PETITIONER:
SRI KRISHAN GOPAL SHARMA ANR.

Vs.

RESPONDENT:
GOVERNMENT OF N.C.T. OF DELHI

DATE OF JUDGMENT: 07/05/1996

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
HANSARIA B.L. (J)

CITATION:
1996 SCC (4) 513 JT 1996 (5) 102
1996 SCALE (4)378

ACT:

HEADNOTE:

JUDGMENT:

WITH

CRIMINAL APPEAL NO.632 OF 1996
(Arising out of S.O.P.(CRL) NO 2650 OF 1995)

J U D G M E N T

G.N. RAY J.

Leave granted. Heard learned counsel for the parties.

Order dated 15.2.1995 passed by the Delhi High Court in Criminal Misc. (Main) Petition No. 2802 of 1994 and Criminal Misc. (Main) Petition No. 3202 of 1994 dismissing the application of the appellants under Section 482 of the Code of Criminal Procedure for quashing the Criminal case No. 149 of 1988 and 42 and 1990 pending in the Court of the Metropolitan Magistrate, New Delhi under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1934 initiated on the basis of the complaint made by the Local Health Authority of the Delhi Administration is under challenge.

Criminal Case No. 149 of 1988 relates to the sample of Chutki Pan Masala purchased from accused No.1 Murari Lal Gupta, partner of the accused No.3 M/s Lal Chand Gupta, and manufactured and supplied by accused No.4 M/s K.K.Karyalaya, of which accused No.5 Krishna Gopal Sharma is the nominee. Case No. 42 of 1990 relates to sample of Chukki Mouth Freshner purchased by Food Inspector D.P. Singh on 21.8.1989 from accused No.1 Krishna Gopal Sharma, the nominee of the manufacturer M/s K.K. Karyalaya. According to the prosecution case both the samples of Chutki Pan Masala and Chutki Mouth Freshner were analyzed by the Public Analyst, Delhi and the Analyst found both the samples as adulterated because it contained saccharin to the extent of 2000 p.p.m. In the first sample and 2450 p.p.m. in the second sample. It may be stated here that at the relevant time when the said samples were purchased, under the existing Rule 44(g) and Role 47 of the Prevention of Food Adulteration Rules, the saccharin contents as found by the Public Analyst in the samples were in violation of the Rules.

The learned Metropolitan Magistrate in dismissing the applications made under Section 248 of the Code of Criminal Procedure held, inter alia, that although from 9th November, 1993, Rule 47 of the Prevention of Food Adulteration Rules 1955 had undergone a change and saccharin to the extent of 8000 ppm in pan masala has been permitted under the amended Rule 47, even then accused were not entitled to get any benefit of subsequent amendment of Rule 47. As at the relevant time, the accused had sold the Pan Masala and Mouth Freshner in violation of the mandate under the Act and the Rules framed thereunder, the prosecution initiated on account of such violation was legal and justified.

The learned Judge relied on the Full Bench decision of the Delhi High Court in Municipal Corporation of Delhi Vs. Charanjit Lal (1980 (1) PFC page 55) wherein similar contentions were negatived by the Full Bench.

Against the said decision, the appellants moved the Delhi High Court under Section 482 of the Code of Criminal Procedure inter alia praying for quashing the said criminal ases. By the impugned judgment, the High Court held that at the relevant time, when the samples were taken and analyzed, the saccharin content as found by the analyst in the samples was not permissible. Hence, the offence under the Food Adulteration Act had been committed and consideration of subsequent change of the permissible limit of saccharin in Pan Masala and Mouth Freshner was not Germane. The High Court, therefore, dismissed the Misc. Cases arising out of Section 482 of the Criminal Procedure Code with an observation that it would open to the accused petitioners to urge the implication of subsequent change in the Rules by permitting user of saccharin upto the extent of 8000 ppm in Pan Masala at the hearing of the criminal cases.

Mr.Sanghi, the learned senior counsel appearing for the appellants, has strongly contended that the extent of saccharin since found by the analyst cannot be held as injurious to health because on the basis of further research and analysis about the effect of saccharin on human body, it has been ascertained that presence of saccharin upto a reasonable limit was not at all injurious to health. Precisely for such change in the outlook, Rule 47 of the Prevention of Food Adulteration Rules has been changed with effect from 9th November, 1993, by indicating that in a Pan Masala, the saccharin content even upto 8000 ppm is permissible. Mr. Sanghi has submitted that at the relevant time when 2000 ppm of saccharin was added to the Chutki Pan Masala and the Mouth Freshner, the accused in fact had not committed any illegal act by adding saccharin in quantities noted because such quantity of saccharin was not injurious to health. It was only because our knowledge about the effect of saccharin on human system was imperfect, an unreasonable embargo on the user of saccharin in Pan Masala and Mouth Freshner was imposed in Rule 47. As it is quite evident that imposition of restriction on user of saccharin in Pan Masala and Mouth Freshner was unjustified because of lack of knowledge about the effect of saccharin on human system, and as it can not be contended that presence of saccharin to the extent of 2000 ppm and 2450 ppm in Pan Masala and Mouth Freshner was either injurious to health or such user of saccharin had adversely affected the quality of the articles by degenerating the same, it must be held that the accused appellants had in fact did not commit any improper act by selling an adulterated food. Because of imperfect knowledge, the wrong restriction was imposed under the Prevention of Food Adulteration Rules at the relevant time and such unjust imposition of restriction of user of

saccharin must be held to be arbitrary, unjust and without any reasonable basis. Mr. Sanghi has submitted that it is nobody's case that the Chutki Pan Masala or Mouth Freshner since sent for analysis contained any substance which had degenerated the quality of the articles or made them injurious to health. Hence, it cannot be reasonably contended that in fact the said articles were adulterated food even at the time of collection of the samples. Mr. Sanghi has submitted that in the aforesaid facts, it will not be fair and proper to prosecute the accused and to punish them for using saccharin in Pan Masala and Mouth Freshner to an extent much below the permissible limit which has been accepted by the concerned authority by rectifying the misconceived notion about the effect of saccharin by amending Rule 47 of the Rules. The alleged violation being based on misconception should not be countenanced by Court and the accused should not be exposed to trial for a criminal offence when in fact no offence had been committed by the accused. In The facts of the case, the prosecution will amount to gross abuse of process of law. Hence, prayer for quashing should have been allowed by the High Court.

Mrs. Amareshwari, the learned senior counsel appearing for the respondent, has however submitted that imposition of restriction of adding saccharin as contained in Rule 47 of Prevention of food Adulteration Rules at the relevant time was not arbitrary and capricious. Such imposition was fairly made consistent with the existing knowledge about harmful effect of saccharin on the human system. Mrs. Amareshwari has submitted that it is nobody's case that at the relevant time on the basis of the available information flowing for research and analysis there was no occasion for putting embargo on the free user of saccharin on the articles sold and restriction in the user of saccharin in Rule 47 of the Rules was wholly arbitrary, capricious and ipsi dikit of the Rule making authority. Rule 47 of the Rules having been fairly made in proper exercise of the power consistent with the then available information on the effect of saccharin on human system, it must be held that such Rule, even though amended at a later stage on the basis of further knowledge on the effect of saccharin on human system, was quite legal and valid. So long Rule 47 being validly made was in force, compliance of the mandate under the Rules was unavoidable and prosecution initiated on violation of Rule 47 as operative at the relevant time cannot be held to be illegal and without any sanction of law. She has, therefore, submitted that the complaint made against the accused and consequential initiation of criminal case under the Prevention of food Adulteration Act cannot be held as illegal and invalid for which an order of quashing such criminal cases was warranted.

After giving our careful consideration to the facts and circumstances of the case it appears to us that at the relevant time when the samples of the Pan Masala and the Mouth Freshner were taken, the saccharin content as found by the Public Analyst in the said articles of food was in violation of Rule 47 of the Prevention of Food Adulteration Rules. The Pan Masala and the Mouth Freshner are undoubtedly within the meaning of food under Section 2(v) of the Prevention of Food Adulteration Act. food under said act has been defined very widely. The validity of Rule 47 prior to its amendment in 1993 restricting the user of saccharin in pan masala cannot be challenged on the ground of arbitrary and capricious exercise of power by the Rule making authority has not been demonstrated that despite widely accepted view by the experts about the effect on saccharin

on human system on the basis of information flowing from research and analysis, the restriction of user of saccharin in Can Masala or touth Freshner as imposed in Rule 47 of the Rules at the relevant time was wholly arbitrary, unjust and capricious. Human knowledge is not static The conception about the harmful effect of saccharin on human system has undergone changes because of information derived from further research and analysis. The knowledge about the effect of saccharin on human system as accepted today may undergo a cringe in future on the basis of further knowledge flowing from subsequent research and analysis and it may not be unlikely that previous view about saccharin may be found to be correct later on. If the Rule making authority on the basis of human knowledge widely accepted by the expert framed rule by imposing restriction of user of saccharin in Pan Masala or Mouth Freshener at a particular point of time, such exercise of power must be held to have been validly made, founded on good reasons; and challenge of the Rule on the score of arbitrary and capricious exercise of power must fail. In this connection, reference may be made to the decision of a Constitution Bench of thus Court in Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Ors. (1974 (2) SCR page 154) In the said case, a Dealer in scented 'supari' was charged for the offence of having sold and retained for selling scented 'supari' with saccharin and cyclamate, in contravention of Section 7(i) (ii) and Rule 47 of Prevention of Food Adulteration Rules. In the said case, because of such contravention, the dealer was prosecuted for an offence punished under Section 16(1) (a) (i) of the Prevention of Food Adulteration Act. The dealer was convicted by the learned Magistrate by imposing a fine Rs.100/-. On revision, the High Court enhanced the punishment to the statutory minimum of six months imprisonment and a fine of Rs. 1000/-. At the hearing of the appeal before this Court, there was no dispute that the article in question which was sold contained saccharin and cyclamate. It was however urged that Section 23(i)(b) empowered the framing of Rules regarding the articles of food for which standards were to be prescribed. It was contended that supari was not a food. It was further contended that neither saccharin nor cyclamate was a bio-chemical risk and the blanket ban on the use of those substances was unconstitutional amounting to unreasonable restriction on the freedom of trade guaranteed under Article 19 of the Constitution It was also urged that although saccharin was permitted to be used in carbonated water, restriction of user of saccharin in supari amounted to hostile discrimination.

The Constitution Bench, however, held that supari was food under Section 2 (v) of the Act. Food was defined under the Act in a very wide amplitude covering any article used as food and every component which enters into it including even flavoring matter and condiments. It was also indicated in the said decision that in offences relating food articles, strict liability was the rule. Nothing more than actus reus was needed where regulation of private activity in vulnerable areas like public health was intended. Social defence reasonably overpowered individual freedom. Section 7 of the Prevention of food Adulteration Act had cast an absolute obligation regardless of scienter, bad faith and mens rea. There would be no more argument about it. The law had denied the right of a dealer to rob the health of a consumer of supari . The Constitution Bench in this regard noticed and relied on an earlier decision of this Court in Andhra Pradesh Grain and Seed Merchants Association Vs. Union of India (1971 (1) SCR 166).

The Constitution Bench also indicated that lt was 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 the high powered technical body, Had prescribed the use of saccharin and cyclamate in some articles of food. Where expertise of a complex nature was expected of the State in framing rules, the exercise of that power not demonstrated as arbitrary must be presumed to be valid as a reasonable restriction of the fundamental right of the citizen and Judicial review must halt at the frontiers. The contention that there had been a hostile discrimination against supari vis-a-vis carbonated waters was also rejected by the Constitution Bench. It was indicated that there was a basis for the distinction and the Courts would not make easy assumption - of unreasonableness of subordinate legislation. The challenge to the vires of Section 23 (ii)(b) of empowering framing of rules uncontrolled and unguided power was also rejected by the constitution Bench by indicating the guidelines implicit in the statute, built into the system, by the contained in the rule and safeguard of laying the rules before the Houses of Parliament.

It will be appropriate to mention here that the prayer for release on probation on good on good conduct was rejected by the Constitution Bench by indicating that the kindly application of probation principle was to be negatived by the imperatives of social defence and improbabilities of moral proselytisation The Constitution Bench had also not approved imposition of only fine offence under Food Adulteration Act by indicating that the court has jurisdiction to bring down sentence to less than minimum prescribed in Section 16(1) of the Act provided there were adequate and special reason in that behalf normally food offences should be deferrently dealt with. When primary necessaries of life were sold spurious admixtures for making profit, the common man being at the mercy of vicious dealer had only protection under the Prevention of Food Adulteration Act and the court. If offenders could get away with trivial fine, the law would would be brought into contempt.

In the back drop of aforsaid exposition of law for offences under the Prevention of Food Adulteration Act it is necessary to consider the facts and circumstances of the case. In these appeals, there is no dispute that saccharin was not added to Pan Masala and Mouth Freshner. It is contended that even if addition of saccharin to the extent as stated to have been found by the Analyst is accepted to have been correctly determined, such addition, as a matter of fact, was neither injurious to health nor it degenerated the articles sold so that they could be branded as adulterated fact. The ban on the use of saccharin in Pan Masala and touth Freshner was imposed on a misconception and erroneous view of its injurious effect on human system. But later on, it has been accepted by the Rule making authority that use of saccharin to the extent of 8000 ppm in pan masala will not be harmful for human consumption and Rule 47 of the Rules has been amended. As use of saccharin to the extent of 2000 and 2450 ppm was not injurious to health at any point of time, it must be held that even before amendment of Rule 47 such use of saccharin to the above extent did not constitute an offence for adulterating food with substances injurious to health.

In our view, at the relevant time, saccharin content in Pan Masala and Mouth Freshner to the extent of 2000 and 2450 ppm as found by the Analyst was not permissible under the Prevention of Food Adulteration Rules. We have indicated that such Rule was valid and operative at the relevant time. Hence, there had been violation of the Food Adulteration Act and the Rules framed thereunder in selling Pan Masala and Mouth Freshner with saccharin content to the extent of 2000 and 2450 ppm. Hence, the complaints made by the Health Department of Delhi Administration and initiation of criminal cases against the accused cannot be held to be without justification. It cannot also be contended that on the face of the complaint, no offence was prima facie committed. Hence, the impugned decision of the High Court in dismissing the applications under section 482 Cr.P.C. can not be held to be unjustified.

It, however, appears to us that even if the complaint is accepted to be correct, the only offence committed by the appellants amounts to technical violation of the mandate of Rule 47 for adding saccharin to the extent of 2000 and 2450 ppm in the Chutki Pan Masala and Mouth freshner. Such addition of saccharin cannot be held to be injurious to health because, considering later findings on research and analysis on the effect of saccharin on human system, addition of saccharin to the extent 8000 ppm in Pan Masala has been allowed by amending Rule 47. The articles sold are not alleged to be injurious to health and such allegations, even if made, cannot be accepted. There is no allegation that any other injurious substance was added to the articles sold making them potentially health hazards. It is also not the case that Pan Masala and Mouth Freshner were of inferior quality and sub-standard. In a case like this, the offence committed is on account of technical violation of Rule 47. It should be emphasized that strict adherence to Prevention of food Adulteration Act and Rules framed thereunder should be insisted and enforced for safeguarding the interest of consumers of articles of food. In the Constitution Bench decision in Tejani's case (supra) it has been indicated that in ordered to prevent unmerited leniency in the matter of awarding sentence for an offence under the Prevention of food Adulteration Act, the legislature by amendment has incorporated the provision of minimum sentence. But it was also been indicated that the court, for adequate and special reasons, may bring down the minimum sentence. The Constitution Bench has also observed that all violations of provisions of the Act and Rules need not be treated alike because "there are violations. In the special facts of these cases, it appears to us that a defferent punishment of imprisonment is not called for and imposition of fine of will meet the ends of justice. The criminal cases were initiated on the basis of samples taken in 1967. The accused appellants have already faced the ordeal of criminal trials for a number of years. In the aforesaid circumstances, further agony of criminal trial need not be prolonged. Conclusion of the criminal cases will also save time and expenditure of the respondent.

In that view of the matter, we direct for quashing the criminal cases in question on payment of costs at Rs.7500/- in each of these appeals as in our view, on conviction of the appellants in the criminal cases initiated against them, such fine would have met the ends of justice. The appeals are accordingly disposed of.

In view of decision in the criminal appeals the Special Leave Petition (Criminal) No. 2650 of 1995 arising out of the order of dismissal passed on the writ petition filed by

the petitioner in the Delhi High Court for challenging the vires of Rule 47 of the Prevention of Food Adulteration Rules, stands dismissed.