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Court : Rajasthan

Decided On : Jan-29-1985

Reported in : 1985(1)WLN338

Judge : Gopal Krishna Sharma, J.

Appeal No. : S.B. Cr. Revision Petition No. 85 of 1979

Appellant : Kailash

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

Gopal Krishna Sharma, J.

1. This revision petition is directed against the judgment dated 26th March 1979, passed by the Sessions Judge, Jaipur City, Jaipur, by Which, he maintained the conviction of the petitioner for the offence Under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short, hereinafter 'the Act'), but reduced the sentence 1 year's SI to that of 6 months and maintained the sentence of fine as awarded by the Chief Judicial Magistrate. In default of payment of fine, the petitioner was ordered to undergo the sentence of imprisonment awarded by the lower court.

2. Succinctly stated, the facts of the case giving rise to this revision petition, are that on 5th Jan. 1976, at about 1 P.M., Ramgopal Sharma, Food Inspector, visited the house of the petitioner and found the petitioner selling 'Paan-ka-Masala' which he suspected to be adulterated. After disclosing his identity, he purchased 600 gms. of the said 'Paan-ka-Masala' from the petitioner, for the purpose of analysis. He made payment to the petitioner for the said Masala. Then, he divided the Masala into three equal parts and filled them in dry and clean bottles. The bottles were properly sealed, and one of those bottles, was given to the petitioner. He, thereafter, seized about 830 packets of 'Pana-ka Masala' which were lying at the house of the petitioner, Kailash. After sealing those bottles, he entrusted them to the petitioner's custody. The sample was then sent to public analyst, for examination, who, later on, found the said sample to be adulterated due to presence of saccharin in it, the use of which was prohibited Under Rule 47 of the Prevention of Food Adulteration Rules, 1955 (for short, hereinafter, the Rules'). After obtaining sanction for prosecution, the Food Inspector lodged complaint in the court of CJM, Jaipur City, Jaipur. The learned CJM, after completing the trial, found the accused-petitioner guilty of the offence Under Section 7/16 of the Act, and sentenced him to 1 year's SI and a fine of Rs. 2,000/-. Against that judgment, an appeal was preferred by the petitioner before the Sessions Judge, Jaipur City, Jaipur, who partly accepted it, and while maintaining the conviction of the petitioner reduced the sentence of imprisonment as mentioned above.

3. Mr. Mantri, the learned Counsel for the petitioner has argued that the learned Sessions Judge has erred in coming to the conclusion that 'Paan-ka-Masala' did not find place in Appendix-B, to the Rules as an article of food to which saccharin could be added. Thus, according to him, the lower courts have erred in holding that saccharin which was found in the 'Paan-ka-Masala' was an unpermitted sweetener. He has further argued that Rule-47 of the Rules, did not impose a blanket-ban on the user of saccharin as an artificial sweetener. The law permits use of saccharin as an artificial sweetener, provided it is according to the standard laid down in Appendix-B to the Rules.

4. Mr. Pareek, the learned Public Prosecutor argued that use of saccharin in 'Paan-ka-Masala' was not permissible. The public analyst in his opinion, said that

the 'Paan-ka-Masala' had saccharin in it, and as use of saccharin was prohibited under Rule 47 of the Rules, in Paan-ka-Masala, the sample was adulterated as it contained saccharin. He argued that the learned Sessions Judge has not committed any error in convicting the petitioner.

5. In order to appreciate the arguments advanced by both the parties, it would be convenient to refer to certain provisions of the Act and the Rules. Rule 44 of the rules, provides that notwithstanding the provisions of Rule 43, no person shall either by himself or by any servant or agent, sell 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 of the Rules provides 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 standards laid down in Appendix-B and where any artificial sweetener in added to any food, the container of such food shall be labelled with an adhesive declaratory label which shall be in the form given below:

This... (name of dood) contains an admixure of... (name of the artificial sweetener).

Here, it is pertinent to reproduce the relevant clause of Appendix-B as under:

A. 0710 - Saccharin Sodium commonly known as soluble saccharin having an empirical formula as C 7 H 4 NNa O3S. 2H2O and molecular weight as 241.2 shall be the material which is soluble at 20C 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 140.5 percent of C7H4O NSH calculated with reference to the substance dried to constant weight at 150C, assay being carried out as presented in Indian Pharmacopoceia. 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 226C and 230C. The loss on drying the material at 105C shall not be less than 12.0 percent and not more than 16.0% of is weight.

The material shall satisfy the tests of identification and shall conform to the limit tests for free acid or alkali, ammonium compounds and parasulphamoly benzoate

as mentioned in Indian Pharmacopoeia.

6. After considering the relevant provisions of the Rules, as mentioned above, I find that use of saccharin is not permitted to any article of food, provided it is in accordance with the standard laid down in Appendix-B. Rule 47 of the Rules, does not impose a blanket ban on the user of saccharin, as an artificial sweetener. The only point to be seen is that the saccharin used in preparing an article of food, should be in accordance with the standard laid down in Appendix-B to the Rules. If the use of saccharin, in the present case, was above the standard laid down in Appendix-B then, certainly, its use was not permissible. But, it cannot be said that the use of saccharin for preparing 'Paan-ka-Masala' was a complete ban. The law does not prohibit the use of saccharin in 'Paan-ka-Masala'. According to Rule-47, where any artificial sweetener is added to any food, the food-container of such food shall be labelled with an adhesive declaratory label. It must be clearly mentioned that it contains a mixture of saccharin. Ex. D. 1 is the label used by the petitioner in this case, which is pasted on the container. This label has been mentioned as 'saccharin-mixed'. As such, there are two conditions imposed under Rule-47 of the rules, the first one is that saccharin is permitted to be used in accordance with the standard laid down in Appendix-B, and the second one is that where an artificial sweetener is added, the container of the food should have a label declaring so. In the present case, both these conditions are fulfilled. It has not been proved by the prosecution that the saccharin used by the petitioner for preparing the 'Paan-ka-Masala' was not in accordance with the standard laid down in Appendix-B. The sample was sent to public analyst for examination. The public analyst opined that it contained saccharin. But, he did not give any opinion whether the saccharin was according to the standard laid down in Appendix-B or not. The public analyst, Mr. Yogesh Chandra Harit has been examined as a court-witness. In his cross-examination, he stated that he could not opine about the standard of saccharin used in the said sample. Thus, there is no proof on the record that the sample which contained saccharin, was not in accordance with the standard laid down in Appendix-B.

7. Mr. Mantri-based his argument on the decision in The State of Maharashtra v. Ranjitbhai Babubhai Suratwalla 1969 FAJ 231, In that case, the accused was

prosecuted Under Section 7/16 of the Act and the charge-sheet that the 'Supari' sold by him was found to have contained saccharin. The public analyst in that case reported that the 'Supari' was adulterated on the ground that it contained saccharin, a non-permitted artificial sweetener. It was held in that case that the conviction of the accused was not sustainable, as saccharin was non-permitted artificial sweetener, provided it conformed to the standard laid down in the rules. The accused was acquitted in that case. In the present case, there is no blanket-ban on the use of saccharin as an artificial sweetener for preparing 'Paan-ka-Masala, as pointed out in Rule 47 of the Rules. The law has permitted the use of saccharin. But, it should, be in accordance with the standard prescribed or laid down in Appendix-B to the Rules. The prosecution in this case, has failed to prove that the use of saccharin was not in accordance with the standard laid down in Appendix-B. The statement of the public analyst is of no help to the prosecution. He has only opined that the sample sent to him for examination, had contained saccharin. It is not disputed by the petitioner that he had used saccharin in preparing 'Paan-ka-Masala'. The label which the petition had used and put on the container of 'Paan-ka-Masala', had a mention of this fact that saccharin was mixed in that. All the conditions of Rule 47 of the Rules were fulfilled, and there is no proof that the saccharin used by the petitioner was not in accordance with the standard laid down in Appendix-B. Hence, the prosecution has failed to prove the case against the petitioner, and the learned Magistrate also has erred in coming to the conclusion that the 'Paan-ka-Masala had contained saccharin which was a non-permitted artificial sweetener. The learned Sessions Judge also has committed error in agreeing with the conclusion arrived at by the learned Magistrate. The conviction of the petitioner, passed by the learned lower courts, cannot, therefore, be maintained.

8. In the result, the revision petition is accepted. The conviction of the petitioner Under Section 7/16 of the Act, is set aside. The petitioner is acquitted of the said charge. He is on bail. He need not surrender. His bail-bonds are hereby cancelled. Fine if already deposited by the petitioner, be refunded to him.

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