

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 150 OF 2003

The State of Maharashtra
at the instance of
Shri B. G. Londhe,
Food Inspector,
Food and Drug Administration,
(M.S.) Solapur

...Appellant

Vs.

Bipinchandra Rambhuj Mourya
Age 32 yrs,
Proprietor of
M/s Maharashtra Traders,
699, Shukrawar Peth, Solapur

...Respondent

Mr. H. J. Dedhia – APP for the State/Appellant
Ms. Manorama Mohanty a/w Mr. Mallika Arjun i/by S. K. Srivastav
and Co. - Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 19th DECEMBER, 2022

JUDGMENT :-

1. Heard learned APP Shri Dedhia for the Appellant/State and learned Advocate Ms. Manorama Mohanty for the Respondent-accused.

2. The judgment given by the Court of Chief Judicial Magistrate, Solapur in Regular Criminal Case No. 28 of 2000, dated

30/07/2002 is challenged by the State by way of this Appeal. The Respondent faced trial for the contravention of the provisions of Section 7(1) read with Section 2(ia)(a) and 2(ia)(h) and contravention of the Section 7(v) read with 47(2) punishable under Section 16 (ia) (ii) of the Prevention of Food Adulteration Act 1954.

3. When the Food Inspector, Food and Drug Administration, Solapur has visited the shop of the Respondent-accused on 19/02/1999 at about 5.00 p.m., he took sample of powder called as 'Mitha Mal' used in Ice-cream. The Respondent-accused is a Proprietor of shop, namely, M/s. Maharashtra Traders, 699, Shukrawar Peth, Solapur. After following the procedure, he divided samples into three parts. One part he sent to the Public Analyst. Whereas two parts, he sent to the local health authority i.e. Solapur Municipal Corporation.

4. The Public Analyst vide his report dated 19/04/1999 was pleased to observe that the sample contains a mixture of two artificial sweeteners, namely, 'Saccharin' and 'Dulcin' and it contravenes the provisions of Rule 47(2) of the Prevention of Food Adulteration Rules, 1955. Earlier to that Complainant issued a notice under Section 14(A) of the Prevention of Food Adulteration Act 1954

to the Respondent and demanded source of that seized material from him. By writing a reply, the Respondent though admitted the purchase of the seized material; but unable to explain the source.

5. After receipt of report, the Complainant made an application bearing Miscellaneous Application No. 58 of 1999, on 19/05/1999 to the Court of JMFC as contemplated under Section 11(4) of the Prevention of Food Adulteration Act 1954. He sent all the papers to the Joint Commissioner Pune. He received the consent order on 07/01/2000 and accordingly complaint is filed.

6. Evidence was recorded prior to framing charges. Accused was given an opportunity of cross examination. After hearing both the sides, the learned Magistrate was pleased to frame charge for the offences mentioned above. The complainant in all examined four witnesses. They are as follows :-

P.W. No. 1	B. G. Londhe	Food Inspector
P.W. No. 2	Dr. V. M. Joshi	Local Health Authority attached to Solapur Municipal Corporation
P.W. No. 3	Dr. S. A. Kodollikar	Local Health Officer
P.W. No. 4	Shri Sacchin K. Algundagi	Panch witness

7. On the basis of above oral and other documentary

evidence, the learned Magistrate was pleased to acquit the Respondent-accused as per impugned judgment.

8. With the assistance of both the sides, I have perused the judgment, it is based on the following findings:-

“a) There was delay in sending the samples to the Public Analyst. Samples were taken on 19/02/1999. Whereas they were sent on 22/02/1999 and as such there is violation of Rule No. 17 of the Prevention of Food Adulteration Rules.

b) The Accused was being denied of right to test the samples from Central Food Laboratory as contemplated under Section 13(2) of the Prevention of Food Adulteration Act 1954.

c) As per the Rule 47 of the Prevention of Food Adulteration Rules, in the table there is reference of Saccharine Sodium as permissible as artificial sweetener, whereas artificial sweeteners found in the samples are plain Saccharin and Dulcin.”

9. It is true that the Appellate Court rarely interferes in the judgment of the acquittal because there is fundamental principle that ‘accused is presumed to be innocent unless he is proved guilty’.

When there is an order of acquittal, the presumption of his innocence is reinforced. The Hon'ble Supreme Court in case of *Murlidhar Alias Gidda and Anr. Vs. State of Karnataka*¹ has laid down various principles to be followed by the Appellate Court when there is judgment of acquittal. If the conclusions drawn by the trial Court are palpably wrong or based on erroneous view of the law, then the Appellate Court can interfere with such conclusion.

10. With this interpretation in mind, I have perused the record with the assistance of both the learned Advocates. Learned APP made following submissions:-

(i) There is no delay in sending the samples. The Samples have to be sent to the Public Analyst on the date succeeding to the date of seizure and according to him 21st February 1999 was Sunday.

(ii) He submitted that accused is being informed of his right of checking the samples from the Central Food Laboratory and he invited my attention to the Exh. 57 i.e. Letter dated 21/01/2000 sent by the Local Health Authority to the Accused and the acknowledgment is at

1 2014 (5) SCC 730

Exh. 59.

- (iii) According to him, there is total ban on the use of artificial sweeteners as contemplated under Rule 47 (1) and only those artificial sweeteners are permitted which are mentioned in the table and within the limits prescribed therein.
- (iv) According to him, the Dulcin is not mentioned in the table and it implies that there is total ban on the use of Dulcin.
- (v) Whereas 'Sodium Saccharin' is a solid form of artificial sweetener 'Saccharin' and what is found by the analyst is 'Saccharin'.
- (vi) According to him, what is permissible within limit is 'Saccharin Sodium' and not the 'Plain Saccharin'.

11. In support of his contention, he relied upon the judgment in case of *K. Krishna Iyer Vs. State of Kerala and another Respondents*². Whereas learned Advocate Ms. Mohanty strenuously argued that there is no scope for interference. She made following submissions:-

(i) The powder Mitha Mal is not provided anywhere in

² 1993 Cri. L.J. 2606

the Appendix 'B' of the Rules 1955.

- (ii) Appendix 'B' lays down the standards of quality of the various articles of food as mentioned in Rule 5 of the said Rules.*
- (iii) She emphasized of not sending the samples on succeeding date to the date of seizure i.e. 19/02/1999.*
- (iii) She also emphasized that the accused has not been informed of his right to test the sample from the Central Laboratory.*
- (iv) What is prescribed in the table attached to the Rule 47 is 'Saccharin Sodium' and not 'Plain Saccharin' and 'Dulcin'. According to her, in view of that it cannot be said that the samples contain artificial sweeteners prohibited by law.*
- (v) She also invited my attention to the Public Analyst report at Exh. 65 which does not say that the sample is injurious to health and according to her, this fact has been admitted by the Food Inspector during the cross-examination.*
- (vi) In addition to that she submitted that the Public analyst has not specifically mentioned the percentage of Dulcin in Exh. 65.*

12. In support of her contention, she relied upon the

judgment in case of *State of Maharashtra Vs. Ranjitbhai Babubhai Suratwale*³ and Judgment in case of *Motumal Vs. State of M.P. and Anr., decided on 19.03.1999 by the Madhya Pradesh High Court.*

13. At this stage, the query is raised to learned APP that what is difference between 'Plain Saccharin' and 'Sodium Saccharin'. This was also mentioned in the order dated 09/12/2022 in para no. 6(ii). The note filed today with the signatures of Assistant Commissioner of Food dated 14/12/2022 does not clarify this position. Hence it was adjourned.

14. Today, I have heard learned APP and learned Advocate for the Respondent Ms. Mohanty. It is clarified that Sodium Saccharin and Plain Saccharin, they are not different and in fact Sodium Saccharin is a solid form of artificial sweetener saccharin. On that basis, the dictation is proceeded.

15. Out of main three reasons given by the learned Magistrate, I am more impressed by the reason about report given by the Public Analyst. In the report, his findings are as follows:-

- (i) Saccharin – Positive (13.54 %)
- (ii) Dulcin – Positive (Percentage not given)
- (iii) Cyclamate – Negative

3 1978 SCC Online Bom 109 (1982) 1 Bom CR 433 : (1979) 1 FAC 206

16. Final conclusion is as follows :

“I am of the opinion that the sample bearing L (H) A Code No. SMC (ii) and Sr. No. 56/99 contains mixture of Artificial sweeteners viz. Saccharin and Dulcin, hence contravenes Rule 47(2) of the PFA Rules 1955.”

17. It is important to note that in this case plain powder was found and it consists of Saccharin and Dulcin. In case of **Motumal Vs. State of M.P and Anr., (supra)** the High Court of Allahabad has dealt with the case involved peppermint and seized sample was found adulterated. The Court considered Rule 5 and Appendix ‘B’ to the Prevention of Food Adulteration Rules, 1955. Material Peppermint was not included as an article in Appendix ‘B’ and that is why the conviction was set aside. The Court also considered the meaning of word ‘adulterated’. Whereas in case of **State of Maharashtra Vs. Shri Ranjitbhai Babubhai Suratwalle** (supra) this Court was pleased to set aside the conviction. Sample of Supari was taken and Saccharin was found in it.

18. It is true that Saccharin is one of the raw material but

within the limit, it can be added to any article of Food as prescribed under the proviso of Rule 47 of the Prevention of Food Adulteration Rules 1955. So if it is in excess of the maximum limit, it can be said that it contravenes the provision of the Prevention of Food Adulteration Rules. In that case, Public analyst was not examined and hence this Court was pleased to dismiss the appeal filed by the State Government. (para nos. 13 and 16). The standard laid down as per clause A.07.10 of Appendix 'B' was also considered.

19. So far as material Saccharin is concerned, we may find two references in the Prevention of Food Adulteration Rules 1955. Rule 47(1) prohibits the use and sell of any artificial sweeteners being added to any article of food. However as per the proviso, you can add artificial sweetener in any article of food within maximum limit. In the table the name of the artificial sweetener, article of food and maximum limit is prescribed.

20. Learned APP in the report submitting to this Court dated 14/12/2022 has also reproduced the table containing all the details. It is important to note that in this case Saccharin Sodium was not found added to any article of food but plain powder was found containing Saccharin and Dulcin. What was that plain powder is not

clarified in the column article of food as per the table. Whereas Rule 5 of the Rules prescribes the standards of quality in respect of various articles of food specified in Appendix 'B', 'C' and 'D'. Clause A.07.10 prescribes the limits for Saccharin Sodium. It lays down following things :-

(a) Empirical formula

(b) Molecular weight

(c) What are the parts of water and what are the parts of alcohol.

It is as per Indian Pharmacopoeia.

21. The learned Magistrate has not considered all these technical terms. It shows the ignorance on the point of the learned Magistrate because in para no. 13 of the judgment, the learned Magistrate has rejected the contention of the learned APP. It is observed

“Rule 47 (2) says about Saccharin Sodium and does not says about Saccharin and Dulcin. Whereas in the report the Public Analyst has mentioned about Saccharin and Dulcin.”

22. The learned Magistrate wants to suggest that there is

mention of Saccharin Sodium in the table attached to Rule 47. And if there is no mention of the plain Saccharin and Dulcin, it will not violate the provisions of Rule 47. This finding is not correct. I agree to learned APP Shri Dedhia that in the table attached to Rule 47, only those artificial sweeteners are mentioned which can be added to the article of food. Only in two contingencies, you can add artificial sweetener in article of food. They are :-

(a) Those sweetener which are prescribed.

(b) They can be added within the permissible limits.

23. In other words, the artificial sweetener which are not mentioned cannot be added and Dulcin is one amongst them. So this finding is not correct. I also do not agree to the submission of learned Advocate Ms. Mohanty to that effect. However learned Magistrate has not taken pains to find out what is difference in between Plain Saccharin and Saccharin Sodium. The Food and Drug Inspector Solapur in his report dated 14/12/2022 has clarified that “Sodium Saccharin is solid form of artificial sweetener Saccharin”. It means the Plain term of artificial sweetener is Saccharin and if it is in solid form, it is called as Sodium Saccharin. In fact the learned

Magistrate could have clarified this aspect from the Complainant.

24. This Court has noticed in so many Appeals against acquittal that the trial Courts, they are not looking cases involving technical aspects very seriously. They are dealing with them just like cases under the Indian Penal Code. Be that as it may, I am not inclined to interfere in the conclusion about the acquittal. It is for the reason that the limits prescribed in the table to Rule 47 are not applicable; but the limits prescribed as per clause A.07.10 as per the Rules are applicable. Because limits prescribed in the table of Rule 47 will be applicable only when, artificial sweetener added in article of food is found (and not when such sweetener is found isolately).

25. The criteria mentioned therein are reproduced herein above. Now it is difficult to understand how the report of the Public Analyst contravenes the limits prescribed as per A.07.10. For that purpose, it was incumbent upon the prosecution to examine the Public Analyst and to clarify this aspect. Unfortunately, it has not happened.

26. The Hon'ble Supreme Court in case of **K. Krishna Iyer Vs. State of Kerala and another Respondents** (Supra) was pleased to alter the conviction from Section 16(1-A) to Section 16(1) (ai). In

that case the sample of Ice-stick was taken and it consists of artificial sweetener Saccharin. It means that the Saccharin was found added to Ice-stick. Ice-stick was not considered as Ice-candy and therefore, the standards prescribed in the item no. A.07.04 of the Appendix- 'B' were held not applicable. It was the submission but it was not accepted (para no. 4.)

27. It was held that Ice-stick was edible ice and sold as frozen ice in the shape of a stick and admittedly it contained sugar and colouring. There was an argument that public analyst report does not say that it was found injurious to health. Similar submission is made in this case also. It was held that the requirement injurious to health does not find place in Section 16(1) (ai) and hence conviction was altered.

28. For the above discussion, I am of this view that the Public Analyst ought to have been examined which could have clarified the disputed question. Hence the conclusion cannot be interfered with.

29. In view of this, I am not dealt with the other issues about sending samples belatedly and denial of an opportunity to get the sample re-checked. Because I feel that not examining the Public Analyst was very important.

30. For the above discussion, I do not find any reason to interfere in the judgment and hence appeal is dismissed.

31. I appreciate the efforts taken by learned APP Shri Dedhia and learned Advocate Ms. Mohanty for assisting the Court for understanding this technical subject.

[S. M. MODAK, J.]