

(1984) 03 GAU CK 0012
In the Gauhati High Court
Case No : Govt. Criminal Appeal No. 7 of 1976

The State of Assam

APPELLANT

Vs

Rameswar Prasad and Another

RESPONDENT

Date of Decision : 28-03-1984

Acts Referred:

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

Prevention of Food Adulteration Rules, 1955 — Rule 22, 44, 47

Citation : (1984) 2 GLR 88

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

Bench : Division Bench

Advocate : Public Prosecutor, for the Appellant; J.P. Bhattacharjee and P.K. Goswami, for the Respondent

Final Decision : Allowed

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 Keshaw Prasad Sahu in Golaghat town and purchased 900 grams of ice-candy from the Manager Rameswar Prasad 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 item 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 like saccharin in that food. 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 Rameswar Prasad 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 Rules 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,

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 and 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", it was covered by Item No. 14, and, therefore, held that the Food Inspector was required to send at least 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

over looking Item 22 of Rule 22, which is a special provision for "Ice Cream and mixed Ice Cream". When 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 Ice Cream 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 candy 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 error.

5. Learned Counsel for the Respondents has also helped us in pointing out the decision of the Supreme Court in *Rajal Das G. Pamnant (supra)* 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. The object and purpose behind Rule 22 is to find out the precise contents of the food by the Public Analyst. However, his verification and tests are subject to the report of the Director of Central Laboratory. If the quantity of sample sent to the Public Analyst is less than that prescribed in Rule 22, but it is sufficient to enable the Public Analyst to make the analysis without any difficulty, then merely because the quantum of sample sent is not in strict compliance with "the Rule" cannot result in the nullification of the report of the Analyst. It is for the Public Analyst to state whether the quantity of sample sent is sufficient for his analysis. When he finds the sample to be insufficient, there is an end of the matter. It may be that when the Analyst finds it sufficient but due to some reason or other it can be shown that the report of the Public Analyst based on the short quantity sent to him is not trustworthy or reliable, the case may fail. In short, if the purpose and object of the Rule is frustrated by sending inadequate quantity by the Food Inspector, the case may terminate in acquittal. However, if the object is not frustrated but is squarely and justifiably achieved without any semblance of doubt, then it would be merely piling unreason upon technicality to acquit offenders on technical ground. Rule 22 is directory and not mandatory. However, all Food Inspectors must try to comply with the Rule as far as possible. This is what we call from the *State of Kerala v. Atasserry Mohammed (supra)* The same view has been expressed by the Supreme Court in *State of Punjab v. Devinder*

Kumar (supra). In view of the law laid down by the Supreme Court the findings reached by the trial Court that Rule 22 is mandatory, and, in view of the breach committed by the Food Inspector, the report of the Public Analyst must be rejected as wrong and it is liable to be set aside, which we hereby do. Now accepting the report of the Public Analyst as an admissible evidence, we have no hesitation in reaching the conclusion that the accused violated the provisions of Rule 44 (g) read with Rule 47 of "the Rules", and, as such, they are guilty under Sections 7/16 of the Prevention of Food Adulteration Act. Accordingly, we hold them guilty under the said provisions of law upon reversing the order of acquittal(sic).

7. Now comes the question of sentence. We find that the incident happened in 1972 when the accused were young men who by now are aged about 50 years. Secondly we find that (sic) 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 disposing of the appeal which is pending since 1975. However, neither the accused nor the prosecution had any hand in it Mr. C.R. De, learned Public Prosecutor, in fitness of things, submits the 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 elderly persons 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-Respondents to pay a fine of Rs. 1,000/- each, in default, to suffer rigorous imprisonment for six months.

8. In the result, the appeal is allowed. The Appellants are convicted under Sections 7/16 of the Act and they are directed to pay fines of Rs. 1,000/- each in default, to suffer rigorous imprisonment for six mouths. 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.