

Before S. S. Sandhawalia C.J. and D. S. Tewatia, J.

NARESH KUMAR,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Revision No. 241 of 1979.

April 10, 1981

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections (21a) & (ix) and 16(1) (a) (i)—Sale of an article of food—Standard of quality or purity of such article not prescribed—Seller—Whether liable to be convicted under section 16(1) (a) (i) in the absence of a prescribed standard.

Held, that patasas, standard of which regarding quality or purity or the preparation of various constituents that go in its making having not been prescribed by the Prevention of Food Adulteration Act, 1954 or the rules framed thereunder, when coated with soap-stone, a substance which has not been declared to be injurious to health, cannot be considered to be adulterated in terms of any of the sub-clauses (e) to (I) or (m) of clause (ia) of section 2 of the Act. Thus, an accused who has sold or kept for sale the patasas, cannot be held guilty of the offence under section 16(1) (a) (i) of the Act. (Paras 7 and 16).

H. S. Brar, Advocate, for the Petitioner.

D. S. Keer, Advocate for A.G. Punjab.

JUDGMENT

D. S. Tewatia, J.—

(1) Sample of patasas, out of 750 grams of Patasas purchased by Dr. Sukhjit Singh Aujla, Government Food Inspector, From Naresh Kumar petitioner out of ten Kilograms of Patasas kept for sale by him at his shop near Bus Stand at Tanda, on an analysis by the Public Analyst, were found to be coated with soap-stone. On the basis of report Exhibit P.D. to this effect, the petitioner was charged under section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954, hereinafter referred to as the Act.

(2) The trial Court, on a finding that the sample of Patasas purchased by the Food Inspector was not of the nature of quality which it was purported to be, the soap-stone being a material foreign

to the Patasas was not expected to be coated on the Patasas, and that the soap-stone coating had certainly rendered the Patasas of inferior quality and, therefore, the Patasas were adulterated, as defined under section 2(ia) of the Act, held the accused-petitioner guilty of the charge and sentenced him to one year's rigorous imprisonment and to a fine of Rs. 2,000 in default to further six months' rigorous imprisonment.

(3) On an appeal at the instance of the accused-petitioner, the Additional Sessions Judge, Hoshiarpur, endorsed the observations of the trial Court already noted and dismissed the appeal. Hence, the present petition, which was referred to be decided by a larger bench and that is how it is before us for decision.

(4) The short, though significant, question that has been posed for decision by the petitioner is as to whether the petitioner could be convicted of an offence under section 16(1) (a) (i) of the Act, when admittedly, neither under the Act, nor under the Rules framed thereunder or otherwise, the standard of quality or purity of Patasas had been prescribed nor soap-stone was declared to be injurious to health or declared to become injurious to health when coated upon Patasas.

(5) Admittedly, no standard of quality or purity of Patasas has been prescribed by the Act or the Rules framed thereunder. Nor soapstone has been declared to be injurious to health or that it becomes injurious to health when coated upon Patasas. The question, therefore, arises whether the mere presence of soap-stone by way of coating over Patasas or its presence otherwise in patasas would render Patasas adulterated so as to invite charge under section 16(1) (a) (i) of the Act.

(6) However, before noticing the kind of adulteration, which is made punishable under section 16(1) (a) (i) of the Act, it is first necessary to notice the definition of the word 'adulterated.' Section 2 of the Act, which defines a substance to be 'adulterated' reads:

"2. In this Act, unless the context otherwise requires:

* * * * *

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

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and

Naresh Kumar v. State of Punjab (D. S. Tewatia, J.)

is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be ;

- (b) if the article contains any other substance which affects, or if the article is so processed as to affect injuriously the nature, substance or quality thereof ;
- (c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;
- (d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;
- (e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;
- (f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption ;
- (g) if the article is obtained from a diseased animal ;
- (h) if the article contains any poisonous or other ingredient which renders it injurious to health;
- (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;
- (j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;
- (k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limit ;

Accession No.
Dated.....

- (l) 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, which renders it injurious to health;
- (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;
- * * * * *
- (ix) 'misbranded'—an article of food shall be deemed to be misbranded— ..
- (a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;
- (b) if it is falsely stated to be the product of any place or country;
- (c) if it is sold by a name which belongs to another article of food;
- (d) if it is so coloured, flavoured or coated powdered or polished that the fact that the article is damaged, is concealed or if the article is made to appear better or of greater value than it really is;
- (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding the

Naresh Kumar v. State of Punjab (D. S. Tewatia, J.)

ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents ;

- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral or other dietary properties in order to sufficiently inform its purchaser as to its value for such uses;
- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder:

* * * * *

The provisions of section 16(1) (a) (i) of the Act are in the following terms:

- “16. (1) Subject to the provisions of sub-section (IA), if any person—
- (a) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of food—
 - (i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority : 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 six months but which may extend to three years, and with fine which shall not be less than one thousand rupees

A perusal of section 16(1) (a) (i) of the Act, reproduced above, would reveal that it makes a person punishable only for such 'adulterated' food as is mentioned in sub-clause (m) of clause (ia) of section 2 of the Act and for such misbranding as mentioned in clause (ix) of section 2.

(7) Patasas, standard of which regarding quality or purity or the proportion of various constituents that go in its making having not been prescribed by the Act or the rules framed thereunder, when coated with soap-stone, a substance which has not been declared to be injurious to health, cannot be considered to be adulterated in terms of any of the sub-clauses (e) to (i) or (m) of clause (ia) of section 2.

(8) The matter is not *res integra*. As far back as in the year 1966, their Lordships of the Supreme Court in *M. V. Krishnan Nambissan v. State of Kerala*, (1), enunciated that where for a given food standard of quality was not prescribed, the accused could not be convicted for an offence under section 16(1) (a) (i) of the Act. That was a case in which butter-milk was found to contain 11 per cent water. It was held that no standard of quality or purity of butter-milk having been prescribed under the rules, the accused did not commit the offence with which he was charged.

(9) A Single Judge of this Court, following the ratio of *M. V. Krishnan Nambissan's case* (supra), in *Shanti Bassi and another v. The State of Punjab*, (2), quashed proceedings in which the petitioners Shanti Gassi and another were prosecuted under section 16(1) (a) (i) of the Act for mixing adulterated rapeseed oil in Vanaspati Ghee, of which the said oil was one of the constituents on a finding that no standard was prescribed under the Act in regard to the quality of rapeseed.

(10) Another Single Judge of this Court in a judgment reported in *Harbhajan Singh v. The State of Punjab* (3), came to the same

(1) A.I.R. 1966 S.C. 1676.

(2) 1976 C.L.R. (Pb. and Har.) 34.

(3) 1978 C.L.R. (Pb. and Har.) 12.

Naresh Kumar v. State of Punjab (D. S. Tewatia, J.)

conclusion in regard to carbonated water, which contained saccharin, as no standard of purity or quality of carbonated water had been prescribed under the Act.

(11) This Court again in *Harish Kumar v. State of Punjab*, (4), in regard to imported palm-oil, of which no standard regarding quality or purity had been prescribed under the Act or the rules framed thereunder, held that the case did not come within the mischief of section 16(1) (a) (i) of the Act.

(12) Sandhwalia, C. J. in *Lekh Raj v. The State*, (4A) while dealing with a case in which fruit-cream was said to be adulterated, following *M. V. Krishnan Nambissan's case* (supra) and *Hari Shanker Banerjee v. Corporation of Calcutta*, (5), and *Municipal Corporation of Delhi v. Kanshi Ram*, (6), held that fruit-cream not being ice-cream and no standard for fruit-cream having been prescribed, no yard-stick was available by which to judge the purity or otherwise of the product taken from the petitioner therein and in the absence of a prescribed standard, no conviction was possible, both on principle or on precedent.

(13) Mr. Daljit Singh Keer, learned counsel for the respondent-State, referred us to *Municipal Corporation of Delhi v. Shri Sat Pal Kapoor and another*, (7), *Smt. Manibai and another v. The State of Maharashtra*, (8), *Sharif Ahmed v. State of U.P.*, (9), *Municipal Corporation of Delhi v. Raj Kumar*, (10), and *Rakam Singh v. State and another*, (11).

(14) We do not propose to examine the ratio of the authorities cited by Mr. Keer, for there is no dispute with the proposition laid down therein. What, however, deserves pointing out is that not even remotely the ratio of the aforesaid decision is relevant to

(4) 1979 (II) F.A.C. 105.

(4A) 1980 C.L.R. (Punjab and Haryana) 148.

(5) 1973 Criminal Law Journal, 1264.

(6) 1972 F.A.C. 41.

(7) 1962 P.L.R. 799.

(8) 1973 F.A.C. 349 (S.C. cases).

(9) 1980 P.L.R. 352.

(10) 1980 (1) F.A.C. 353.

(11) 1980 (11) F.A.C. 11.

the proposition under consideration and these decisions are of no help whatever to the respondent-State.

(15) On facts, it may be noticed that the record is absolutely bereft in regard to the substances that go in the making of Patasas. No one has said that soap-stone is injurious to health or is a substance which is not edible in any form.

(16) In view of the above, we unhesitatingly held that the petitioner is not guilty of the offence under section 16(1) (a) (i) of the Act. We, therefore, allow his revision petition and quash his conviction and sentence.

S. S. Sandhawalia, C. J.—I agree.

N. K. S.

Before S. S. Sandhawalia C.J. and M. R. Sharma, J.

STATE OF PUNJAB and others,—Appellants.

versus

TIKKA SINGH CONSTABLE and others,—Respondents.

Letters Patent Appeal No. 717 of 1980.

April 21, 1981.

Punjab Police Rules 1934—Rules 13.1, 13.7, 13.8, 13.20 and 13.21—Lower School Course—Police Constables who are outstanding sportsmen—Whether eligible for such course without passing the examination as contemplated by Rule 13.20—Power to relax the rules—No specific order relaxing the rule—Such power—Whether could be deemed to have been exercised impliedly.

Held, that a combined reading of the Punjab Police Rules 1934 shows that promotion from one rank to another has to be made by selection tempered with seniority and 5 per cent of the promotions is to be made from amongst the members of the police force who achieve outstanding distinction in the field of sports at the all India level or at the international level provided they are otherwise eligible for promotion. In other words, condition regarding seniority