# Bal Kishan Thaper vs Municipal Corporation Of Delhi on 9 March, 1979

## Equivalent citations: AIR 1979 SUPREME COURT 1004, 1979 CRILR(SC MAH GUJ) 412.2, (1979) 2 SCJ 251, (1979) 3 SCR 551 (SC), 1979 (1) FAC 199, 1979 ALLCRIR 341, 1979 FAJ 159, (1979) CURLJ(CCR) 180, 1979 RAJLR 304, (1979) LS 59, (1979) 6 CRI LT 114, 1979 SCC(CRI) 513, (1979) 2 MADLJ(CRI) 587, ILR (1979) HP 25, (1979) SC CR R 248, (1979) ILR SC 25, (1979) 3 MAHLR 270, (1979) MADLW(CRI) 197, 1979 (2) SCC 459, (1979) ALLCRIC 147, (1979) 1 FAC 199

PETITIONER:
BAL KISHAN THAPER

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF DELHI

DATE OF JUDGMENT09/03/1979

BENCH:

ACT:
Prevention of Food Adulteration Act, 1954 (37 of 1954)-S. 2(ix) (a) and (g) Scope of-outer label described the contents as "as sweet as sacharin"-Whether a case of misbranding.

HEADNOTE:
The appellant was a manufacturer of a preparation called Para Excellent and Para Asli The outer label of the package describe the contents as "as sweet as saccharin". Under the directions for use it was mentioned on the label that the preparation was para saccharin.

The appellant was prosecuted under s.2(ix)(a) and (g) of the Prevention of Food Adulteration Act for misbranding the goods and for selling it as saccharin.

While the trial court convicted and sentenced the appellant to imprisonment and a fine on the ground that though a case of misbranding under s. 2(ix) (a) and (g) had not been made out, it was a case of misbranding contemplated by s. 2(ix) (k), the High Court, in revision, enhanced the sentence and fine under ss. 7 and 16 read with s. 2(ix)(a) and (g) of the Act.

On behalf of the prosecution it was contended in the appellant's appeal to this Court that the use of the word saccharin gave the impression that the preparation was saccharin or something akin to it and it was, therefore, a case of misbranding punishable under the Act.

Allowing the appeal.

^

HELD :1. There is nothing on the facts of the case to show that the appellant in any way tried to give an impression to the purchasers that either saccharin or some preparation of the type of saccharin was being sold so as to amount to misbranding as contemplated by s. 2(iv)(a) and (g) of the Act. Nor was there an attempt to sell the preparation as saccharin or some kind of saccharin. When the label described that the preparation was as sweet as saccharin it merely laid emphasis on the sweetness of the preparation when compared to the sweetness of the saccharin. Similarly when the label described the preparation was not as bitter as saccharin it was intended to convey that it was neither something like saccharin nor saccharin itself in any form or of any type. [553 C-D]

2. Nor again was there any evidence of intention on the part of the appellant to sell a preparation which resembles saccharin in any respect. The words "as sweet as saccarin" were merely meant to convey one of the qualities of the preparation itself and not the quality of saccharin. That by itself would not attract the provisions of s. 2(ix)(a) of the Act. [554 B]

3. The use of the word para saccharin appears to be a mistake. In the Hindi portion of the directions contained in the label the words "para Saccharin" were not used. Secondly the word "para saccharin" would not indicate that

552

the preparation sold was saccharin in any form or of any kind. It was just a way of describing the contents because the preparation was "as sweet as saccharin.' The manufacturer wanted to convey that the preparation wasa also much sweeter than sugar and could be used for preparing soda water. [554 C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 105 of 1975.

Appeal by Special Leave from the Judgment and Order dated 6-8-1974 of the Delhi High Court in Criminal Revision No. 58 of 1973.

Frank Anthony, K. C. Dua and O. P. Soni for the Appellants.

Soli. J. Sorabjee, Additional Soli. General, B. P. Maheshwari and Suresh Sethi for the Respondents.

The Judgment of the Court was delivered by FAZAL ALI, J.-This appeal by special leave is directed against the Judgment of the Delhi High Court convicting the appellant under section 7/16 of the Prevention of Food Adulteration Act, read with Section 2(ix) clause (a) & (g) of the Act and sentenced to rigorous imprisonment of six months and a fine of Rs. 1,000/-. This order was passed by the High Court in a revision filed by the Municipal Corporation of Delhi against the Order of the Trial Court which convicted the appellant under section 7/15 of the Prevention of Food Adulteration Act read with Section 2(ix)

(k) of the Act and sentenced him to imprisonment till the rising of the Court and a fine of Rs. 500/-, a revision against this order to the Sessions Judge was unsuccessful and hence a further revision was taken by the Delhi Administration before the High Court.

The facts of the case are detailed in the Judgment of the High Court and the Magistrate and we need not repeat the same all over again. The food Inspectors, namely, one Mr. James and Mr. Sinha took samples of a preparation called Para Excellant and Para Asli from the shop of the appellant who according to the Food Inspectors sold these preparations as saccharin, a fact which is not admitted by the appellant. The Trial Court after considering the evidence and the report of the Chemical Examiner found that the case of mis- branding under section 2(ix) (a) & (g) was not made out by the Prosecution, but it was certainly mis-branding as contemplated by section 2(ix) (k) of the Act. He, accordingly convicted the appellant as indicated above. Mr. Frank Anthony, Learned Counsel for the appellant has submitted that the High Court was wrong in law in interfering with the Order of the Magistrate, firstly, because the findings of fact by the Magistrate was binding on the High Court in revision and secondly, because the High Court took a legally erroneous view of the law on the interpretation of Section 2(ix) (a) &

(g) of the Prevention of Food Adulteration Act.

We have heard learned counsel for the parties and have perused the judgment of the High Court and we are of the opinion that the contentions raised by the learned counsel for the appellant is well founded and must prevail. We have perused the original label which described the preparation sold to the food inspectors. There is nothing to show that the appellant in any way tried to give an impression to the purchaser that either saccharin or some preparation of the type of saccharin was being sold so as to amount to misbranding as contemplated by Section 2(ix) (a) & (g) of the Act. All that the appellant purported to convey under the label was that the preparation sold was as sweet as saccharin but not as bitter as saccharin. This was intended merely to lay emphasis on the sweetness of the preparation when it was compared to the sweetness of saccharin. When the label clearly described the fact that the preparation was not as bitter as saccharin it clearly intended to convey that it was neither something like saccharin nor saccharin itself, in any form or of any type. Mr. Sorabjee appearing for the respondent submitted that the use of the word saccharin itself amounts to mis-branding and gives the impression that the preparation sold was saccharin or something akin to saccharin. We are unable to agree with this contention. In the facts and circumstances of the present case and the contents of the label and the description of the preparation, we are satisfied

that there was no misbranding, nor was there any attempt on the part of the appellant to sell his preparation as saccharin or some sort of saccharin. Section 2.(ix) (a) runs as follows:

> "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."

According to the Additional Solicitor General of India, the sale, by the appellant, of the preparation clearly falls within (iii) clause of sub-section (a), that is to say-the preparation resembles saccharin so as to deceive a person who wanted to purchase the article of food known as saccharin. After having examined the label, its description and the contents of the tin and packets, sold to the food inspectors, we are unable to find any evidence of any intention on the part of the appellant to sell a preparation which resembles saccharin in any respect. The words, as sweet as saccharin were merely meant to convey one of the qualities of the preparation itself and not the quality of saccharin at all. That, by itself, would not attract the provision of Section 2(ix) (a) of the Act. It was, then submitted that in one of the labels under the directions it was mentioned that the preparation was para saccharin which also shows that the appellant intended to pass on the preparation as some sort of saccharin. In the first place, the use of the word para saccharin appears to be a mistake in the facts of the present case because this word is completely absent from the Hindi portion of the directions contained in the same label. Secondly, the word para saccharin would not indicate that the preparation sold was saccharin in any form or of any kind. It was just a way of describing it because according to the manufacturers the preparation was as sweet as saccharin. This was mentioned because saccharin being 500 times sweeter than sugar, the manufacturer wanted to convey that the preparation was also much sweeter than sugar and could be used for preparing soda water bottles. It is obvious that if any person who purchased the preparation was not conversent with the English language, he would not be misled at all.

Having regard to these circumstances we are of the opinion that the case of the appellant does not fall within the clauses (a) & (g) of Section 2(ix) of the Act and the High Court erred in law in convicting the appellant for misbranding under these provisions. For the reasons given above, the appeal is allowed. The order of the High Court is set aside and the sentence of imprisonment of six months is also set aside and the fine is reduced to Rs. 500/-. In other words, the order of the Trial Court Magistrate is hereby restored. The appeal is accordingly allowed.

N.V.K. Appeal allowed.