found "Saccharin" in the sample of ice-candy sent to him. In *State of Kerala v. Alasserry Mohammed* (supra), their Lordships have held that Rule 22 is not mandatory. We extract the relevant observation of their Lordships dealing with Rule 22 of the Rules.

It would thus be seen that the whole object of Section 11 and Rule 22 is to find out by a correct analysis, subject to further verifications and tests by the Director of the Central Laboratory or otherwise, as to whether the sample of food is adulterated or not. If the quantity sent to the Public Analyst, though it is less than that prescribed, is sufficient and enables the Public Analyst to make a correct analysis, then merely because the quantity sent was not in strict compliance with the rule will not result in the nullification of the report and obliterate its evidentiary value. If the quantity sent is less, it is for the Public Analyst to see whether it is sufficient for his analysis or not. If, he finds it insufficient, there is an end of the matter. If however, he finds it sufficient but due to one reason or the other, either because of further tests or otherwise, it is shown that the report of the Public Analyst based upon the short quantity sent to him is not trustworthy or beyond doubt, the case may fail. In other words, if the object is frustrated by the sending of the short quantity by the Food Inspector to the Public Analyst, it is obvious, that the case may end in acquittal. But. if the object is not frustrated and is squarely and justifiably achieved without any shadow of doubt, then it will endanger public health to acquit offenders on technical grounds which have no substance. To quote the words of Sir George Rankin, C.J. from the decision of the Calcutta High Court in Chandra Nath Bagchi Vs. Nabadwip Chandra Dutt and Others, at P. 478, it would "be merely piling unreason upon technicality".... In our considered judgment the Rule is directory and not mandatory. But we must hasten to reiterate what we have said above that, even so, Food Inspectors should take care to see that they comply with the Rule as far as possible.

In view of the law laid down by the Supreme Court, the findings reached by the trial Court must be held to be bad and liable to be set aside, which we hereby do. We hold the accused guilty Under Sections 7/16 of "the Act"

7. Now comes the question of sentence. We find that the incident happened in 1972 when the accused was a young man, who by now is aged over 50 years. Secondly, we find *that "saccharin" is not absolutely prohibited item which cannot be used in food-stuff. It may at least be used in some articles of food. Next we find that there has been long delay in disposal of the appeal which is pending since 1975. However, neither the accused nor the prosecution has any hand in it. Mr. C.R.De, learned Public Prosecutor, in fitness of things submits that in many such cases decided within this Court under similar circumstances accused have been let off with fine only. We do not like to send an elderly person to jail after a lapse of years from the date of occurrence. In our opinion, ends of justice will be met if we direct the accused to pay a fine of Rs. 1,000/-,* in default, to suffer rigorous imprisonment for six months.

8. In the result, the appeal is allowed. On setting aside the order of acquittal the appellant accused-respondent is convicted Under Sections 7/16 of the Act and he is directed to pay a fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for six months. While awarding the sentence we have also taken

into consideration the stand taken by learned Counsel of the accused in pointing out the correct law of the land.