

PETITIONER:
K. KRISHNA IYER

Vs.

RESPONDENT:
STATE OF KERALA AND ANR.

DATE OF JUDGMENT 30/03/1993

BENCH:
ANAND, A.S. (J)
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ANAND, A.S. (J)
SINGH N.P. (J)

CITATION:
1993 SCR (2) 707 1993 SCC (3) 226
JT 1993 Supl. 58 1993 SCALE (2) 358

ACT:
Prevention of Food Adulteration Act, 1954:
Sections 7(1), 16(1-A) and 161(a) (i)--Ice stick containing
sacharin--Prohibition of artificial sweetener--Sample not in
conformity with standards prescribed--Hence
adulterated--Presence of dulcin--Found by Public Analyst and
Central Food Laboratory excluding it--Conviction altered.

HEADNOTE:
The appellant was selling ice-sticks. The Food inspector
took samples and sent one sample to the Public Analyst, who
opined that it contained artificial sweeteners viz.
saccharin and dulcin and was therefore adulterated. A
complaint was filed before the Judicial Magistrate.
Appellant pleaded not guilty and exercised his right to have
the sample analysed by the Central Food Laboratory.
According to the report of the Central Food Laboratory the
sample contained artificial sweetener identified as
saccharin. The Magistrate convicted the appellant for an
offence under sec. 16(1) (a) read with sec. 7(1) of the Act,
sentenced him to suffer one year rigorous imprisonment and
to pay a fine of Rs. 2,000 and in default to undergo
imprisonment for three months. The appeal preferred by the
appellant was dismissed by the Sessions Judge. The Criminal
Revision petition filed before the High Court was also
dismissed. Hence the present appeal.
On behalf of the appellant it was contended that since the
report of the Public Analyst which had found the presence of
dulcin in the sample stood superseded by the report of the
Central Food Laboratory which had not found the presence of
dulcin, the consumption of which was injurious to health
under the Rules, the conviction of the appellant for an
offence under Section 16(1-A) of the Prevention of Food
Adulteration Act, 1954 was not justified; and that the
presence of artificial sweetener like saccharin, which has
not been declared as injurious to health could not attract
the provisions of S.16(1A) of the Act.
Partly allowing the appeal, this Court
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HELD:1. It would be seen from Section 16(1-A) of the
Prevention of Food Adulteration Act, 1954 that in order to
maintain a conviction under the said provision, the article

of food which is adulterated should fall either in one of the sub-clauses(e) to (1) of clause (ia) of Section 2 or should contain an adulterant which is injurious to health. The adulterated article of food sold in this case admittedly does not fall in any of the sub-clauses (e) to (1) of Section 2(ia). According to the report of Central Food Laboratory, it also does not contain any adulterant declared as 'injurious to health'. [712 E, F]

2.However, keeping in view the fact that the Article of food, 'ice-stick' sold by the appellant did not conform to the standard as prescribed in Item A.07.04 of Appendix B and contained an artificial sweetener saccharin it is obvious that the article of food sold by the appellant was adulterated within the meaning of Section 2(ia)(m) of the Act and the same would, therefore, be punishable under Section 16(1) (a) (i) of the Act. [713 C]

3.It cannot be said that since the appellant had been charged for an offence under Section 16(1-A) of the Act, he could not be convicted for an offence under Section 16(1) (a) (i) of the Act. The penalty for an offence under Section 16(1) (a) (i) admittedly is less than the penalty prescribed for the offence under Section 16(1-A), which is a graver offence and therefore, there is no impediment in the way of the court, on the findings of the fact recorded by it, to convert the conviction of the appellant from the one under Section 16(1-A) to one under Section 16(1) (a) (i) of the Act, notwithstanding the fact that the appellant had been charge-sheeted for an offence under Section 16(1-A) of the Act. [713 E, F]

4.Judicial notice is taken of the fact that the type of adulterated article sold by the appellant is the one generally consumed by children and it is not only illegal but even immoral to serve them with articles containing artificial sweeteners use whereof has been prohibited by the statute. Just because the appeal has remained pending here since 1985 the society cannot be made to suffer for this delay by letting the criminal go unpunished as a crime of this nature, being a crime against the society at large, cannot be ignored. Sympathy in such cases is totally misplaced. [714 B-D]

5.The conviction of the appellant is altered from the one under Section 16(1-A) read with Section 7(1) of the Act to the one under Section 16(1) (a) (i) read with Section 7(1) of the Act and the sentence is reduced from one year 709

R.I. and a fine of Rs. 2,000 to the minimum prescribed for the said offence ie. six months R.I. and a fine of Rs. 1,000 in default of which the appellant shall suffer imprisonment for one month more. [714 E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 781 of 1985.

From the Judgment and Order dated 8.8.1984 of the Kerala High Court in Crl. R.P.No. 459 of 1981.

T.S.K. Iyer, Ms. Prasanthi Prasad and N. Sudhakaran for the Appellant.

M.T. George for the Respondents.

The Judgment of the Court was delivered by

DR. ANAND, J. The appellant was convicted for an offence under Section 7(1) read with Section 16 (1-A) (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter the Act) by the Additional Judicial Magistrate, 1st Class,

Trivandrum on 17.7.1981 and sentenced to suffer one year R.I. and to pay a fine of Rs. 2000 and in default to undergo imprisonment for three months. The conviction and sentence were upheld by the Additional Sessions Judge, Trivandrum who dismissed his appeal on 28.10.1981. Criminal Revision Petition No. 459 of 1981 filed in the High Court of Kerala also failed on 8th August, 1984. It is, thereafter, that he has come up to this court by appeal on special leave being granted.

On 12.2.1980, the Food Inspector of the Corporation of Trivandrum after disclosing his identity purchased from the appellant 600 gms. of 'ice-stick' and paid Rs. 1.25. One of the samples was sent to the Public Analyst at Trivandrum, who vide report dated 6.3.1980 opined that the "said sample contains artificial sweeteners saccharin and dulcin and is therefore adulterated". The Public Analyst also stated in his report that the use of dulcin in food articles is not permitted on account of the fact that "its consumption is injurious to health". According to the report of the Public Analyst, dulcin to the extent of 100.0 parts per million and saccharin to the extent of 90.0 parts per million was found present in the sample sent for analysis. A complaint was accordingly filed before the Additional Judicial 1st Class Magistrate, Trivandrum. The appellant pleaded not guilty and also exercised his right to have the sample analysed from the Central

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Food Laboratory. The sample was then set to the Central Food Laboratory and after analysis of the sample, it opined that "the sample does not conform to the standards laid down for ice-candy under the provisions of PFA Act 1954 and the Rules thereunder". It was found by the Central Food Laboratory that the sample contained "an artificial sweetener" identified as saccharin to the extent of 190 parts per million. The sample had also tested positive for presence of cane-sugar.

Before the trial court, it was urged that the 'ice-stick' sold by the appellant to the Food Inspector PW1 could not be treated as ice-candy and since no standard for 'ice-stick' had been prescribed in the Act, the conviction of the appellant was not warranted. It was also argued that for the offence committed by the appellant the sentence imposed was not justified. The trial court, negatived both the contentions and recorded a finding of fact to the effect that the appellant had sold an article of food ice-stick- to PW1 for purposes of analysis and that the ingredients of the ice-candy and the ice-stick were the same and the standards prescribed for ice candy etc. were applicable to the article sold by the appellant also. It was further held that since the sample did not conform to the standards laid down for ice candy under the provisions of the Act and the Rules framed thereunder, as per the certificate of the Public Analyst, the sample was adulterated and in view of presence of dulcin, "the adulterant was injurious to health". The trial court held that the offence of the appellant squarely fell under Section 7 read with Section 16 (I-A) (i) of the Act. The sentence imposed is the minimum prescribed for the said offence. Similar arguments were raised in the appeal before the Sessions Court also. It was once again found, on facts, that the ice-stick sold by the appellant was an article of food and that the ingredients of the ice candy and the ice-stick were the same. It was also found that since the sample contained the prohibited artificial sweetener, saccharin it was adulterated and the conviction and sentence were justified. Similar grounds were once

again raised before the High Court which also found:

"In this case, therefore, from the evidence available especially Ext. P9 report, it is clear that the petitioner sold ice candy which is described as ice stick for, it was frozen ice containing sugar. In this view, it did not conform to the standard prescribed under the Rules

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Undeterred by the finding of fact recorded by all the three courts below to the effect that the 'ice-stick' sold by the appellant was covered by the articles mentioned in Item A.07.04 of Appendix B and was required to conform to the standards laid therein, a strenuous argument was once again raised before us to the effect that the 'ice-stick' sold by the appellant could not be treated to be 'ice-candy' and, therefore, the standards prescribed in Item A.07.04 of Appendix B were not applicable to it. We are afraid, we cannot agree with this submission. All the three courts have carefully gone into the matter and found that the article sold by the appellant was an article of food covered by the Item A.07.04 of Appendix B. Their finding is supported by the entry itself. Item A.07.04 of Appendix B, as it stood at the relevant time, reads thus:
"A.07.04 'Ice-candy or Ice Lollies or Edible Ice' by whatever name it is sold, means the frozen ice produce which may contained the permitted flavors and colors, sugar, syrup, fruit, fruit-juice, nuts, cocoa, citric acid, stabilizers or emulsifiers not exceeding 0.5 per cent. It shall not contain any artificia

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sweetener."

Considering the nature of the article sold, we have no doubt in our mind that the 'ice-stick' was edible ice and sold as frozen ice in the shape of a stick. It admittedly contained sugar and coloring as is evident from the report of the Central Food Laboratory. It was, therefore, required to conform to the standards prescribed in Item A.07.04 of Appendix B and since according to the report of the Public Analyst as also the Central Food Laboratory the article contained an artificial sweetener, saccharin, it did not conform to the standard laid down in the entry which specifically prohibits the use of any artificial sweetener. Faced with this situation, learned counsel for the appellant then submitted that since the report of the Public Analyst, Trivandrum, which had found the presence of dulcin in the sample stood superseded by the report of the Central Food Laboratory, which had not found the presence of dulcin, an article the consumption of which is "injurious to health", under the Rules, the conviction of the appellant for an offence under Section 16 (1-A) was not justified. Learned counsel submitted that the mere presence of artificial sweetener like saccharin in the sample, which has not been declared as-"injurious to health", could not attract the provisions of Section

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16 (1-A) of the Act. We find force in this submission. The report of the Central Food Laboratory definitely excluded the presence of dulcin in the sample. It only found

presence of the prohibited artificial sweetener, saccharin. Section 16 (1-A) provides:

"(1A) If any person whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes

(i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (1) (both inclusive) of clause (ia) of section 2; or

(ii) any adulterant which is injurious to health,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees."

It would be seen from the above provision that in order to maintain a conviction under the said provision, the article of food which is adulterated should fall either in one of the sub-clauses (e) to (1) of clause (ia) of Section 2 or should contain an adulterant which is injurious to health. The adulterated article of food sold in this case admittedly does not fall in any of the sub-clauses (e) to (1) of Section 2 (ia). According to the report of Central Food Laboratory, it also does not contain any adulterant declared as "injurious to health". Thus, on the face of it is not possible to hold that the appellant had committed an offence punishable under Section 16(1-A) of the Act and the conviction of the appellant for an offence under Section 16(1-A) of the Act cannot be sustained.

The article of food sold by the appellant, however, has been found by the Central Food Laboratory to contain an artificial sweetener, the use whereof in such article of food is prohibited. It, therefore, does not conform to the standards prescribed in Item A.07.04 of Appendix B. Section 16(1)(a)(i) of the Act makes a person liable to punishment if whether by himself or by any other person on his behalf, he inter alia, manufactures for sale, or stores or sells any article of food which is

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adulterated within the meaning of sub-clause (m) of clause (ia) of Section 2 of the Act. Section 2 (ia) (m) reads thus:

"2(ia) 'adulterated' an article of food shall be deemed to be adulterated

"(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:"

Keeping in view the fact that the article of food, 'ice-stick' sold by the appellant did not conform to the standard prescribed for it in Appendix B and contained an artificial sweetener saccharin, it is obvious that the article of food sold by the appellant was adulterated within the Meaning of Section 2(ia)(m) of the Act and the same would, therefore, be punishable under Section 16 (1)(a)(i) of the Act.

We are unable to accept the argument of the learned counsel for the appellant that since the appellant had been charged for an offence under Section 16 (I-A) of the Act, he could not be convicted for an offence under Section 16(1)(ai) of

the Act. There is no basis for such an argument. The penalty for an offence under Section 16(1)(ai) is admittedly less than the penalty prescribed for the offence under Section 16(1-A), which is a graver offence and therefore, there is no impediment in the way of the court, on the findings of the fact recorded by it, to convert the conviction of the appellant from the one under Section 16(1-A) to the one under Section 16(1)(ai) of the Act, notwithstanding the fact that the appellant had been charge sheeted for an offence under Section 16(1-A) of the Act. In view of our findings recorded above, we alter the conviction of the appellant from the one under Section 7(1) read with Section 16(1-A) of the Act to the one under Section 7(1) read with Section 16(1)(a)(i) of the Act.

The argument of the learned counsel for the appellant that since the appellant has been on bail in this court and the occurrence took place more than a decade ago, a sympathetic view be taken and his appeal be accepted and he be acquitted, is to say the least, a rather ambitious submission and we cannot agree. Indeed, there has been some lapse of time since the offence was committed in 1981 but that lapse of time alone cannot come to the aid of the appellant because having found the appellant guilty of an

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offence under Section 16(i)(a)(i) read with Section 7(1) of the Act, this Court is obliged 'to convict the appellant and not let the crime go unpunished. The appellant has been prosecuting the case in appeal and revision and the High Court dismissed his revision petition in 1985. The appeal has remained pending in this Court ever since and as the appellant had obtained an order of bail, he, obviously was not interested in an early disposal of the appeal and took no steps in that behalf. The pendency of the appeal in this Court for about six years does not by itself render the conviction bad or raise any other equity in his favour. We can take even a judicial notice of the fact that the type of adulterated article sold by the appellant is the one generally consumed by children and it is not only illegal but even immoral to serve them with articles containing artificial sweeteners use whereof has been prohibited by the statute. Just because the appeal has remained pending here since 1985 the society cannot be made to suffer for this delay by letting the criminal go unpunished as a crime of this nature, being a crime against the society at large, cannot be ignored. Sympathy in such cases is totally misplaced.

As a result of the above discussion, the conviction of the appellant is altered from the one under Section 16(1-A) read with Section 7(1) of the Act to the one under Section 16(1)(a)(i) read with Section 7(1) of the Act and the sentence is reduced from one year R.I. and a fine of Rs. 2000 to the minimum prescribed for the said offence i.e. to six months R.I. and a fine of Rs. 1000. In default of payment of fine the appellant shall further suffer imprisonment for one month more.

The appeal succeeds and is partly allowed to the extent indicated above.

The appellant is on bail. His bail bonds shall stand cancelled. He shall be taken into custody to suffer the remaining period of the sentence.

G.N.

Appeal partly allowed.

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JUDIS