

Bal Kishan Thapar

Vs

Municipal Corporation of Delhi

Criminal Appeal No. 105 of 1975

(Syed M. Fazal Ali, A. D. Koshal JJ)

09.03.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the Delhi High Court convicting the appellant under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, read with Section 2(ix) clause (a) & (g) of the Act and sentenced to rigorous imprisonment of Six months and a fine of Rs. 1000. This order was passed by the High Court in a revision filed by the Municipal Corporation of Delhi against the Order of the trial Court which convicted the appellant under Section 7 read with Section 16 of the Prevention of Food Adulteration Act read with section 2(ix)(k) of the Act and sentenced him to imprisonment till the rising of the Court and a fine of Rs. 500, a revision against this order to the Sessions Judge was unsuccessful and hence a further revision was taken revision was taken by the Delhi Administration before the High Court.

2. The facts of the case are detailed in the Judgment of the High Court and the Magistrate and we need not repeat the same all over again. The Food Inspectors, namely, one Mr. James and Mr. Sinha took samples of a preparation called Para Excellent and Para Asli from the shop of the appellant who according to the food inspectors sold these preparations as saccharin, a fact which not admitted by the appellant. The trial Court after considering the evidence and the report of the Chemical Examiner found that the case if misbranding under Section 2(ix)(a) and (g) was not made out by the prosecution but it was certainly misbranding as contemplated by Section 2(ix)(k) of the Act. He accordingly convicted the appellant as indicated above. Mr. Frank Anthony, learned counsel for the appellant has submitted that the High Court was wrong in law in interfering with the Order of the Magistrate, firstly because the findings of fact by the magistrate was binding on the High Court in revision and secondly, because the High Court took a legally erroneous view of the law on the interpretation of Section 2(ix)(a) & (g) of the Prevention of Food Adulteration Act.

3. We have heard learned counsel for the parties and have perused the judgment of the High Court and we of the opinion that the contentions raised by the learned counsel for the appellant is well founded and must prevail. We have perused the original label which described the preparation sold to the food inspectors. There is nothing to show that the appellant in any way tried to give an impression to the purchaser that either saccharin or some preparation of the type of saccharin was being sold so as to amount to misbranding as contemplated by Section 2(ix)(a) & (g) of the Act. All that the appellant purported to convey under the label was that the preparation sold was as sweet as saccharin but not as bitter as saccharin. This was intended merely to lay emphasis on the sweetness of the preparation when it was compared to the sweetness of saccharin. When the label clearly described the fact that the preparation was not as bitter as saccharin it clearly intended to convey

that it was neither something like saccharin nor saccharin itself, in any form or of any type. Mr. Sorabjee appearing for the respondent submitted that the use of the word saccharin itself amounts to misbranding and gives the impression that the preparation sold was saccharin or something akin to saccharin. We are unable to agree with this contention. In the facts and circumstances of the present case and the contents of the label and the description of the preparation, we are satisfied that there was no misbranding, nor was there any attempt on the part of the appellant to sell his preparation as saccharin or some sort of saccharin. Section 2(ix)(a) runs as follows :

"Misbranded" - an article of food shall be deemed to be misbranded -

(a) if it is an imitation of, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labeled so as to indicate its true character.

4. According to the Additional Solicitor-General of India, the sale, by the appellant of the preparation clearly falls within (iii) clause of sub-section (a) [sic third clause in sub-clause (a)], that is to say the preparation resembles saccharin so as to deceive a person who wanted to purchase the article of food known as saccharin. After having examined the label, its description and the contents of the tin and packets, sold to the food inspectors, we are unable to find any evidence of any intention on the part of the appellant to sell a preparation which resembles saccharin in any respect. The words, 'as sweet as saccharin' were merely meant to convey one of the qualities of the preparation itself and not the quality of saccharin at all. That, by itself, would not attract the provision of Section 2(ix)(a) of the Act. It was then submitted that in one of the labels under the directions it was mentioned that the preparation was 'para saccharin' which also shows that the appellant intended to pass on the preparation as some sort of saccharin. In the first place, the use of the word 'para saccharin' appears to be a mistake in the facts of the present case because this word is completely absent from the Hindi portion of the directions contained in the same label. Secondly, the word 'para saccharin' would not indicate that the preparation sold was saccharin in any form of any kind. It was just a way of describing it because according to the manufacturers the preparation was as sweet as saccharin. This was mentioned because saccharin being 500 times sweeter than sugar, the manufacturer wanted to convey that the preparation was also much sweeter than sugar and could be used for preparing soda water bottles. It is obvious that if any person who purchased the preparation was not conversant with the English language he would not be misled at all.

5. Having regard to these circumstances we are of the opinion that the case of the appellant does not fall within the clauses (a) & (g) of Section 2(ix) of the Act and the High Court erred in law in convicting the appellant for misbranding under these provisions. For the reasons given above the appeal is allowed. The order of the High Court is set aside and the sentence of imprisonment of six months is also set aside and the fine is reduced to Rs. 500. In other words, the order of the trial Court Magistrate is hereby restored. The appeal is accordingly allowed.

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