

(1978) 12 BOM CK 0019

In the Bombay High Court

Case No : Criminal Appeal No. 146 of 1977 (By State)

State of Maharashtra

APPELLANT

Vs

Ranjitbhai Babubhai Suratwalla

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)
Prevention of Food Adulteration Rules, 1955 — Rule 47

Citation : (1982) 1 BomCR 433

Hon'ble Judges : B.N. Mehta, J

Bench : Single Bench

Advocate : B.S. Deshmukh, P.P, for the Appellant; A.C. Agarwal and Anita A. Agarwal, (Original Accused No. 1), for the Respondent

Final Decision : Dismissed

Judgement

B.N. Mehta, J.—The State of Maharashtra has filed this appeal for enhancement of the sentence passed by the learned Chief Judicial Magistrate, Ahmednagar, on 23-11-1976 on the respondent who was original accused No. 1 in the trial Court.

2. The accused was charged u/s 16(1) of the Prevention of Food Adulteration Act (hereinafter referred to as the "said Act"). The learned Magistrate was pleased to convict the accused on the said charge and to sentence him to suffer simple imprisonment till the rising of the Court and to pay a fine of Rs. 1000/-, in default to undergo six months rigorous imprisonment.

3. Mr. Deshmukh, the learned Public Prosecutor, who has appeared for the Appellant-State, has submitted that the minimum penalty prescribed u/s 16(1) of the said Act was six months rigorous imprisonment and a fine of Rs. 1000/-. Mr. Deshmukh urged that the learned Magistrate had been unduly lenient in sentencing the accused to simple imprisonment till the rising of the Court and to a fine of Rs. 1000/-. Mr. Deshmukh urged that no adequate or special reasons had been assigned by the learned Magistrate for the undue leniency shown to the accused save and except that the accused was a young man. Mr. Deshmukh,

submitted that youth by itself could not be a ground for leniency. Mr. Deshmukh, therefore, contended that a stringent penalty or atleast the minimum prescribed by the law ought to be awarded to the accused.

4. Mr. Agarwal, the learned Advocate appearing on behalf of the respondent-accused, submitted that since this was an appeal for enhancement of sentence, he would urged that the learned Magistrate had erred in conviction the accused and that the conviction and sentence ought to be set aside.

5. Since this is an appeal for enhancement of the sentence, it is open to the accused to urge that the conviction in the first instance was based on erroneous grounds and that he was entitled to an acquittal.

6. Mr. Agarwal has urged only one point in this appeal and that is that the learned Magistrate had erred in coming to the conclusion that the saccharin which was found mixed in the supari was a non-permitted sweeteners. Mr. Agarwal pointed out that Rule 47 of the Prevention of Food Alteration Rules (hereinafter referred to as the "said Rules") did not prescribe a blanket ban on the user of saccharin as an artificial sweetener and that the law had permitted the use of saccharin as an artificial sweetener provided that the standard of user of saccharin complied with the standard laid down in Appendix "B" of the rules.

7. In order to appreciate Mr. Agarwal's contention, it would be convenient to set out certain provisions of the Prevention of Food Adulteration Act and Rules. Rule 44 provided for the prohibition of the sale of certain mixtures. Rule 44(g) is relevant for the purpose of this discussion and provides :---

"Rule 44. Notwithstanding the provisions of Rule 43 no person shall either by himself or by any servant or agent sell.

xx xx xx xx

(g) any article of food which contains any artificial sweetener, except where such artificial sweetener is permitted in accordance with the standard laid down in Appendix "B".

Rule 47 provides :---

"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.....".

(The rest of the rule is not pertinent for the purpose of this discussion).

8. It will, therefore, be pertinent to turn to Appendix "B". In Appendix "B" of the Prevention of Food Adulteration Rules, Clause A.07.10 provided for sweetening agents. Clause A.07.10 provides :---

"Saccharin Sodium commonly known as soluble Saccharin having an empirical formula as- $C_7H_{1/4}NNaOCS \cdot 2H_2O$ and molecular weight as 241.2 shall be the material which is soluble at 200-C in 1.5 parts of water and 50 parts of alcohol

(95 percent); and shall contain not less than 98.0 per cent and not more than the equivalent of 140.5 per cent of C₇H₄O₃ NSN as calculated with reference to the substance dried to constant weight at 105°C, as say being carried out as presented in Indian Pharmacopoeia. It shall not contain more than 2 p.p.m. of arsenic and 10 p.p.m. of lead. The melting point of Saccharin isolated from the material as per Indian Pharmacopoeia method, shall be between 226°C and 230°C. The loss on drying of the material at 105°C shall not be less than 12.0 per cent and not more than 16.0 per cent of its weight. "The material shall satisfy the tests of identification and shall conform to the limit tests for free acid or alkali, ammonium compounds and parasulphamoylbenzoate as mentioned in the Indian Pharmacopoeia."

9. Mr. Agarwal is therefore, justified in the contention that it could not be stated that saccharin was a non-permitted artificial sweetener. Saccharin was a permissible artificial sweetener provided it conformed to the formula mentioned in Clause A.07.10 of Appendix "B". The learned Magistrate was, therefore, in error when he concluded :---

"As per Rule 47 of the Prevention of Food Adulteration Act, saccharin is not allowed to be used as sweetener in supari. As non-permitted sweetener was used, it is an offence under the provision of the Prevention of Food Adulteration Act. I, therefore, hold the accused No. 1 sold supari containing non-permitted sweetener saccharin and answer Point No. 1 in affirmative".

10. The learned Magistrate arrived at his conclusion on the basis of the Report of the Public

Analyst dated 10-7-1974, Ex. 16. In the column "Test for Saccharin" it has been stated "Positive 7070.8p.p.m. (parts per million)". The Public Analyst has been then gone on to state in the said Report.

"I am of the opinion that the sample No.RVJ/49/74 contained saccharin, a non-permitted artificial sweetener in supari".

This opinion of the Public Analyst is obviously wrong for, as discussed above, saccharin is a permitted artificial sweetener provided it conformed to the standard laid down in Clause A.07.10 of Appendix "B".

11. If the prosecution desired to prove that saccharin had been used in breach of the standard laid down in Appendix "B", then they should have examined the Public Analyst to show that the saccharin mixed in supari sold by the accused did not conform to the standard laid down in Clause A.07.10 of Appendix "B". The opinion given by the Public Analyst that saccharin, a non-permitted artificial sweetener, was used in supari is obviously not correct. Mr. Agarwal was, therefore, right in this submission that the learned Magistrate had proceeded on the footing that saccharin was non-permitted artificial sweetener. The conviction of the accused has, therefore, been based upon wrong premises.

12. Mr. Deshmukh has urged that I should not disturb the conviction of the

accused for the reason that saccharin was harmful to public health and that although Appendix "B" permitted the use of saccharin as an artificial sweetener according to the standard laid down therein., the saccharin found in the supari sold by the accused did not comply with the standard. Mr. Deshmukh pointed out that in the Report of the Public Analyst, Ex. 16 it had been shown that saccharin was found to the extent of 7070.8 p.p.m. (parts per million).

13. Mr. Deshmukh relied upon , a ruling of the Supreme Court in the case of Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others, wherein their Lordships were pleased to observe :---

"Such being the facts, it is not the judicial function to enter the thicket of research controversy or scientific dispute where Parliament has entrusted the Central Government with the power, and, therefore, the duty, of protecting public health against potential hazards and the Central Government after consultation with a high powered technical body, has prohibited the use of saccharin and cyclamates. The fact that for a long time these substances were allowed is no argument against the reasonableness of their later ban; for human knowledge advance and what was regarded as innocuous once is later discovered to be deleterious. In no view can the discretion of the Government, exercised after listening to the technical counseling of the Central Committee, be castigated as arbitrary and capricious or as unreasonable."

14. Now, with regard to the authority cited by Mr. Deshmukh it may be pointed out, that was a case where the adulterated food was mixed both with saccharin as also with cyclamates. Apart from that the offence committed in that case was on 25-1-1971. Clause A.07.10 in Appendix "B" had been inserted by Notification No. GSR. 938 dated 26-5-1971. Their Lordships, therefore, could not have considered Clause A.07.10 of Appendix "B" for the reason that it had not been placed on the Statue Book at the time when the judgment was delivered. That authority, therefore, can have no relevance to the point involved in the instant case.

15. With regard to Mr. Deshmukh's contention that the Public Analyst had shown that the proportion of saccharin was found to be 7070.8 p. p.m. (parts per million) which was not the permitted standard, I can only state that there is no evidence on record that the proportion found by the Public Analyst was in breach of Clause A.07.10 of Appendix "B". As I have pointed out earlier, the burden lay on the prosecution to prove through the mouth of the Public Analyst that the saccharin found was in breach of the standard laid down by Clause A.07.10 of Appendix "B". Without the help of the evidence of the Public Analyst, it is impossible to state that the proportion of saccharin found in the supari sold by the accused was beyond the standard laid down in Appendix "B". I have also pointed put that the Public Analyst has opinion that the sample contained saccharin a non-permitted artificial sweetener. Rule 47 did not lay down a blanket ban upon the use of saccharin as an artificial sweetener. I am, therefore, of the view that the learned Magistrate had erred in coming to the conclusion

that the supari contained saccharin which was non-permitted artificial sweetener. The consequence of this finding would be that the accused is entitled to be acquitted.

16. In the result, the appeal filed by the State is dismissed. The conviction and sentence passed by the learned Judicial Magistrate on the accused is set aside. Bail bond of the accused to stand cancelled. Fine, if paid, to be refunded to the accused.