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M.RAJA MOHAMMED AND ANR.

v.

FOOD INSPECTOR, PALGHAT MUNICIPALITY

NOVEMBER 22, 1991

B

[K. JAGANNATHA SHETTY AND YOGESHWAR DAYAL, JJ.]

Prevention of Food Adulteration Rules, 1955 : Rules 44(g) and 47 (As amended by Prevention of Food Adulteration (Third Amendment) Rules, 1968 and as they stood prior to Amendment of 15.4.1988)—Appendix 'B'—Restriction on sale of Articles containing Artificial sweetener/ Saccharin—Prescription of standard of saccharin or any artificial sweetener in Appendix 'B' is not relevant—Standard must be prescribed in respect of Article of sale—Standard must permit user of sweetener in the Article—No standard laid down for Supari and Pan Masala—Held addition of artificial sweetener saccharin in Pan Masala and Supari is prohibited.

D

The appellant (in Criminal Appeal No. 553/89) was prosecuted for selling adulterated supari with admixture of saccharin. He filed a petition in the Kerala High Court under section 482 of the Criminal Procedure Code for quashing the criminal proceedings which was dismissed by a single judge. Against the decision of the single judge an appeal was filed in this Court.

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The appellant (In Criminal Appeal No. 283/91) was also prosecuted for selling adulterated Supari but was acquitted by the Chief Judicial Magistrate, Palakkad. On appeal the Kerala High Court set aside his acquittal and convicted him under section 16(1) (a) (i) of the Prevention of Food Adulteration Act and sentenced him to imprisonment for 6 months and a fine of Rs.1000. Against the order of the Kerala High Court an appeal was filed in this Court.

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The appellant (In Criminal Appeal No. 284/91) was convicted under section 7(i) and (v) read with sections 16(i) (a) (ii) of the Prevention of Food Adulteration Act for sale of adulterated supari with admixture of saccharin. He filed a Revision Petition in the Kerala High Court and a Single Judge dismissed the same. Against the order of the Single Judge an appeal was filed in this Court.

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The facts in the connected civil appeal (Nos. 3708-13/89) are that a batch of writ petitions was filed in the Andhra Pradesh High

Court for a declaration that the admixture of saccharin in supari was in accordance with Rule 44 of the Prevention of Food Adulteration Rules, 1955 and for restraining the respondents from interfering with the business of sale of supari. A Division Bench of the High Court allowed the writ petitions. Against the decision of the Division Bench Union of India has filed appeals in this Court.

Civil Appeal No. 1897/91 is directed against the order of the Division Bench of the Kerala High Court which held that the learned Single Judge should have declined jurisdiction for the reason that the relief claimed was of a general character for a declaration that the admixture of saccharin in Roja Scented betelnut is not a blanket ban under Rule 47 read with Appendix 'B' of the Prevention of Food Adulteration Rules, 1955.

Criminal Appeal No. 722/91 is directed against the order of the High Court of Kerala setting aside the order of acquittal passed by the trial court and remanding the matter to the trial court for fresh disposal according to law. The High Court did not agree with the submission that the article of Supari was not adulterated as saccharin could be added to Supari. Accordingly it held that saccharin could not be added to supari and consequently remanded the matter to the trial court for fresh disposal according to law.

In appeals to this court it was contended on behalf of the accused that on the construction of Rule 44(c) it permits sale of Article of food which contains artificial sweetener with the standard as laid down in Appendix 'B' to Prevention of Food Adulteration Rules, 1955.

Disposing the appeals, this Court,

HELD : 1. Rule 44(g) of the Prevention of Food Adulteration Rules, 1955 indicates that sale of any article of food which contains artificial sweetener is banned. The ban is lifted only if such artificial sweetener is permitted to be added to the article of food for which standards have been laid down in Appendix 'B' to the Rules. Rule 47 in other form specifically bars saccharin or any other article of artificial sweetener to be added in any article of food, except where the addition of such artificial sweetener is permitted in accordance with the standards laid down in Appendix 'B'. Thus both Rules 44(g) and 47 constitute a total blanket ban on the addition of any artificial sweetener including saccharin to any article of food

- A unless standards for that article of food is prescribed which authorises the use of such an artificial sweetener. [398 G, 399 A-B]

- B 2. The prescription of standard of saccharin or any artificial sweetener in Appendix 'B' is really irrelevant. It is not the question of standard being prescribed for saccharin which is irrelevant what is relevant is the standard being prescribed in Appendix 'B' of the article of food which is being sold and which standard permits user of saccharin. This is the real intention of the legislature while enacting Rule 44(g) of the Rules. [399 E-F]

- C 3. What one has to see is the article of food in which the artificial sweetener is sought to be added. The article which was being sold should contain a standard and the standard should permit artificial sweetener to be added. If the standards for that article of food is provided in Appendix 'B' to the Rules and such standards permit the addition of saccharin or any other artificial sweetener, then and then only saccharin or any other artificial sweetener could be added and not otherwise. [399 A-C]

- E 4. Admittedly no standard has been laid down for Pan Masala or Supari i.e. the article of food which was being sold. Therefore, the exception permitted by clause (g) of Rule 44 has no application and no relevance. [398 H, 399-A]

Pyarali K. Tejani v. Mahadeo Ramchandra Dange and Ors., [1974] 1 S.C.C. 167, explained and applied.

- F *State of Maharashtra v. Ranjitbhai Babubhai Suratwalla*, [1979] FAJ 231; *Thummalapudi Venkata Gopala Rao v. The State*, [1986] CrL. L.J. 1699, *M/s Wahab and Co. a proprietary concern represented by its proprietor N.A. Wahab son of N. Mohammad Sheriff v. Food Inspector, Tiruchirappalli Municipal Corpn., Trichy*, [1990] L.W. (CrL.) 437; *Kailash v. The State of Rajasthan*, [1985] 1 F.A.C. 282; *State of Assam v. Ram Karani and Ors.*, (1987) 3 All India Prevention of Food Adulteration Journal 153; *Ujjain Municipal Corpn., Ujjain v. Chetan Das*, (1985) 1 F.A.C. 46, overruled.

State by Public Prosecutor v. K.R. Balakrishnan, (1986) 1 F.A.C. 384; *Food Inspector v. Usman*, (1985) K.L.T. 1038; *Krishna Chandra (In jail) v. State of Uttar Pradesh*, (1990) 1 F.A.C. 35, approved.

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 722 of 1991. A

From the Judgment and Order dated 21.12.1990 of the Kerala High Court in Criminal Appeal No. 425 of 1989.

B.R.L. Iyanger, R. Mohan, V. Krishnamurthy and V. Balachandran for the Appellants. B

P.S. Poti, T.T. Kunhikannan, E.M.S. Anam, Ms. Indira Sawhney, P. Parmeswaran, Ms. Sushma Suri, K. Ram Kumar and Y.P. Rao for the Respondents.

The Judgment of the Court was delivered by C

YOGESHWAR DAYAL, J. Special leave granted.

This order will dispose of six matters namely, Crl. Appeal Nos. 553/89, 283/91, 284/91, Civil Appeal Nos. 3708-13/89, 1897/91 and Criminal Appeal arising out of S.L.P. (Crl.) No. 2647/91. D

FACTS

Crl. A. No. 553/89

This appeal arises from the judgment of the learned Single Judge of the High Court of Kerala dated 6th June, 1988 whereby the learned Single Judge declined to quash the prosecution of the petitioner therein under Section 482 of the Code of Criminal Procedure. The petitioner therein has been prosecuted for selling adulterated "Ashoka special supari" on the basis of a certificate issued by the Director of Central Food Laboratory showing that the article of Food purchased from the accused contained 2000 mgs/kg. saccharin and that the sample does not conform to the Prevention of Food Adulteration Rules, 1955, (hereinafter referred to as the Rules). The High Court took the view that the report *prima facie* goes to show that accused has sold adulterated article of food and consequently declined to quash the prosecution under Section 482 of the Code. [1988 (2) K.L.T. 5]. E F G

Crl. A. No. 283/91

This appeal is directed against the order of the Kerala High Court dated 22nd January, 1991 accepting the appeal against the order of H

- A acquittal passed by the Chief Judicial Magistrate, Palakkad, in S.T.No. 36 of 1988. The appeal was filed against the acquittal of accused Nos. 2 and 3 therein and out of whom N. Raja Mohammed, the Joint Managing Director of M/S N.V.K. Mohammed Sultan Rawther (P) Ltd., is the appellant before us. The High Court confirmed the acquittal of second accused but sentenced the appellant before us under Section 16(1)(a)(i) of the
- B Prevention of Food Adulteration Act to undergo simple imprisonment for six month and to pay a fine of Rs. 1,000 with a default sentence of simple imprisonment for two more months.

Crl. A.NO. 284/91.

- C This appeal is filed against the order dated 21st December, 1990 passed by the learned Single Judge of the Kerala High Court dismissing the revision petition whereby accused No. 1 therein was sentenced to pay Rs. 1,000 as fine and the two other accused were sentenced to simple imprisonment for six months each and Rs. 1,000 as fine and in default of
- D payment of fine to undergo simple imprisonment for a period of one month more. Their conviction were recorded under Section 7(i) and (v) read with Section (16) (1) (a) (ii) of the Prevention of Food Adulteration Act for having sold Roja Sungandha Supari with admixture of saccharin. The sample was taken on 22nd December, 1986.

- E *Civil Appeal Nos. 3708-13/89*

- These appeals are filed by the Union of India against the judgment of the Division Bench of the High Court of Andhra Pradesh dated 16th June, 1986 whereby the Division Bench following the judgment of a learned Single Judge in Crl. Misc. Petition No. 1569 of 1984 allowed the
- F writ petitions. A batch of writ petitions were filed for a declaration that the admixture of saccharin in Anjali Sugandhi Supari; Roja Scented Betelnut; Nizam Supari; A.R.R. Saugantha Supari and Ajantha Sugandhi Supari is in accordance with Rule 44 of the Rules and restraining the respondents/appellant herein from interfering with the business of sale of Supari with such an admixture.

- G *Civil Appeal No. 1897/91*

- This appeal is directed against the order of the Division Bench of the Kerala High Court dated 22nd November, 1990 whereby the learned Division Bench was inclined to take the view that the learned Single
- H Judge should have declined jurisdiction for the reason that the relief claimed

is of a general character for a declaration that the admixture of saccharin in Roja Scented Betelnut is not a blanket ban under Rule 47 read with Appendix B of the Prevention of Food Adulteration Rules, 1955.

Crl. Appeal arising out of SLP (Crl.) No. 2647/91

This appeal is directed against the order of the High Court of Kerala dated 21st December, 1990 setting aside the order of acquittal passed by the trial court and remanding the matter to the trial court for fresh disposal according to law. The trial court had *inter alia* taken the view that the sample of Supari in question was taken contrary to Rule 22-A of the Rules. The High Court took the view that the sample was properly taken. On a plea being raised that the article of Supari was not adulterated as saccharin could be added to Supari, the High Court did not agree with the submission and held that saccharin could not be added to Supari and consequently the High Court remanded the matter to the trial court for fresh disposal according to law.

The case *inter alia* involves interpretation of Rule 44 (g) of the Rules before its deletion with effect from 15th April, 1988 and the amendment of Rule 47 by Notification No. GSR 454 (E) dated 15.4.1988 (with effect from 15.4.1989) as covered by GSR 1157 (E) dated 9.12.1988. Rules 44(g) and 47 as they originally stood and as they stood modified at the relevant time of taking of the sample, figured during the arguments and they are extracted hereunder with comments :-

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

(g) any article of food which contains any artificial sweetener, except Saccharin, or in the preparation of which any such artificial sweetener has been used".

"47.Addition of Saccharin to be mentioned on the label -

Saccharin may be added to any food if the container of such food is labelled with an adhesive declaratory label, which shall be in the form given below :

This.....(name of food).....contains an admixture of Saccharin".

These Rules held the field from November 24, 1956 until August 24, 1968 when they were further amended. The Prevention of Food Adulteration (Third Amendment) Rules 1968, redrafted Rules 44 (g) and 47, and it

- A is these Rules which were extant at the time of the alleged offence. It is proper at this stage to reproduce these two Rules :

“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 —

- B (g) 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’.

- C “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 labelled with an adhesive-declaratory label which shall be in the form given below:

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

- E The Supreme Court in its decision *Pyarali K. Tejani v. Mahadeo Ramchandra Dange and Others*, [1974] 1 SCC 167 took the view that at the relevant time the article like saccharin could not be added to the Supari in view of the amended Rules 44(g) and 47 of the Rules. It will be noticed that till date no standard has been prescribed in Appendix ‘B’ to the Rules so far as the Supari is concerned. Therefore under Rule 44(g) there was a total prohibition of use of saccharin, which is an artificial sweetener, to any article of food including Supari and regarding saccharin
- F it was specifically provided in Rule 47 that it 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’. Therefore, under Rule 47 again so far as saccharin is concerned and for which no standards have been prescribed in Appendix ‘B’ there was total prohibition of adding the same in any article of food. This was the view
- G taken in the aforesaid case of *Pyarali K. Tejani*. For the period relevant for the *Tejani’s* case the Rules permitted saccharin to be added in case of carbonated water in item 5(B)-A 1.01.01 only but no such permission was noticed by the Supreme Court in the case of Supari. Thus the Supreme Court had settled the law, as far as the Rules between August 24, 1968 and 15th April, 1988 are concerned. We may mention that w.e.f. 15.4.1988
- H Rule 44(g) was omitted and Rule 47 was substituted by new Rules.

However, it appears that with effect from 26th May, 1971 for the first time a standard was prescribed for Saccharin Sodium as item No. A.07.10 in Appendix 'B' to the Rules.

After the provision of standard for Saccharin Sodium in Appendix 'B' to the Rules, the Bombay High Court in the case of *State of Maharashtra v. Ranjitbhai Babubhai Suratwalla*, [1979] FAJ 231 (Bombay) distinguished the judgment of the Supreme Court in *Tejani's case* (supra) and took the view that because standards have been prescribed for saccharin, Rule 47 permitted its user in article of food. This view was followed by Single Judge of the Andhra Pradesh High Court in the case reported as *Thummalapudi Venkata Gopala Rao v. The State*, (1986)Crl LJ 1699. A similar view was taken by another Single Bench of the Madras High Court in the case *M/s. Wahab and Co., a Proprietary concern represented by its proprietor M.A. Wahab son of N. Mohamed Sheriff v. Food Inspector, Tiruchirappalli Municipal Corporation, Trichy*, (1990) L.W.(Crl.) 437 without noticing the earlier contrary view of the same High Court reported as *State by Public Prosecutor v. K.R. Balakrishnan*, (1986) (I) FAC 384. The Rajasthan High Court also took the same view in the case reported as *Kailash v. The State of Rajasthan*, (1985) (I) FAC 282. The Gauhati High Court in the case reported as *State of Assam v. Ram Karani and Others* (1987) (3) All India Prevention of food Adulteration Journal 153 following some of the aforesaid decisions also took the view that addition of artificial sweetener like saccharin in Supari or Pan-Ka-Masala, if it conforms to the standard laid down in clause A.07.10 of the Appendix 'B' of the Rules, did not violate Rule 44(g) read with Rule 47 of the Rules. The Madhya Pradesh High Court in the case reported as *Ujjain Municipal Corporation, Ujjain v. Chetan Das*, (1985) (I) FAC 46. followed the view of the Bombay High Court in the case reported as *Ranjitbhai Babubhai Suratwalla* (supra).

On the other hand the High Court of Kerala, Allahabad and another earlier Single Bench of the Madras High Court took the view that prescription of standard of saccharin in Appendix 'B' to the Rules could not alter the interpretation of Rule 44(g) nor help could be taken from interpretation of Rule 47. The Kerala High Court in the case reported as *Food Inspector v. Usman*, (1985) K.L.T. 1038 noticed the view of the Bombay High Court in *Ranjitbhai Babubhai Suratwalla's case* (supra) and dissented from it and held:

"Rule 47 of the Prevention of Food Adulteration Rules provides that saccharin or any other artificial sweetener shall not be added to any article of food, except where the addition of

- A 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 labelled with an adhesive declaratory label to that effect. That means unless and to the extent in accordance with the standards prescribed in Appendix 'B' saccharin or any other
- B artificial sweetener are prohibited material in food articles. For pan supari no standard is fixed in Appendix 'B'. That means addition of artificial sweetener is not permitted by the standards laid down in Appendix 'B' and the prohibitions under Rule 47 operates as an absolute prohibition against addition of saccharin or other artificial sweetener so far as pan supari is
- C concerned. Whether addition of artificial sweetener is injurious to health or life is not a matter for consideration when its addition is prohibited".

Following the decision of the Supreme Court in *Tejani's* case the Court set aside the acquittal of accused No. 1 and sentenced him.

- D A Division Bench of the Allahabad High Court in *Krishna Chandra (in Jail) v. State of Uttar Pradesh*, (1990) (I) F.A.C. 35 differed with the earlier decision of the Single Bench in *Ibrahim Hussain v. State of Uttar Pradesh* and also differed with the view of the Bombay High Court in *Ranjitbhai Babubhai Suratwalla's* case and declined to distinguish the
- E *Tejani's* case as held by this court and took the view that the prescription of the standard of saccharin is not at all relevant to the inquiry and saccharin could not be added to any article of food unless permitted by standard prescribed in Appendix 'B' to the Rules and purported to follow the decision of this Court in *Tejani's* case.

- F Before us also Mr. B.R.L. Iyengar, who appeared for the accused, made submission that on the construction of Rule 44(g) it permits sale of article of food which contains artificial sweetener with the standard as laid down in Appendix 'B' to Rules. We are unable to accept the submission. We are also unable to accept the decisions of the High Courts supporting that view.

- G Rule 44 (g) indicates that sale of any article of food which contains artificial sweetener is banned. The ban is lifted only if such artificial sweetener is permitted to be added to the article of food for which standards have been laid down in Appendix 'B' to the Rules. Admittedly no standard has been laid down for Pan Masala or Supari. It is this article of
- H food which was being sold. No standard was prescribed for this article of food. Therefore, the exception permitted by clause (g) has no application

and no relevance. The article which was being sold should contain a standard and the standard should permit artificial sweetener to be added. Again Rule 47 in other form specifically bars saccharin or any other article of artificial sweetener to be added in any article of food, except where the addition of such artificial sweetener is permitted in accordance with the standards laid down in Appendix 'B'. Therefore both Rules 44(g) and 47 constitute a total blanket ban on the addition of any artificial sweetener including saccharin to any article of food unless standards for that article of food is prescribed which authorises the use of such an artificial sweetener. The argument that since the standards of saccharin have been provided for in the Appendix 'B' to the Rules and therefore, it could be added in view of the language of Rule 44(g) is fallacious. What one has to see is the article of food in which the artificial sweetener is sought to be added. If the standards for that article of food is provided in Appendix 'B' to the Rules and such standards permit the addition of saccharin or any other artificial sweetener, then and then only saccharin or any other artificial sweetener could be added and not otherwise not.

It appears that the Bombay High Court and the other High Courts which have taken the opposite view seem to have fallen into errors while interpreting Rule 44(g). They have assumed as if once the standards of saccharin or the artificial sweetener have been prescribed it could be freely added to any article of food. It is necessary to point out that the prescription of standard of saccharin or any artificial sweetener in Appendix 'B' is really irrelevant. What was emphasised in *Tejani's* case is the standard of food and the standard should permit saccharin or any artificial sweetener to be added. It is not the question of standard being prescribed for saccharin which is relevant; what is relevant is the standard being prescribed in Appendix 'B' of the article of food which is being sold and which standard permits user of saccharin. This is the real intention of the legislature while enacting Rule 44(g) of the Rules. For *Supari and Pan Masala*, it is undisputed that there is no standard prescribed.

In this view of the matter, we agree with the decisions of the Kerala High court in *Food Inspector v. Usman* (1985) K.L.T. 1038; Allahabad High Court in *Krishna Chandra, (in Jail) v. State of Uttar Pradesh*, 1990 (I) F.A.C. 35 and Madras High Court in *State by Public Prosecutor v. K.R. Balakrishnan*, 1986 (I) F.A.C. 384.

The decisions in : *State of Maharashtra v. Ranjitbhai Suratwalla*, 179 FAJ 231 (Bombay) the Bombay High Court; *Thummalapudi Venkata Gopala Rao v. The State*, (1986) Cri. L.J. 1699 of the Andhra Pradesh High Court ; *M/s. Wahab and Co., a Proprietary concern represented by its proprietor M.A. Wahab son of N. Mohammed Sheriff v. Food Inspec-*

- A *tor, Tiruchirapalli Municipal Corporation, Trichy*, (1990) L.W. (Crl.) 437 of the Madras High Court; *Kailash v. The State of Rajasthan*, 1985 (I) F.A.C. 282 of the Rajasthan High Court; *The State of Assam v. Ram Karani and Others*, 1987 (3) All India Prevention of Food Adulteration Journal 153 of the Gauhati High Court and *Ujjain Municipal Corporation, Ujjain v. Chetan Das*, 1985 (I) F.A.C. 46 of the Madhya Pradesh High Court cannot be said to have been correctly decided and are hereby overruled.
- B

The result is that civil Appeal Nos. 3708-13 of 1989 are accepted and the impugned judgment of the Andhra Pradesh High Court dated 16th June, 1986 is set aside Crl. Appeal Nos. 553/89, 283/91, 284/91, Civil Appeal No. 1897/91 and the appeal arising out of S.L.P. (Crl.) No. 2647/91 are dismissed.

T.N.A.

Appeals disposed of.