
(1972) 11 BOM CK 0011
In the Bombay High Court

The Municipal Council

APPELLANT

Vs

Shripat Ganeshlal and Another

RESPONDENT

Date of Decision : 23-11-1972

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)

Citation : (1973) CriLJ 1490 : (1973) MhLj 399

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Judgement

Masodkar, J.—This is an appeal by the Municipal Council, Akola, against the acquittal recorded by the Judicial Magistrate, First Class, Akola of respondent-1 accused Shripat for an offence u/s 16 (1) (a) of the Prevention of Food Adulteration Act, 1954, (hereinafter called the Act).

2. The material facts are not at all in dispute. On March 26, 1968, the accused was found selling Kesari Dal in his shop located in Kothari Bazar, Akola. This sale was effected to C. W. 1 Abdul Karim, who being Sanitary Inspector with the complainant Municipal Council was also for the purpose of the Act, the Food Inspector. He took oath as C. W. 1 and stated that he knew the accused, who deals in sales of grains in Kothari Bazar. The witness had gone to his shop when after disclosing his identity he pointed out to him that he wanted grains for sample from his shop. In the shop Tur Dal and Lakh Dal i.e., Kesari Dal, were kept for sale. C. W. 1 demanded sample of Lakh Dal as a sample for food. Upon this the accused sold him 750 grams of Dal as food-stuff. The notice Exh. 13 was properly served on the accused which describes the sample as the food-article. That notice is duly signed by the accused. Having paid the amount, he obtained the receipt which is Ex. 14. That receipt is duly signed by accused. Thereafter the sample was divided in three parts and put in three tin-containers which were sealed. One of them was given to the accused, another was sent to Chief Public Analyst, Amravati and third was retained with the complainant Council. Panchanama was prepared vide Exh. 15 which also bears the signature of the

accused. The recitals in the panchanama show that the food article of Lakh Dal was sold for the purpose of analysis and it is signed by the accused. There is similarly a signature of the Food Inspector stating that he had obtained the sample of the food article and having paid 88 paise to the vendor as its price. All these documents cannot be in dispute nor are disputed.

3. In his examination u/s 342 of the Code of Criminal Procedure, the accused has stated that C. W. 1 had come to his shop but denied the disclosure of his identity. He says that this witness had told him that the accused was selling Lakh Dal and wanted a sample to test its colour. He denied the demand for a food article. He admitted the notice Exh. 13. Similarly, he admitted the receipt of 88 paise. Exhibit 14 is also admitted. Exhibit 15, which is the Panchanama and the process of preparation of that panchanama is also admitted. The accused admits that the Inspector gave him one tin.

4. One of the containers was sent to the Chief Chemist, Public Analyst, Amravati, as a sample under No. 57 and Exh. 17 is the report of analysis. That report says that the sample No. 57 of Lakh conforms to the standards of Lakh Dal which is prohibited for sale under Rule 44-A of Prevention of Food Adulteration Rules, 1955.

5. After obtaining this report, prosecution was lodged by the Municipal Council u/s 16 (1) (a) of the Act and the complaint stated that the accused had committed an offence by selling Lakh Dal or Kesari Dal in contravention of Rule 44-A of the Rules framed under the Act.

6. During the trial the accused took the stand that Lakh Dal was exposed for sale as a cattle fodder. In other words, the plea was that there was no breach of Rule 44-A as sale of Lakh Dal was not shown to be an article of food for human consumption, but as an article of fodder for use as such.

7. There is some support for the accused to be found in the evidence led by the prosecution. C. W. 2 Hussain was the person in whose presence Abdul Karim (C. W. 1) had demanded sample of Dal and is a signatory to Exh. 13. In cross-examination he has stated that the accused deals in cattle-food. At the relevant time cotton seeds as well as mixture-snuri were seen in the shop. It may be, therefore, possible to urge for the accused that he was dealing in fodder and the sale was with a notice that it was not for human consumption.

8. The learned Trial Court found against the accused on all the points and answered that it was established that the accused sold Lakh Dal to Food Inspector Abdul Karim, that the sale was prohibited under Rule 44-A (but he held that the appointment of Abdul Karim as Food Inspector was not valid and, therefore, acquitted the accused.

9. That is how the matter has been brought by the Municipal Council before this Court having obtained leave to appeal as required by Section 417 (3) of the Code of Criminal Procedure.

10. The notification appointing Sanitary Inspector of the Municipal Council to be the Food Inspector under the Act is clear. That is produced at Exh. 53. It does appoint a Sanitary Inspector of the Municipal Council to be the Food Inspector for the purposes of the Act. The fact that C. W. 1 Abdul Karim was the Sanitary Inspector at the relevant time cannot at all be doubted. The order produced at Exh. 12 clearly shows that he was working as the Sanitary Inspector at the material time.

11. What is being argued is that the appointments u/s 9 of the Act, must be by name and cannot be by office. This argument on the plain reading of Section 15 of the General Clauses Act has to be rejected. The Prevention of Food Adulteration Act is a piece of Central Legislation and the provisions of the General Clauses Act would govern the matter in controversy. Whenever there is a power to appoint any person to fill in any office conferred by a Central Act, then it is competent mode of appointment to make such appointment by name or by virtue of the office. Even under the provisions of the present Act, the appointments of Sanitary Inspector by office have been upheld in *State of Tripura v. Ashu Ranjan Saha*, *State of Mysore v. Danjaya* AIR 1963 Mys 157 : (1963) 1 Cri LJ 785 and *Subbayyan Muthukomaran Vs. State of Kerala and Others*, The principles underlying the provisions of Section 15 of the General Clauses Act have been considered by Supreme Court in *Abdul Husein Tayabali and Others Vs. State of Gujarat and Others*, In that case it is found with reference to the appointment of Special Land Acquisition Officer, that there could be no objection if the appointment is made of an officer by virtue of his office and not by his name. Thus the principle being clear, the power conferred by Section 9 of the Act can be exercised in the manner indicated by Section 15 of the General Clauses Act. The State Government has exercised that power by nominating the office in the notification. The notification, therefore, produced at Exh. 53 in this case, was validly made and no exception can be taken to the appointment of Sanitary Inspector as such to be the Food Inspector.

12. It follows that C. W. 1 Abdul Karim, under the notification of the State Government was the Food Inspector and was authorised to purchase the commodity for the purpose of sample which he did as is indicated above.

13. Upon this finding, the acquittal recorded by the learned Trial Court will have to be set aside. But an important and interesting debate is urged in the present case Which may now be considered.

14. As far as this Court is concerned, Rule 44-A has been the subject-matter of consideration by a Full Bench vide *Dhirajlal Valji Kotak Vs. Ramchandra Janglaji Gujar and Another*, The concerned rule is quoted in the body of the judgment and after considering the several arguments that were advanced the Full Bench answered the question referred to in para 47 of the Judgment (page 109 of the report) in the following terms:-

Thus, upon a consideration of the authorities and the provisions of law, in our

opinion the following conclusions would flow:

(1) That what is necessary to establish in the case of a sale under the Prevention of Food Adulteration Act is-

(a) that there is an article of food,

(b) that a sale of that article has taken place; and

(c) that the article is either adulterated, misbranded or dealt with contrary to a prohibition or a rule under the Act, or its sale is otherwise prohibited as in Rule 44-A:

It follows from this that if an article is proved to be an article of food it must be sold or otherwise dealt with only in its pure form.

(2) That the ban on the sale of Kesari Dal in Rule 44-A is total and there is no scope for any exception or exemption.

(3) That it is no defence to a prosecution under the Act to say--

(a) that the accused did not intend to use Kesari Dal as food, or

(b) that he never intended to sell it as food.

Intention or mens rea as such is totally irrelevant to the applicability of Rule 44-A and so is the question of the use to which an article is put

(Emphasis provided)

According to this Court, therefore, it is not open to an accused to plead in defence that the accused did not intend to sell Kesari Dal as food or that he never intended to expose it as food. Similarly, the ban on the sale of Kesari Dal in Rule 44-A was total and complete. The person selling Kesari Dal which is admittedly an article of food would commit breach of Rule 44-A and as such would be blameworthy under the provisions of the Act, the defence of the present kind being impermissible.

15. It is argued on behalf of the accused that the relief of this judgment and the law as found by the Full Bench of this Court, is completely shaken and in fact it-plied overruled by the Supreme Court judgment now reported in Andhra Pradesh Grain and Seed Merchants Association Vs. Union of India (UOI) and Another, . Relying on certain passages from this judgment, it is urged by the accused that it is open to a person charged under the provisions of Section 16 (1) of the Act to point out that he had given notice to the customers that what was being sold was not meant for human consumption. In other words, it was not an article of food and was not sold as such. It is submitted that there is evidence in this case to suggest that accused was dealing in cattle fodder and that he had kept this Kesari Dal for that purpose only. Exhibits 40 and 41 are the bill-books produced in this case by the accused and it is printed on each bill which must be deemed to be issued to each customer that Kesari Dal is meant for the use as cattle-feed.

The learned Counsel, therefore, argues that the view taken by the Full Bench that it is not open to accused to say that Kesari Dal was sold as an article of cattle-feed is no more a good law.

16. The learned Counsel further points out that actually the State has issued a circular, which is produced in this case as Exh. 34, pointing out that though Kesari Pat is injurious to human health and has been banned as such, but since the same can be used as an animal feed, the Government of Maharashtra has decided that its sale for animal feed through cattle food shops should be permitted and it should not be allowed to be sold by grocers and shop-keepers who also sell food-grains and pulses for human consumption.

17. This circular appears to have been issued on July 7, 1966 and is not in the form of any notification. It appears to be more or less a concession in favour of certain dealers who had made representations to the Government for permitting the sale of Kesari Dal as a cattle feed. Therefore, argues the learned Counsel for the accused, that the State has itself permitted this sale of Kesari Dal as an article of cattle-feed and there is no question of total prohibition as is evidenced by Rule 44-A which was so interpreted by the Full Bench of this Court

18. It is further submitted that if Rule 44-A framed under the provisions of the Prevention of Food Adulteration Act is to mean a total ban upon the activity of trade and commerce qua Kesari Dal, then it is unreasonable restriction on the right of the accused under Article 19 (1) (g) of the Constitution. Even the Government circular clearly establishes that this can be an article which is available- in the market for the purpose of cattle feed. In other words, it is not injurious to animals and could be an object of permissible trade. To put such article out of trade and prohibit even its exposure for sale which is a commercial activity is to, in fact, take away the fundamental right guaranteed by the Constitutional mandate to practise any profession or to carry on any occupation, trade or business. The learned Counsel argues, at any rate, this prohibition being complete as is found by the Full Bench is an unreasonable one. He therefore submits that Rule 44-A should be ignored as being violative of his fundamental right and accused cannot be held culpable if he has exposed the cattle feed for sale which is a legitimate activity of a citizen.

19. It is further submitted that not only Rule 44-A should be tested on the touchstone of Article 19 (1) (g) read with its Sub-clause (6) of the Constitution of India, but it should be tested on the provisions of Section 23 (1) (f) of the Act, which is a power conferred upon Central Government to make rules. If Rule 44-A travels beyond the power given expressly by Section 23 (1) (f) of the Act, it is argued, it should be declared as ultra vires.

20. Having issued the circular, of course, the State has its own doubts. The learned Government Pleader Mr. Palshikar appearing for the State tried to follow the line indicated by the circular. As to the defence open to an accused, he submitted that the law laid down by the Full Bench of this Court cannot be held

good in view of the later Supreme Court judgment. The correct position according to the Government Pleader is that it must be open whenever there is a trial under the Act to an accused to point out that the article was not sold as an article of food but was sold for any other purpose. The answer given by the Full Bench thus does not find accord with the State and the learned Counsel says, the circular is explanatory and therefore it is open to an accused to show that Kesari Dal was sold in fact as an animal feed; and upon such proof Rule 44-A must be construed to mean that it restricts the activity of sale of an article of food only for human consumption. It is said that wherever there is a sale it must further be shown by the prosecution that the article was sold as such for human consumption and it is always open to the accused to say that it was sold for any other purpose.

21. The complainant Municipal Council demur at all those submissions.

22. While relying upon precedents, dogmatic and doctrinaire approach is surely strewn with dangerous results. The doctrine of stare decisis has always been inhibited in its application by judicial circumspection. Mere logical extensions flowing from the orbiters available in the course of a judgment or the reasons stated therein are not and cannot be the part of ratio decidendi of a judgment, Celebrated Earl of Halsbury, L. C. in *Quinn V. Leathern* 1901 AC 495, observed:

... that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it." Lord Denning pithily found the passage of this prime principle in 1962 AC 367 (*Close v. Steel Co. of Wales Ltd.*) in the following terms:-

... The doctrine that your Lordships are bound by a previous decision of your own is, as I have always understood it, limited to the decision itself and to what is necessarily involved in it. It does not mean that you are bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required". In saying this, I am only repeating what Lord Celborne, L. C, said in *Caledonians Rly. Co. v. Walkar's Trustees* (1882) 7 AC 259. and Lord Hals-bury, L. C. in (1901) AC 495 : 17 TLR 749 . As Sir Frederick Pollock has well said (*Continental Law in the Nineteenth Century - Continental Legal History Series* xliv.): "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision": and his words were endorsed by Sir William Holdsworth in his *Essays* (*Essays in Law and History*, pp. 158, 159)...

22-A. In *Andhra Pradesh Grain and Seed Merchants Association Vs. Union of*

India (UOI) and Another, , the Supreme Court was considering the validity of certain sections of the Prevention of Food Adulteration Act, 1954, and so also rules upon a complaint that it takes away the rights under Articles 14, 19 (1) (g) and 20 (3) of the Constitution. The legislation in its entirety is found to be valid having been properly made with a view to control adulteration and misbranding of articles of food. It was conceded before the Supreme Court that there was no right of business in adulterated or misbranded food. After quoting the provisions of Section 7, Sub-section (5) of Section 13, Section 16 (1), Section 19 and the definition of the term "food" and referring to the definitions of the terms "misbranded" and "adulterated", the Court considered the argument whether the provisions of Section 16 (1) (a) are in the nature of unreasonable restrictions. Their Lordships observed in para 5 of the judgment:

In our judgment, the restrictions imposed upon the conduct of business by traders in foodstuffs cannot be deemed unreasonable. By Section 16 (1) provision is made for imposing penalties, among other acts, for storage, sale or distribution of articles of food which are adulterated or misbranded, or sale of which is prohibited by the Food (Health) Authority in the interest of the public health, or is in contravention of the Act or the rules.

The validity of the provision was upheld. It was present to the mind of the Court clearly that Section 16 (1) made it penal the contravention of the provisions of the Act or of the Rules. No more therefore a challenge is open that the provisions of Section 16 (1) which penalises the contravention of the rules can be said in any manner transgressing upon a fundamental right that is found to be proper and valid. The Court further observed:

But in considering whether creation of absolute liability amounts to imposing unreasonable restrictions, the Court has to strike a balance between the individual right and public weal. The Courts will not strike down an Act as imposing unreasonable restrictions merely because it creates an absolute liability for infringement of the law which involves grave danger to public health. The Courts will undoubtedly consider whether without imposing absolute liability the object of the statute could be reasonably secured. For that purpose the Court will consider the object of the Act, apprehended danger to the public interest, arising out of the activity if not controlled and the possibility of achieving the intended results by less stringent provisions sions....

The Court further alluded to the common experience relating to the rampant evil of adulteration and misbranding of foodstuffs in the country. A statute calculated to control such a ruinous course of activity was indisputably in the interest of the general public.

24. An argument was advanced before the Supreme Court that even though an article is purchased not as an article of food but for use otherwise, the vendor is still deemed guilty and an example of coconut oil, which is an article of food in some part of the country and not in others, was pressed in aid. While repelling

that submission the following observations upon which the accused rely in this case are made by the Court:-

We are again unable to accept the argument that under the Act even when an article is purchased not as an article of food but for use otherwise, the vendor will be deemed guilty if the article does not conform to the prescribed standards, or is as an article of food adulterated or misbranded. Counsel staid that coconut oil is used in the State of Kerala as a cooking medium, and sale of adulterated coconut oil may in Kerala be an offence u/s 16, but in other parts of the country where coconut oil is not used as a cooking medium and is used as a component of hair oil or for other purposes, it amounts to imposing an unreasonable restriction to penalise the vendor who sells coconut oil knowing that the purchaser is not buying it as a cooking medium. But there are no articles which are used as food only in one part, and are not at all used as food in another part of the country. Even coconut oil is used as a cooking medium by certain sections of the people in parts of India other than Kerala. In any event it is always open to a person selling an article capable of being used as an article of food as well as for other purpose to inform the purchaser by clear notice that the article sold or supplied is not intended to be used as an article of food. What is penalised by Section 16 (1) is importation, manufacture for sale, or storage, sale or distribution of any article of food, if what is imported, manufactured or stored, sold or distributed is not an article of food, evidently Section 16 can have no application.

(The underlining is mine)

25. Relying upon the portions underlined above, it is argued for the accused that this is a ratio decidendi upon the entire Section 16 (1) and it is open to a person selling an article to take a defence in every case under that section and penalty would not attach if article was not intended to be used as an article of food. It is submitted that this position will also avail whenever there is a charge of sale of an article in contravention of Rule 44-A. If that be so, the argument proceeds, then the Full Bench authority of this Court is completely shaken or is impliedly overruled.

26. The argument thus proceeds that the observations found in the Supreme Court judgment are in the nature of ratio decidendi and will govern each and every case u/s 16 (1) of the Act. Such an approach ex facie is neither proper nor sound upon the principles applicable in such matters. The paragraph itself indicates that what the Court was considering was a submission with respect to matters of sale of an article of food which does not conform to the prescribed standards or an article of food adulterated or misbranded. The Court was not, therefore, called upon nor was deciding a case where the sale of an articles of food is in contravention of the provisions of the Act or the Rules framed under the Act. The observations in terms do not apply to each and every case that may arise under the provisions of Section 16 (1). Such statements which obviously are not part of ratio decidendi are to be distinguished as obiter dicta of the

Superior Court and are to be understood in the context in which the same find place in a judgment. The attempt to apply an obiter of the kind which is pressed in aid in this case in its entirety to the provisions of Section 16 (1) would demonstrably lead to startling results.

27. A bare perusal of the Clauses (b), (c), (e), (f) of Section 16 (1) which are independent offences would show that the observations upon which reliance is placed cannot apply to it. Under Clause (b) a person preventing a Food Inspector from taking sample as is authorised by the Act is subjected to penalty. In such a prosecution, though it is covered by Section 16 (1), surely no accused can take a defence relying upon the observations as is done in the present case. Clause (c) of Section 16 (1) is similarly relating to prevention offered to the Food Inspector in his exercise of powers conferred by or under the Act. Clause (e) concerns itself with the user of a report or a certificate and Clause (f) relates to offences upon a false warranty. There is, therefore, inherent infirmity in the submission that the observations in the aforesaid judgment of the Supreme Court have anything to do with all types of prosecutions for it refers to Section 16 (1) of the Act.

28. Section 16 (1) (a) itself is in two parts and it has something to do with the other provisions of the Act and also the scheme of preventing dealings in food adulteration and articles of food. By Sub-clause (i) of Section 16 (1) (a), whenever any person imports into India or manufactures for sale, or stores, sells or distributes an article of food which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) Authority in the interest of public health, a penalty is imposed. By Sub-clause (ii) of Section 16 (1) (a), distinct provision is made. Penalty is attached to similar activities carried on in respect of an article of food other than referred to in Sub-clause (i) of that section, in contravention of any of the provisions of the Act or of the rules made thereunder. Independent offence is, therefore, contemplated. The difference between Sub-clause (i) and Sub-clause (ii) of Section 16 (1) (a) is plain; and a trial under the one need not be confused with the trial under the other. Defence available under the first part may not be available under the second part. It follows therefore that whenever contravention of Rule 44-A is alleged by the prosecution, it is the case that falls u/s 16 (1) (a) (ii) of the Act. Once therefore contravention of a rule which may totally prohibit a sale of an article of food is established the offence is complete. By mere breach the person is rendered blameworthy. The prohibition being total the consequence is absolute. Such a category and eventuality was not before the Supreme Court,

29. The ratio of the observations quoted supra clearly govern the subject-matter of a trial of offences for sale, transport, storage etc. of articles of food adulterated or misbranded and may extend to articles temporarily prohibited in public interest. Thus construed it takes in cases covered by the provisions of Section 16 (1) (a) (i) only.

30. The other provisions of the Act and the scheme if perused is indicative of the same result. The term "food" has been defined by Section 2 (v) and means any

article used as food or drink for human consumption other than drugs and water and includes any article which ordinarily enters into or is used in the composition or preparation of human food and any flavouring matter or condiments. This definition therefore is prescriptive of the articles which are being used or capable of being used as food or drink for the purpose of human consumption. The terms "adulterated" "misbranded", so also the terms "sale" and "sample", are all defined in the Act viz. Section 2 (i), 2 (ix), 2 (xiii) and 2 (xiv).

31. Section 5 imposes prohibition upon the imports of any adulterated food or misbranded food or articles of food except in accordance with the conditions of license of any article of food in contravention of the provisions of this Act or the Rules framed thereunder. Section 7 operates upon manufacture for sale or storage, sale or distribution of any adulterated food, any misbranded food, any article of food, any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence, any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health or any article of food in contravention of any other provisions of this Act or of any rule made thereunder. Section 19 speaks of defences available in a prosecution upon an offences involving sale of any adulterated or misbranded article of food and therefore has reference to specific prosecutions only. It does not deal with the defences which could or should be available upon other prosecutions contemplated by Section 16 (1) of the Act.

32. Keeping in view these several kinds of contemplations further power is given to Central Government which can be exercised only after consultation with the Committee and subject to the condition of previous publication, to frame rules, u/s 23. Section 23 (1) (f) empowers the Central Government to prohibit the sale or define the conditions of sale of any substance which may be injurious to health when used as food or to restrict in any manner its use as an ingredient in the manufacture of any article of food or regulate by the issue of license the manufacture or sale of any articles of food. It enables a choice of substances which may be injurious to health when used as food and permits prohibition by framing a proper rule. Such substances may not initially answer the description of the term "food", but may be used as "food".

33. This brief survey brings out differences inherent in legislative intent with respect to adulterated, misbranded and totally prohibited articles of food. It is left to the State to take into account the social facts while making a Rule operative upon an article treating it as ex-commercial. Such a power can be plainly read in the terms of Section 23 (1) (f) and the genesis of Rule 44-A lies with the legislative experience available in a country like ours. Consultations with the Committee and further requirement of laying such rules before the Parliament are guidelines to secure public interest in such matters.

34. The nature of this substance called "Kesari Dal" or "Kesari gram" has been in extenso considered by another Full Bench in this country, i. e. of the Kerala High Court too, in the case of P. Govinda Pillai Vs. V.G.N. Padmanabha Pillai and

Others, . There the provisions of Rule 44-A were questioned as being ultra vires of the constitutional guarantees under Article 19 (1) (g) read with Article 19 (6) of the Constitution. It was found that the rule has been framed by the Central Government with reference to its power u/s 23 (1) (f) of the Act. It was observed that Kesari Dal was injurious to health. The Full Bench of the Kerala High Court, taking into account the text books on Medical Jurisprudence, pointed out that this Dal is grouped under the poisonous food and grains. The Court also concerned itself with the findings published by the Madras Government relating to the Kesari gram, Kesari Dal and their products being wholly Unwholesome and unfit for human consumption and harmful to the health of the people. The Court quoted from a book by Lyon regarding this Kesari Dal pointing out thus:

Various cereals, when affected by fungi, Including maize, become poisonous as has already been mentioned. Cases of poisoning have also arisen through the eating of certain Wild grains and peas, especially in times of famine. The symptoms resulting are those of spastic spinal paraplegia and polyneuritis. The condition has been called Lathyrism or "Bean Paralysis" in Europe, after the particular genus of pea or vetch most commonly causing these symptoms, though similar disturbances result from eating certain grasses and other plants. Cases of this kind of poisoning are most common in the Central Provinces, including Chota Nagpur and in the outer Himalayas. When mixed with three times its weight of wheat, and cooked as pottage or bread, the grain is apparently harmless, but cooked by itself it acts as a poison. Lathyrism has occurred in epidemic form during times of famine, in India, and Its connection with the eating of certain peas has been recognised since Hippocratic times. It has frequently been described in Europe by writers of the fifteenth, and sixteenth centuries. It has given rise to epidemics in France, Italy, Algiers and Abyssinia, and also in India in Sind, Chota Nagpur and the Central Provinces. The incriminated pea is lathy us sativa locally known as Kesari (also Khesari) or Teora. L. Cicera is incriminated elsewhere.

The onset is in many cases sudden. The patient may wake up feeling pains in the loins and calves and an inability to move his legs. The lower limbs assume the rigid character of spastic paraplegia (lateral sclerosis) and in severe cases there may be complete paraplegia. The knee-jerk is greatly exaggerated; ankle-clonus is generally readily obtained, and in severe cases is caused in progression when the weight of the body is brought to bear on the ball of the toes. A slight tap may throw the legs into severe conic spasm. Initial and transitory paralysis of the bladder has been described, but was not noticed in all cases.

Beyond the initial backache, etc. there is no sensory disturbance, nor is there any muscular atrophy except such as arises under the famine conditions which may have forced the patient to resort to a diet of inferior food-grain.

The head, upper part of the trunk and upper extremities are not affected, so that late in the disease when the rigid legs are useless for progression, the patient drags or pulls himself along by means of a lathi grasped in the hand or in other

cases squats in a metal basin and "rows" himself about with clogs held in the hands.

After observing the nature of the article which is capable of being used by human beings and its disastrous results, the High Court held that the complete prohibition of trade as is evidenced by Rule 44-A would be in the interest of general public and the rule valid and constitutional.

35. The decision, therefore, of Kerala Full Bench as well as the Full Bench of this Court were rendered much before the judgment of the Supreme Court and it must be taken that everyone was aware that there was a total prohibition enacted under the rules as far as certain articles of food which are known to be poisonous and which are and can be used as food in this country were stamped out of the activities of sale or trade in that regard. In spite of this, one does not find any reference in the Supreme Court judgment that even in a trial where there is a total prohibition of trading in a poisonous food, such defence would be available to a person charged with an offence u/s 16 (1) (a) (ii). It does not appear, therefore, to me that the observations of the Supreme Court can be of any help to the present accused who is put for trial for contravening the provisions of Rule 44-A. What, the rule prohibited was complete ban on the sale of Kesari Dal in the interest of the general public as that product is poisonous and dangerous to public health and is injurious. It must, therefore, be answered that the judgment relied upon by the accused in this case does not permit him to point out that though Rule 44-A prohibited the sale of the substance called J.Cesari Dal, he had sold it as an article of cattle feed.

36. This necessarily takes me to the challenge that the provisions of Rule 44-A are ultra vires of the constitutional guarantee under Article 19 (1) (g). As earlier stated, that question has been considered at some length by the Full Bench of the Kerala High Court and it has been observed that the rule is not invalid and was reasonable and has been framed in the public interest.

37. The Supreme Court decision upon which reliance was placed was also concerning the challenge not only to the Act but to the Rules framed under the Act. It is clear that no exception whatsoever has been found to validity of Rule 44-A. No fundamental right of commerce even with respect to adulterated or misbranded article of food was even asserted therein. The provisions of the Act generally and of the Rules have been upheld being in the public interest.

38. As the history of the present rule shows and the facts available and the injury and mischief sought to be avoided by imposition of this denial of trade, it cannot seriously be disputed that the same is within the purview of Section 23 (1) (f) of the Act. By referring to the provisions of Article 19 (1) (g), no citizen can claim that he has a right to deal in an article which is poisonous and injurious to public health. There is no such fundamental right. When one speaks of possession, occupation, trade or business and a right therein, it is a basic postulate that it is article or a thing not injurious or harmful to others.

39. The concept of "right" in such matters cannot be conceived in isolation. Social experience and public realities are all relevant as juridically, right is understood as a relative abstraction flowing from the concept of duty itself. Properly put the doctrine has all the same dimensions it emanates and inheres for achieving individual existence as a social being. Law looks to it as a well-cut piece of diamond fitted and secured by human experiences having facets of all the lucent interplay of ideas of duty and obligations, right and wrong. The life of this luminescent phrase must always be felt and understood with its inherent limitations and not without it. The word "right" in favour of one person serves as a sign that someone else is obliged to conform to a pattern of conduct, or that the person in whom it is said to inhere is free to act or not, as he chooses, or that he has a power to achieve some result, or an immunity and secondly, it carries the implication that in the enjoyment or exercise of any such advantage the right-bearer "will do no "wrong" tonight at understood in law and lastly, it serves as a directive to courts by symbolising conveniently the inference that is drawn from a given set of facts. (See "Jurisprudence" by Dias, Second Edition, Chapter IX, page 219 at page 226). The term "right" connotes differing ideas concerning the activities of a person with reference to another. Before the Court can be called upon to pronounce that there is a constitutional right of trade or commerce with references to an article which obviously is injurious to public health, it must be further shown that such activity is sanctioned and will not or cannot have the effect of doing wrong which it is wrought with. Mere assertion of such a right is not enough but must have reference to all relative facts from which an inviolate reference can be drawn in favour of such permissive claim.

40. I have quoted above in extenso from the judgment of the Kerala Full Bench to point out that in a poisonous foodstuff none can claim a fundamental right of trade. The dangerous and poisonous articles which have inbuilt potential for mischief with regard to human health and safety, should be treated ex-commercial and, in my view, are not within the fundamental right that is asserted at the foot of Article 19 (1) (g) of the Constitution.

41. In Andhra Pradesh Grain and Seed Merchants Association Vs. Union of India (UOI) and Another, before the Supreme Court the point was not at all pressed with respect to the fundamental right with regard to misbranded or adulterated food. In The State of Bombay Vs. R.M.D. Chamarbaugwala, , gambling activity was held to be extra-commercial and not within the Article 19 (1) (g) or Article 301 of "the Constitution. In State of Uttar Pradesh Vs. Kartar Singh, , the rule under the Prevention of Food Adulteration Act by which certain standards were prescribed with respect to the foodstuffs was considered upon a challenge of constitutional validity under Article 14 of the Constitution. The Court repelling the contention that Article 14 was in any manner violated or transgressed observed :

We might in this connection add that the respondent cannot assert any fundamental right under Article 19 (1) to carry on business in adulterated food-stuffs.

This is enough to hold that in a poisonous food-stuff the accused who is a citizen of this country cannot claim any fundamental right to carry on a business. The challenge, therefore, to Rule 44-A is without any merits.

42. Even assuming that he has such a right, Rule 44-A has been properly made in the public interest. The facts available in this country must be assumed to be before the Legislature, in that this article is capable of being used for human consumption while putting a complete embargo in the form of Rule 44-A upon its activity. On the one hand, this largely populated country experiences state of continual want and poverty of its millions, is an acknowledged fact. The studies recently published show that about 21 crores of people live on the bare starvation margin in this country. There are large areas ever experiencing drought and famine in a cyclic rotation. Food and articles that possibly make it are also under pressure and treated coveted commodity. The rationalised discrimination available to a well-fed community in the choice of articles of food surely is not attributable to people where hunger rules the life of men. Anything that can be consumed and have a semblance of food can find way to the hungry and destitute, irrespective of its results. The exposition of such poisonous grain for the purpose of commerce has obvious possibility of mischief and injury, it being available to people as food and consequently endangering life and health of society. Law or the Rule in such matters has both positive and prohibitive facets. On the one it represents and takes in within its fold the common social experience and on the other it sanctions a control, operative on permissive activity. It is ample to state that mere logic is not the life of law. Law is surely the repository of the communicative conscience, as well its concern felt of the necessities of an age and time. The present piece is clearly laden with these and no exception can be entertained to it on a supposition of right or its unreasonable taking away.

43. Concept of constitutional "restriction" has been found to include total prohibition. (See Narendra Kumar and Others Vs. The Union of India (UOI) and Others, . Constitutional field is replete with instances when the Courts have upheld stamping out of an activity in the public interest. (See for instance: Smt. Sona Bai and Others Vs. Municipality of Agra, ; Smt. Shama Bai and Another Vs. State of Uttar Pradesh, Lucknow and Others, and Municipal Committee, Malerkotla Vs. Mohd. Mushtaq, regarding prostitution. So also see Balley Singh Vs. State of Uttar Pradesh and Others, regarding poppy cultivation).

44. If upon a debate it is possible to see that the prohibition enacted is for furthering a clear policy to achieve the object for which the rule inhibits an activity, then the Courts cannot be asked to pre-empt their own notions and to reach and restate the law as to reasonableness. These matters must rest within the domain of the legislative experience indicating the means to do away a patent wrong. The provisions of Section 23 of the Act furnish safe guides in this regard. It is upon the advice of the committee and in consultation therewith, framing of such a rule is enjoined. Prior publication for public knowledge is

similarly provided followed by laying it before the Parliament. In this manner the present article is chosen and declared extra-commercium in the country. There are eminent guidelines and the Rule 44-A has thus been properly made. I cannot, therefore, accede to the submission that Rule 44-A transgresses or violates the fundamental right available to the present accused or it passes beyond the limits of Section 23 (f) of the Act. Even granting a right to the accused who is a citizen of this country the Rule imposed a reasonable restriction on his activity. His present act was wholly blameworthy, he is liable as such.

45. The accused thus did commit an offence by selling 750 grams of Kesari Dal in contravention of Rule 44-A framed under the provisions of the Act.

46. However, as to the sentence, the matter must be governed by the proviso to Section 16 (1). In this case there are peculiar features which have been noticed where even the State itself feels the doubt about the absolute liability imposed by Rule 44-A framed under the Act. A circular has been issued which emanates from the Under Secretary to Government, Urban Development, Public Health and Housing Department, Sachivalaya, Bombay, stating that though sale of Kesari Dal is totally prohibited as an article of food for a human being, it is permitted to be so sold as an animal feed. This appears to have been issued before the date of sale which constituted an offence. It is perfectly possible that keeping reliance in good faith upon such a circular, a person in the position of accused may expose Kesari Dal as an article for sale. Hence, I feel that there are good grounds not to impose the minimum sentence prescribed by the provisions of Sub-section (1) of Section 16 but to treat this matter under its proviso. The interests of justice would be met if the accused is sentenced to pay a fine of Rs. 500/- within a period of one month or in default to undergo two months R. I. for the same.

47. Accordingly, the appeal is allowed. The order of acquittal of the accused-respondent is set aside; and the accused is convicted for an offence u/s 16 (1) (a) (ii) of the Act and sentenced to pay a fine of Rs. 500/- within a period of one month or to undergo rigorous imprisonment for two months in default.