

of Rule 4(2) (b), which is a deeming provision, the Government employee shall be deemed to have been placed under suspension. No order is required to be passed for placing him under suspension once he is convicted or an criminal offence and sentenced to imprisonment for a term exceeding forty-eight hours. "Sentence" means a judgment formally pronounced by a Court upon the accused after his conviction in a criminal prosecution, awarding the punishment to be inflicted. It formally declares to the accused legal consequences of guilt of which he has been convicted.

(6) The petitioner was convicted by the learned Special Judge. Ropar of an offence under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act and was sentenced for a period of imprisonment exceeding forty-eight hours. Although the sentence was suspended by this Court on April 8, 1993, but the sentence awarded by the learned Special Judge was in operation from January 22, 1993 to April 8, 1993. Thus, the petitioner remained sentenced for a period exceeding forty-eight hours and the rigorous of Rule 4 (2) (b) of the Rules is attracted. A close reading of Rule 4 indicates that Rule 4(2) (a) talks of suspension on detention in custody exceeding a period of forty-eight hours, while Rule 4(2) (b) only speaks of conviction. Thus even if the operation of the order of sentence has been stayed in appeal by this Court after it had been on operation for more than forty-eight hours, the mandate of the rule will be deemed to have become applicable and the order of suspension is automatic. The impugned order of suspension is referable to Rule 4(2) (b) of the Rules and is perfectly valid and legal.

(7) For the reasons stated above, the writ petition fails and is dismissed.

S.C.K.

Before : Hon'ble J. S. Sekhon and A. S. Nehra, JJ.

GOVERNMENT FOOD INSPECTOR,—Petitioner.

versus

HANUMAN SINGH,—Respondent.

Criminal Appeal No. 365DBA of 1990

April 27, 1994.

Prevention of Food Adulteration Act, 1954—Ss. 2(ix) (e), 2(v), 7, 11(i) (b) and 16(1) (a) (i)—Prevention of Food Adulteration Rules.

1955—Rls. 29(gg) and 55(15)—Misbranding of strength of liquor—Label proclaiming 55° found on analysis 51.99°—Liquor falls in definition of article of 'food'—Standard of alcoholic strength for whisky or other alcoholic beverages not prescribed under the rules will not make misbranding not punishable—Acquittal on ground of non-fixation of standard of alcoholic strength is improper—Respondent liable to be convicted—Court, however limiting imprisonment to period already undergone—Fine of Rs. 5,000 imposed.

Held, that under the definition of "food", wine, liquor and other excisable articles (intoxicants) have not been excluded. Rule 29(gg) of the Rules indicates that the use of coal tar dye is not permitted in the alcoholic drinks. In Rule 55 of the Rules, alcoholic wines are mentioned at Serial No. 15. Therefore, wine, liquor and other excisable articles (intoxicants) are foods. Misbranding of an article of food is an offence under section 7 read with section 16 of the Act.

(Para 9)

Held, that though no standard of alcoholic strength for whisky or other alcoholic beverages has been prescribed under the Rules but, under the definition of 'food', wine, liquor and other excisable articles (intoxicants) have not been excluded by the legislature. Rule 29 of the Rules framed under the Act indicates that the use of coal tar dye is not permitted in the alcoholic drinks. Rule 55 of the Rules also deals with alcoholic wines. Therefore, wine, liquor and other excisable articles (intoxicants) are foods according to the definition of 'food' given in the Act.

(Para 10)

Further held, that the fact that misbranding of an article of food is an offence punishable under section 7 read with section 16 of the Act was not brought to the notice of this Court in *Tar Balbir Singh's case*, *Krishan Lal's case*, *Chaman Lal's case* and *Pawan Kumar alias Pawan Singh's case* (Criminal Misc. No. 12934-M of 1991 decided on 21st April, 1993). Therefore, the above-mentioned decisions given by the Single Judges of this Court are hereby over-ruled.

(Para 10)

Tar Balbir Singh v. State of Punjab, 1986 (II) FAC 152.

Chaman Lal and others v. State of Punjab, Crml. Misc. No. 5600-M of 1981, decided on July 22, 1982.

Krishan Lal v. State of Haryana, 1990(1), Recent Criminal Reports 476, and

Pawan Kumar alias Pawan Singh v. State of Haryana Crml. Misc. No. 12934-M of 1991, decided on April 21, 1993.

Over-ruled

J. C. Sethi, Additional A.G. Haryana, D. S. Bishnoi, D.A.G., Haryana, for the Petitioner.

Hari Mittal and Pramodh Mittal, Advocates, for the Respondent.

JUDGMENT

A. S. Nehra, J.

(1) This appeal is directed against the judgment dated October 9, 1989, passed by the Judicial Magistrate 1st Class, Narnaul,—*vide* which Hanuman Singh accused, was acquitted of the charge under section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter called 'the Act').

(2) On November 13, 1987, Shri Megh Nath, Food Inspector accompanied by Dr. S. P. Singh, was present at Bus Stand of village Buchawas in connection with taking the sample of the articles of food; Food Inspector accompanied by the doctor went to the liquor vend situated at Bus Stand Buchawas belonging to M/s. Bahadur Singh and Company. Hanuman Singh was sitting on the vend as salesman. The Food Inspector disclosed his identity and inspected the spot for the purpose of taking the sample of the liquor. He found that six nips of country liquor mark Jagadhri No. 1 were lying in the vend for public sale. Mohinder Singh a public person was also present at that time. The Food Inspector served a notice Ex. PA on the accused requiring him to give the sample of liquor. Then the Food Inspector purchased three nips of liquor mark Jagadhri No. 1 against payment of Rs. 27,—*vide* receipt Ex. PB. Notice Ex. PA and receipt Ex. PB were thumb-marked and signed by Hanuman Singh and attested by Dr. S. P. Singh and Mohinder Singh. Each nip of liquor so purchased was in sealed condition. Each nip was labelled and was again sealed with one seal of the doctor at its neck. Then each nip was wrapped in a strong thick paper, both the ends of which were folded in and were pasted with gum. A paper slip bearing the serial number, code number and signatures of Local Health Authority was pasted from top to bottom on the wrapper of each bottle. Then each bottle was twined with a thread horizontally and vertically and was again sealed with one seal of the doctor and four seals of the Food Inspector himself. Thumb-impressions of the accused on each bottle were obtained in such a manner so that half of the thumb-impression came on the wrapper and the remaining half came on the paper slip. Spot memo Ex. PD was prepared. It was attested by the witnesses and thumb-marked and signed by the accused. Five copies of memorandum in Form VII were prepared at the spot. One copy alongwith one part of the sample in a sealed packet were sent to the Public Analyst, Haryana, Chandigarh, for analysis. One copy of Memorandum in Form No. VII was also sent separately to the Public Analyst, Haryana, through registered post.

Remaining two parts alongwith two copies of memorandum in Form No. VII were deposited with the Local Health Authority, Narnaul, on 14th November, 1987. The Public Analyst, Haryana, Chandigarh, analysed the sample and,—*vide* his report Exhibit PH, opined that the sample gave alcoholic strength 51.99° proof against the label declaration of 55° proof. The Public Analyst sent four copies of his report to the Local Health Authority, Narnaul. The Local Health Authority, Narnaul, had sent two copies of the report to the Food Inspector requiring him to submit the complaint against the accused. The Food Inspector, Mahendergarh, submitted the complaint in the Court and informed the Local Health Authority, who sent one copy of the report Exhibit PH to the accused alongwith covering letter Exhibit PC through registered post. Exhibit PC/2 is the postal receipt and Exhibit PC/1 is the registered A.D. The registered letter Exhibit PC came back undelivered with the report that there was no salesman on the vend. Thereafter, the accused put in appearance in the Court and applied for sending the second part of the sample to the Director, Central Food Laboratory, Mysore, who,—*vide* his report Exhibit PK, opined that the sample was mis-branded, and the alcohol contents expressed as degree proof falls below the declared value of 55° proof OBS 0.3°. The substance of the accusation was stated to the accused by means of an order dated October 12, 1988. The accused pleaded not guilty and claimed trial

(3) The prosecution, in order to prove its case, examined Megh Nath Food Inspector PW-1 and Dr. S. P. Singh PW-2 and closed the evidence.

(4) The accused was examined under section 313 of the Code of Criminal Procedure. He again pleaded innocence.

(5) The trial Court relying upon the judgments in *Tar Balbir Singh v. State of Punjab* (1), and Criminal Misc. No. 5600-M of 1981 (*Chaman Lal and others v. State of Punjab*), decided on July 22, 1982, held that no standard of alcoholic strength is prescribed under the Prevention of Food Adulteration Act, 1954. The trial Court also relied upon the judgment in *Anil Kumar v. Food Inspector, Jind* (2) and held that Section 11(i) (b) of the Act has not been complied with.

(1) 1986 (II) F.A.C. 152.

(2) 1982 (1) F.A.C. 9.

(6) Mr. J. C. Sethi, Additional Advocate General, Haryana, has contended that the Food Inspector has complied with the mandatory provisions of the Act and the rules in respect of sending and depositing of the samples with the Public Analyst and the Local Health Authority respectively. He has further submitted that the Public Analyst received the sample in sealed condition; that he compared the seals of the samples with the specimen seal impression sent to him separately by the Food Inspector; that he analysed the sample and found that the alcoholic strength of the sample gave alcoholic strength 51.99° proof against the label declaration of 55° proof and that, therefore, the sample of alcohol was mis-branded. Mr. Sethi has, therefore, submitted that the prosecution has proved its case against the respondent and, therefore, he is liable to be convicted.

(7) Mr. J. C. Sethi, Additional Advocate General, Haryana, further argued that the term "food article" would embrace all articles consumed by human beings and thus, even if no standard of alcohol is prescribed under the Rules, it would still be a case of mis-branding of food article as defined in Section 2(ix) (e) of the Act. In support of his argument, he has relied upon *District Medical Officer of Health, City Board, Mussorie, Dehradun v. Asrar Singh and another* (3).

(8) Mr. Hari Mittal, learned counsel for the respondent, has submitted that no standard of alcoholic strength is prescribed under the act and the Rules and that liquor cannot be treated 'food' as defined in the Act. In support of his arguments, he has relied upon *Krishan Lal v. State of Haryana* (4), Criminal Misc. No. 12934-M of 1991 (*Pawan Kumar alias Pawan Singh v. State of Haryana*) decided by this Court on April 21, 1993; and *Tar Balbir Singh v. State of Punjab* (5).

Under the Act, food is defined in section 2(v) as follows :—

“ ‘Food’ means any article used as food or drink for human consumption other than drugs and water and includes—

- (a) any article which ordinarily enters into, or is used in the composition or preparation of human food;
- (b) any flavouring matter or condiments, and

(3) 1974 All India, Prevention of Food Adulteration cases 470.
(4) 1990 (1) Recent Criminal Reports 476.
(5) 1986 (II) F.A.C. 152.

- (c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette as food for the purposes of this Act."

'Misbranded' has been defined in section 2(ix) of the Act, which reads as under :—

"misbranded"—an article of food shall be deemed to be misbranded—

(a) to (d) * * * * *

(e) if false claims are made for it upon the label or otherwise;

* * * * *

Rule 29 (gg) and Rule 55(15) of the Prevention of Food Adulteration Rules, 1955 (hereinafter called as the Rules), read as follows :—

"29. Use of permitted coal tar food-colours prohibited :—

Use of permitted coal tar food-colours in or upon any food other than those enumerated below as prohibited :—

(a) to (g) * * * * *

(gg) Alcoholic beverages for the period up to and inclusive of the 21st May, 1977.

* * * * *

55. Use of Class II preservatives restricted.—The use of Class II preservatives shall be restricted to the following group of foods in concentration not exceeding the proportions given below against each :—

Article of food	Preservative	Parts per million
(1)	(2)	(3)
1 to 14 ****	****	*****
15 Alcoholic wines	Sulphur dioxide	450

(9) Under the definition of "food", wine, liquor and other excisable articles (intoxicants) have not been excluded. Rule 29(gg)

of the Rules indicates that the use of coal tar dye is not permitted in the alcoholic drinks. In Rule 55 of the Rules, alcoholic wines are mentioned at Serial No. 15. Therefore, wine, liquor and other excisable articles (intoxicants) are foods. Misbranding of an article of food is an offence under section 7 read with section 16 of the Act. Section 7 of the Act is reproduced as below :—

“7. *Prohibition of manufacture, sale, etc. of certain articles of food.*—No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute :—

- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; or
- (vi) any adulterant.

Explanation : For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.”

(10) Though no standard of alcoholic strength for whisky or other alcoholic beverages has been prescribed under the Rules but, under the definition of ‘food’, wine, liquor and other excisable articles (intoxicants) have not been excluded by the Legislature. Rule 29 of the Rules framed under the Act indicates that the use of coal tar dye is not permitted in the alcoholic drinks. Rule 55 of the Rules also deals with alcoholic wines. Therefore, wine, liquor and other excisable articles (intoxicants) are foods according to

the definition of 'food' given in the Act. According to the report (Exhibit PH) of the Public Analyst, Haryana, Chandigarh, the sample gave alcoholic strength 51.99° proof against the label declaration of 55° proof. Therefore, the sample analysed by the Public Analyst is misbranded. Misbranding of an article of food is punishable under section 7 read with section 16 of the Act. The fact that misbranding of an article of food is an offence punishable under section 7 read with section 16 of the Act was not brought to the notice of this Court in *Tar Balbir Singh's case* (supra), *Krishan Lal's case* (supra), *Chaman Lal's case* (supra), and *Pawan Kumar alias Pawan Singh's case* (Criminal Misc. No. 12934-M of 1991—supra—decided on 21st April, 1993). Therefore, the above-mentioned decisions given by the Single Judges of this Court are hereby over-ruled.

(11) The Food Inspector found six nips of country liquor mark Jagadhri No. 1 lying in the vend for public sale. He purchased three nips of liquor mark Jagadhri No. 1 against payment of Rs. 27. Each nip of liquor so purchased was in a sealed condition. Each nip was labelled and was again sealed with one seal of the doctor at its neck. Then each nip was wrapped in a strong thick paper, both the ends of which were folded in and were pasted with gum. A paper slip bearing the serial number, code number and signatures of Local Health Authority, was pasted from top to bottom on the wrapper of each bottle. Then each bottle was twined with a thread horizontally and vertically and was again sealed with one seal of the doctor and four seals of the Food Inspector. Thumb-impressions of the accused-respondent on each bottle were obtained in such a manner so that half of the thumb-impression came on the wrapper and the remaining half came on the paper slip. The sample was sent to the Public Analyst. The Public Analyst gave his opinion as mentioned in the earlier part of the judgment. Therefore, three nips of liquor, purchased by the Food Inspector, have been found misbranded and the prosecution has proved beyond doubt that the three nips of liquor mark Jagadhri No. 1, purchased from the respondent, were misbranded. Therefore, the respondent is liable to be convicted.

(12) *Anil Kumar's case* (supra), relied upon by the trial Court, is not applicable to the facts of the present case because, in this case, we are dealing with the case of misbranding and not of adulteration. *Anil Kumar's case* (supra) deals with a case in which, according to the report of the Public Analyst, the sample was found to contain sachrine in the bottles of carbonated water for

sale. Therefore, *Anil Kumar's case* (supra), relied upon by the trial Court, is of no help to the respondent and the trial Court has erred in relying upon the same.

(13) In view of the above discussion, we hold that the respondent is liable to be convicted for misbranding the nips of liquor. Therefore, the appeal is allowed, the judgment dated 9th October, 1989 passed by the Judicial Magistrate 1st Class, Narnaul, is set aside and the respondent is convicted under section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954.

(14) The sample was taken on 13th November, 1987. The complaint was filed in the Court on 11th January, 1988 and the trial of the respondent was concluded by the learned Judicial Magistrate on 9th October, 1989. Since 1990, this appeal is pending in this Court. This prolonged litigation of seven years itself is a ground for treating the respondent in a lenient manner. In a similar case, the Supreme Court in *Brahm Dass v. State of Himachal Pradesh* (6). Prevention of Food Adulteration Cases 13, has reduced the sentence of the accused to already undergone. Though the respondent is liable to be sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000, but, in view of the circumstances mentioned above and that the respondent has faced the protracted litigation for seven years and has undergone sufficient harassment, we find it a fit case where no useful purpose will be served by sending the respondent to jail at this stage. As a result, we sentence the respondent to imprisonment for the period already undergone by him and to pay a fine of Rs. 5,000 and in default of payment of fine, to undergo further rigorous imprisonment for six months.

(15) The Additional Registrar (Judicial) of this Court is directed to send a copy of this judgment to the Director, Health Services, Punjab; the Director, Health Services, Haryana, and the Director, Health Services, Union Territory Administration, Chandigarh. The Director, Health Services, Punjab; the Director, Health Services, Haryana; and the Director, Health Services, Union Territory Administration, Chandigarh, are further directed to send copies of this judgment to all the Food Inspectors in their respective States.

R.N.R.

(6) 1988 (2) P.F.A. Cases 13.