

ALLAHABAD HIGH COURT

Krishna Chandra

Vs.

State of U.P

Criminal Revn. No. 1597 of 1981

(R.K. Shukla and O.P. Mehrotra, JJ.)

06.05.1987

JUDGMENT

O.P. Mehrotra, J.

1. A learned Single Judge of this Court has referred this case to a Division Bench as he found that two contradictory views had been taken by two Single Judges of this Court in the cases of *Kailash Kumar Shukla v. State*,¹ and *Ibrahim Hussain v. State of U.P.*,²

2. A sample of Pan Masala was taken by the Food Inspector from the applicant and was sent to the Public Analyst for analysis. The report of the Public Analyst shows that the Pan Masala was sweetened with saccharin. Having been found guilty of the offence under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) by the courts below, he came up to this Court in revision.

3. It was contended before the learned Single Judge that Pan Masala could not be said to be adulterated as the report of the Public Analyst did not show that saccharin, with which it was sweetened, did not conform to the standard prescribed in Rule 44(g) read, with Para A.07.10 of Appendix-B. Reliance was placed on a decision of this Court in *Ibrahim Hussain v. State of U.P.*,³ which was also a case of Pan Masala which was found to contain Saccharin. It was held that addition of saccharin in Pan Masala will not be an offence unless it was proved that such addition did not conform to the standard laid down in Para A.07.10 of Appendix B. It was observed that in each case of addition of saccharin, prosecution is required to give evidence whether it conforms with the standard laid down in Para A.07.10.

4. A contrary view had, however, been taken by another Single Judge of this Court in the case of *Kailash Kumar Shukla v. State*,⁴ in which a reference was made to Rule 44(g) and Rule 47 of the Prevention of Food Adulteration Rules, 1955 and it was held:

"Reading both the rules together the inference is inevitable that saccharin cannot now be added in any article of food except as permitted under Appendix B. For example, it may be mentioned in the case of non-alcoholic beverages viz. serial No. A.01 of Appendix B, the use of saccharin not exceeding 10 PPM is permitted. This illustration I have merely cited to show that Appendix B contains items in which admixture of saccharin is permitted, but for the rest where the addition has not been specifically mentioned, Rule 44 provides an absolute bar to the admixture of this artificial sweetener to other items of food.

5. On account of the fact that contrary views had been taken in the above Single Judge decisions, this reference has been made to the Division Bench.

6. We may mention at the out-set that after hearing learned Counsel for the Petitioner and the learned Standing Counsel and having carefully considered the various decisions cited before us, we find ourselves in respectful agreement with the view taken by Hon'ble Bakshi, J. in *Kailash Kumar Shukla's* case (Supra) and we are of the opinion that the view taken in *Ibrahim Hussain's* case does not lay down the correct law.

7. We may first refer to the relevant rules. Rule 44 of the Prevention of Food Adulteration Rules, 1955 prohibits sale of certain admixtures. Rule 44(g), which is relevant here, provides:

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

(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, which also deals with addition of saccharin or other artificial

sweeteners, provides :

"47. Addition of artificial sweetener to be mentioned on the label: 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 standards laid down in Appendix B and where any artificial sweetener is added to any food, the container of such food shall be labeled with an adhesive declaratory label which shall be in the form given below:

This...(name of food) contains an admixture of...(name of the artificial sweetener).

8. We may now turn to Appendix B of the Rules which contains definitions of various articles of food and also specifies the standard of quality prescribed therefore. Para A. 01 deals with Non-Alcoholic Beverages. Para A.01.01 dealing with Carbonated Water runs as under:

"A.01.01-Carbonated Water means potable water impregnated with carbon dioxide under pressure and may contain any of the following singly or in combination:

Sugar, liquid glucose, dextrose monohydrate invert sugar, fructose, honey, saccharin not exceeding 100 p.p.m. fruits and vegetables extractives and permitted flavoring, coloring matter, preservatives, emulsifying and stabilizing agents, citric acid, tartaric acid, phosphoric acid, lactic acid, ascorbic acid, malic acid, edible gums such as sugar, karaya, arable, carobean, furcellaran tra-gacanth, gum ghatti, edible gelatin albumin, licorice and its derivatives, salts of sodium, calcium and magnesium, vitamins, caffeine not exceeding 200 parts per million, and quinine salts not exceeding 100 parts per million (expressed as quinine sulphate):

Provided that in the case of sweetened carbonated waters other than tonic water and dry ginger ale the percentage of (total sugars expressed as sucrose) shall not be less than five.

9. Para A.07 deals with sweetening agents such as Cane, Sugar, Honey, Gur, Calie Sugar, Dextrose etc. Para A.07.18 to which reference has been made by the learned Counsel for the revisionist, provides:

"A.07.10 Saccharin Sodium commonly known as soluble Saccharin,

having an empirical formula as $C_7H_4NNaO_3 \cdot 2H_2O$ and molecular weight as 241.2 shall be the material which is soluble at 20 degree C in 1.5 parts of water and 50 parts of alcohol (95 percent); and shall contain not less than 98.0 percent and not more than the equivalent of 100.5 percent of $C_7H_4O_3NSNa$ calculated with reference to the substance dried to constant weight at 105 degree C, assay 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 degree C and 230 degree C. The loss on drying of the material at 105 degree C shall not be less than 12.0 percent and not more than 16.0 percent of its weight.

The material shall satisfy the test of identification and shall conform to the limit tests for free acid or alkali, ammonium compounds and parasulpha moyibenzoate as mentioned in the Indian Pharmacopoeia.

10. Now, it is not disputed that saccharin is an artificial sweetener and that the sample taken from the possession of the accused was found to contain saccharin. However, there was nothing in the report of the public analyst as to how much saccharin was found in the sample. The contention of the learned Counsel for the revisionist was that Para A.07.10 of Appendix B laid down the standard for saccharin and the sample in question could not be said to be adulterated unless it was found that it contained saccharin in excess of the standard laid down in Para A.07.10 of Appendix B.

11. On the other hand, the learned Counsel on behalf of the State contended that Para A.07.10 referred to 'Saccharin Sodium' and not to 'Saccharin' as such. He referred to Para A.01.01 and pointed out that saccharin not exceeding 100 p.p.m. was permitted to be added to 'Carbonated Water' and that saccharin did not appear to have been permitted to be added up to any limit in Pan Masala and consequently the sample in question which was found to contain 'Saccharin' was rightly found to have been adulterated.

12. We are unable to agree with the contention raised by the learned Counsel for the revisionist. In the first place we find that Para A.07.10 deals with 'Saccharin

Sodium' commonly known as soluble saccharin and not with 'saccharin' as such. A perusal of the Rules would show that at some places there is reference to 'saccharin', such as in Para A.01.01 which permits addition of saccharin not exceeding 100 p.p.m. in carbonated water, while Para A.07.10 refers to 'Saccharin Sodium'. This indicates that 'Saccharin' and 'Saccharin Sodium' are two different things. The report of the public analyst shows that the sample in question was found to contain Saccharin'. There is nothing in that report to indicate that the same was found to contain 'Saccharin Sodium', and consequently the standard laid down for 'Saccharin Sodium' in Para A.07.10 was not at all relevant for our present purposes.

13. It is also noteworthy that Appendix B contains definitions of various articles of food and also prescribes the standards of quality required for them. Para A.07.10 lays down the standard of quality prescribed for 'Saccharin Sodium' as an article of food. It does not lay down any limit up to which 'Saccharin Sodium' or 'Soluble Saccharin' can be added to other articles of food. Hence, even if we presume that 'Saccharin' and 'Saccharin Sodium' are one and the same thing, it would not mean that addition of Saccharin is permitted up to any limit under Para A.07.10. Para A.07.10 merely lays down the standard of quality prescribed for that article (viz. Saccharin Sodium), but it does not permit addition of 'Saccharin Sodium' (or for that matter 'Saccharin') to any article of food up to any limit.

14. We may illustrate by an example. Para A.07.10 defines 'Cane Sugar' and specifies the quality of standard prescribed therefore. But cane sugar can be lawfully added to various articles of food, as there is no restriction over its addition. In fact sugar is factually added to a large number of food articles and no objection is raised regarding its addition. However, Rule 44(g) specifically prohibits the sale of any article of food which contains any artificial sweetener such as Saccharin, except where such artificial sweetener is permitted in accordance with the standard laid down in Appendix B. This is further clarified by Rule 47 which provides that Saccharin or any 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.

15. Now, we may consider whether addition of Saccharin is permitted in accordance with the standard laid down in Appendix B to the article of food in question viz. Pan Masala. We find that Para A.07.10 does not permit addition of Saccharin Sodium (or for that matter 'Saccharin') to Pan Masala or to any article of food. As a matter of fact, as already mentioned above, Para A.07.10 was not relevant for our present purposes because it simply defines 'Saccharin Sodium commonly known as soluble Saccharin' and specifies the standard of quality prescribed for it, and it does not prescribe the limits within which this artificial sweetener can be added to the different articles of food. In order to see how far, or to what extent, addition of Saccharin is permitted, we shall have to look to other paragraphs of Appendix B dealing with articles which are sweetened with various sweetening agents, and not to paragraphs dealing with sweetening agents, themselves. As we have already seen, Rule 44(g) and 47 contain clear and definite prohibition regarding addition of Saccharin or other artificial sweeteners, except where the addition of such artificial sweeteners is permitted in accordance with the standard laid down in Appendix B. An example of such an exception is contained in para A.0101 dealing with 'Carbonated Water' which permits addition of Saccharin not exceeding 100 p. p m. This would mean that a sample of 'Carbonated Water' such as Vinto, Limca, Campa Cola will not be said to be adulterated if it contains Saccharin not exceeding 100 p.p.m. but the same will be held to be adulterated if it contains Saccharin exceeding 100 p.p.m.

16. The present case relates to 'Pan Masala'. We do not find anything in Appendix B which permits addition of Saccharin to any extent in Pan Masala. Consequently, the sample in question which contained an artificial sweetener viz. 'Saccharin' must be held to be adulterated, despite the fact that the Public Analyst had not reported as to how much Saccharin it contained. The question is whether 'Saccharin' was permitted to be added to 'Pan Masala' and, if so, to what extent. The answer, evidently, is 'No', because we do not find any paragraph of Appendix B which permits addition of Saccharin to any extent to Pan Masala.

17. The prosecution case against the applicant was not that the sample of Pan Masala was adulterated because it contained saccharin which did not conform to the standard prescribed in Appendix B. On the other hand, the prosecution

alleges that the Pan Masala in question was adulterated because it contained an artificial sweetener viz. Saccharin, the addition whereof to Pan Masala was not permitted at all. It is not said that the Saccharin found added to the sample in question was adulterated. That Saccharin may be perfectly pure and genuine. Yet the Pan Masala in question has to be held 'adulterated' because it contained an artificial sweetener viz. Saccharin, the addition whereof to Pan Masala was not permitted to any extent. Para A.01.01 permits addition of 'Saccharin' not exceeding 100 p.p.m. to Carbonated Water, but addition of 'Saccharin' to Pan Masala, Supari etc. is not permitted to any extent. It would appear that Appendix B contains items in which admixture of Saccharin is permitted, but for the rest where the addition has not been specifically mentioned. Rules 44(g) and 47 provide an absolute bar to the admixture of this artificial sweetener to other articles of food. Pan Masala falls in this category, because addition of saccharin to it has not been specifically mentioned anywhere in Appendix B. Thus, the law contains an absolute bar to the admixture of Saccharin to Pan Masala.

18. We find that there is five Judges decision of the Hon'ble Supreme Court on this point in *Pyarali K. Tejani v. Mahadeo Ramchandra Dange reported in*,⁵ which unfortunately does not appear to have been cited before the two Single Judges, who gave contradictory judgments mentioned in the order of reference. That was a case in which a sample of Supari was held to be adulterated as the same was found to contain Saccharin. After referring to Rules 44(g) and 47 and item A.01.01 of Appendix B, the Supreme Court held that addition of Saccharin was permitted in the case of carbonated water but no such benefit was enjoyed by Supari. The plea that there was discrimination against Supari vis-a-vis carbonated water was repelled on the ground that there was a reasonable basis for the distinction. Their Lordships further observed:

"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 advances 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 counselling of the Central Committee, be castigated as arbitrary and capricious or as unreasonable.

19. Pan Masala and Supari stand on similar footing. As in the case of Supari, addition of Saccharin to Pan Masala was not permitted anywhere in Appendix B, The controversy at hand is, thus, settled by the above decision of the Supreme Court.

20. Learned Counsel for the applicant referred to a Single Judge decision of the Bombay High Court in *State of Maharashtra v. Shri Ranjit Bhai Babubhai Suratwalla*,⁶ in which it was held that Saccharin was a permissible artificial sweetener provided it conformed to the standard mentioned in Cl. A.07.10 of Appendix B. That was also a case of 'Supari' which contained Saccharin. It was held that it will not, attract punishment under Sections 7 and 16(i) unless addition of Saccharin was found in excess of the standard laid down in clause A.07.10. The above mentioned decision of the Supreme Court in *Pyarali K. Tejani's case*,⁷ was cited before him but the learned Single Judge did not follow the same on the ground:-

"Clause A.07.10 in Appendix B had been inserted by Notification. No. GSR 938 dated 26-5-1971. Their Lordships of the Supreme Court, therefore, could not have considered Cl. A.07.10 of Appendix B for the reason that it had not been placed on the Statute Book at the time when the judgment was delivered. That authority, therefore, can have no relevance to the point involved in the instant case.

21. In our opinion the learned Single Judge of the Maharashtra High Court could not have refused to follow the above mentioned decision of the Hon'ble Supreme Court in *Pyarali K. Tejani's case*. The Supreme Court decision was given on 30-10-1973, more than two years after Para A.07.10 had been inserted by Notification dated 26-5-1971. Consequently, it could not be said that their Lordships of the Supreme Court could not have considered Para A.07.10 of Appendix B nor it can be presumed that the same had not been placed on the Statute Book till the time when the judgment was delivered. It is correct that the

judgment of the Supreme Court does not contain any reference to para A.07.10. The reason appears to be, as we have already mentioned above, that Para A.07.10 was not at all relevant here, because it merely lays down the standard of quality prescribed for Saccharin Sodium, but it does not permit addition of Saccharin Sodium', or for that matter even ' Saccharin', to any article of food up to any limit. Consequently, we are unable to agree with the view expressed by the Maharashtra High Court in Ranjit Bhai's case (supra). The law laid down by the Hon'ble Supreme Court in Pyarali K. Tejani's case (supra) is the final word on the point at issue and we are bound to follow the law laid down in that case.

22. For the reasons given above, we are in respectful agreement with the view taken by Bakshi J. in Kailash Kumar Shukla's case (supra) which is in consonance with the decision of the Supreme Court in Pyarali K. Tejani's case. The contrary view taken by another Single Judge of this Court in Ibrahim Hussain's case (supra) does not lay down the correct law and the same is in direct contradiction with the above decision of the Hon'ble Supreme Court. Let the record be laid down before the learned Single Judge, who made the reference, with the above opinion.

Order accordingly.

Cases Referred.

1. 1982 ACR 114: 1982 All LJ 476
2. 1982 EFR 425
3. 1982 EFR 425
4. 1982 ACR 114: 1982 All LJ 476
5. AIR 1974 SC 228
6. 1982 EFR 395
7. AIR 1974 SC 228