

It may be recalled that the firm stand of the respondent-State, both in the written statement as also on the basis of the record and in Court was that the petitioners had indulged in the gravest and most aggravated forms of prejudicial activities in order to endanger the security of the State.

43. Coming now to the passing observations of the learned Single Judge in *Gauranga Karmarkar's case* to the effect that mere incitement to violent crime and public disorder would not come within the scope of the expression 'security of the State', it is significant to notice that this view was in terms reversed by the Division Bench on appeal in *State of West Bengal and others v. Narenbra Narayan Das* (supra) wherein it was held (in the passage already quoted in the earlier part of the judgment) that even the maintenance of public order would squarely come within the wider expression of the interest of the Security of the State. I am, therefore, of the view that the last contention raised on behalf of the petitioners cannot also hold water.

44. In the light of the exhaustive discussion aforesaid it is plain that all the writ petitions are devoid of merit and are hereby dismissed. The parties are, however, left to bear their own costs.  
*S. S. Sandhawalia, C.J.*

Oral prayer of Mr. Kuldip Singh, learned counsel for the petitioner for leave to file an appeal to the Supreme Court is declined.

N. K. S.

*Before M. M. Punchhi, J.*

TILAK RAJ,—Petitioner.

*versus*

STATE OF PUNJAB,—Respondent.

*Criminal Revision No. 376 of 1977*

November 20, 1979.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7 and 16(1) (a)—Prevention of Food Adulteration Rules 1955—Rule 5 and Appendix B Item A. 01.01—Sweetened carbonated water seized by the Food Inspector—Report of public analyst that the*

Tilak Raj v. State of Punjab (M. M. PUNCHHI, J.)

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*sample contained no sugar—Such report silent as to the presence of other sweetening agents—Accused—Whether liable to be convicted.*

*Held*, that carbonated water would only mean potable water impregnated with carbon dioxide. In order to become sweetened carbonated water, it has to contain (carbonated water may or may not) a sweetening agent of any of the kinds mentioned in item A. 01.01 of Appendix B of the Food Adulteration Rules, 1955 namely sugar, liquid glucose, dextrose, monohydrate, invert sugar, fructose, honey sacharin not exceeding 100 p.p.m. fruit and vegetable extractives. The sweetening agents are only these and sugar is only just one of them. Absence of sugar *per se* from the sample is no crime as the accused could have chosen any of the sweetening agents referred to above. On this foundation, the accused could not have been convicted for selling sweetened carbonated water unless and until the sweetened agent employed by him was found to be less than 5 per cent in sucrose content. (Paras 4 and 5).

*Petition under Section 401 Cr.P.C. for revision of the Order of Shri S. K. Jain, Additional Sessions Judge, Ferozepur, dated 25th April, 1977, modifying that of Shri Iqbal Singh, Addition C.J.M., Ferozepur, dated 10th March, 1976, convicting the petitioner.*

Harinder Singh and B. K. Garg, Advocates, for the Petitioner.

M. S. Librahan, Advocate for Sunil Parti, Advocate, for A.G. Punjab, for the Respondent.

#### JUDGMENT

*Madan Mohan Punchhi, J. (Oral).—*

(1) Tilak Raj, a shopkeeper of Ferozepore Cantt., has challenged his conviction under section 16(1)(a) of the Prevention of Food Adulteration Act read with section 7, thereof and sentence of one year's rigorous imprisonment and a fine of Rs. 3,000 in default further rigorous imprisonment for nine months.

(2) The case of the prosecution is simple and straight. It became all the more so by the stand taken by the petitioner. On 20th of June, 1974, the petitioner was found to be in possession of

two crates (48 bottles), containing a substance which was orange in colour and stated to be sweetened carbonated water. Out of these Dr. S. K. Gupta (P.W. 1), the Food Inspector, purchased 9 bottles, took samples therefrom and sent the same to the Public Analyst. On analysis, the Public Analyst found that the orange coloured sweetened carbonated water sent to him contained no sugar at all, whereas it should have contained a minimum of five per cent. On that premises, the petitioner was complained against, tried, convicted and sentenced by the trial Court. The order was maintained in appeal before the Sessions Court. This is how the matter has come up to this Court in revision.

(3) The principal contention of the learned counsel for the petitioner is that the substance recovered from the petitioner though described as orange coloured, sweetened and carbonated water yet it cannot be said to have been adulterated in view of the definition given in rule 5 of the Prevention of Food Adulteration Rules read with item A. 01.01 of Appendix B of the Rules. In order to appreciate the contention, it would be useful to incorporate here the definitions of carbonated water and sweetened carbonated water which would come into play to arrive at a proper decision:—

“A.01.01.—Carbonated water means potable water impregnated with carbon dioxide under pressure and may contain any of the following singly or in combinations:—

Sugar, liquid glucose, dextrose, monohydrate, invert sugar, fructose, honey, saccharin not exceeding 100 p.p.m. fruits and vegetables extractives and permitted flavouring colouring matter, preservatives, emulsifying and stabilizing agents, citric acids, tartaric acid, phosphoric acid, lactic acid, ascorbic acid, malic acid, edible gums referred to in the Indian Pharmacopeia, edible gelatin, calcium, licoric and its derivatives, salts of sodium, calcium and magnesium, vitamins, caffeine not exceeding 200 parts per million, and quinine salts not exceeding 100 parts per million (expressed as quinine sulphate):

Provided that in the case of sweetened carbonated waters other than tonic water and dry gingerale the percentage of sucrose shall not be less than five.”

Tilak Raj v. State of Punjab (M. M. Punchhi, J.)

(4) Elaborating the contention, it was pointed out that carbonated water would only mean potable water impregnated with carbon dioxide. In order to become sweetened carbonated water, it has to contain (carbonated water may or may not) a sweetening agent of any of the kinds mentioned in the above-quoted items namely sugar, liquid glucose, dextrose, monohydrate, invert sugar, fructose, honey, saccharin not exceeding 100 p.p.m. fruit and vegetable extractives. The other items mentioned therein are flavouring, colouring or preserving agents. The sweetening agents are only these and sugar is just one of them. It was pointed out that it was saccharin at the level of 100 parts per million which was present in the sample, but its percentage was not disclosed in the analysis. On the other hand, analytically it was disclosed that sugar was absent and its absence *per se* was taken to make it fall of the minimum of 5 per cent prescribed. On that analysis, the learned counsel for the petitioner contends that the Public Analyst has nowhere stated that the saccharin of the permissive kind was below the minimum percentage as prescribed in the item. Absence of sugar *per se* from the sample was no crime as the petitioner could have chosen any of the sweetening agents above-referred to.

(5) The argument of the learned counsel is not only attractive but carries great substance. It also assumes significance in the light of the language used in the charge, the adducing of the prosecution evidence and the statement ultimately recorded under section 313, Criminal Procedure Code. The charge against the petitioner was that he had sold "aerated water" but the evidence led was that he had sold sweetened aerated water to the Food Inspector, and the question put to him under section 313, Criminal Procedure Code, again was that he sold aerated water to the Food Inspector. On that foundation, the petitioner could not have been convicted for selling sweetened carbonated waters unless and until the sweetened agent employed by him was found to be less than 5 per cent in sucrose content.

(6) In somewhat similar circumstances, their Lordships of the Supreme Court in judgment *Bhim Sen v. State of Punjab*, (1), laid down as follows:—

"According to standard of quality laid down in Item A-01-01 of Appendix B of the Rules, carbonated water which is the

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(1) A.I.R. 1976 S. C. 281.

same as aerated water, may or may not contain sugar. If it does not contain sugar, it would not in any way detract from the standard of quality prescribed for aerated water in this item. The requirement of sucrose content being not less than 5 per cent under the proviso to that item does not apply where what is sold is not "sweetened aerated water" but merely "aerated water" which may or may not contain sugar.

Therefore, conviction of seller of aerated water containing only 0.38 per cent sucrose, or no sucrose for an offence punishable under section 7 read with Section 16 is unsustainable."

(7) It would also be useful to take note of the omission in the report of the Public Analyst that sucrose was not referred to it at all. It has been contended at the bar and which has not been refuted that it is in the absence of the sucrose content alone, subject to the prescribed standard, that a conviction under section 16(1)(a) of the Prevention of Food Adulteration Act can sustain. The Public Analyst was not examined in the instant case and the prosecution rests contented in furthering its case against the petitioner on the basis that it was carbonated water. In the absence of sufficient proof, the case of the prosecution has to falter. It also deserves mention that carbonated water was coloured and that *per se* may amount to adulteration even if the sweetening standards are brushed aside. Somewhat an akin argument was raised in *Bhim Sen's case* (supra) wherein, their Lordships did not permit the prosecution to deviate from its stand, in the absence of the charge for selling aerated water in a coloured form and in the absence of question to that effect put to the accused under section 342 of the Old Criminal Procedure Code. In that case, the sample of "aerated water" contained non-permitted coal tar dye, a dyeing agent which would make the substance adulterated. But here the charge barely mentioned that he sold adulterated aerated water to the Food Inspector. The petitioner admitted in his statement under section 313, Criminal Procedure Code, that he did sell. But it is not to be lost sight of the fact that the aerated water which the petitioner sold was not aerated water *per se*, it was coloured sweetened aerated water, coloured and sweetened with the sweetening agent known as saccharin, quite contra-distinct from sugar, the absence of which alone was detected by the Public

Ujagar Singh v. State of Punjab (M. M. Punchhi, J.)

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Analyst. The defence of the petitioner that he had prepared sweetened aerated water by putting saccharin in it, at the instance of his customers, who were diabetic patients may well be true. The colouring agent used has not been found to be prohibitive. The adding of a colouring agent to carbonated water would not cease the substance to remain carbonated water any more; but further addition of a sweetening agent would make it a sweetened carbonated water and then alone the standards of the proviso have to apply.

(8) In the result, this petition succeeds and the petitioner is hereby acquitted. Fine, if paid, be refunded to him.

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H.S.B.

Before M. M. Punchhi, J.

UJAGAR SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Revision No. 384 of 1977.

November 22, 1979.

*Indian Penal Code (XIV of 1860)—Sections 193, 218, 463 and 466—Code of Criminal Procedure (2 of 1974)—Sections 195 and 360—Court official tampering with the statements of the witnesses given in that court—Such action—Whether falls within the mischief of sections 218 and 466—Section 193—Whether attracted—Bar to prosecution as envisaged in section 195 of the Code—Whether applicable to cases under section 21-B—Benefit of Probation—Whether should be given to the offenders in such cases.*

*Held.* that a bare reading of the provisions of section 195 of the Code of Criminal Procedure, 1973 reveals that the clog to cognizance is placed on Courts with respect to the offences mentioned therein and section 218 of the Indian Penal Code 1860 is not one of those sections. Equally, the offences described under section 463 of the Indian Penal Code which are excluded from the purview of cognizance except on a complaint are those offences which are alleged to have been committed in respect of a document produced or given in