10. For the aforesaid reasons, I accept the writ petitions with costs and quash the impugned orders. The matter can, however, be decided afresh in accordance with law and after taking into consideration the observations made above. Counsel's fee in each case is Rs. 200.

N. K. S.

Before S. S. Sandhawalia, C.J.

LEKH RAJ,—*Petitioner.*

versus

STATE,—*Respondent.*

Criminal Revision No. 834 of 1977.

February 29, 1980.

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16(1) (a) (i)—Prevention of Food Adulteration Rules 1955—Appendix B, Item A. 11.02.08—Standards of purity prescribed for ice cream under the Rules—Whether also applicable to fruit cream—Sample fruit cream not conforming to such standards—Conviction under Section 16(1) (a) (i)—Whether can be recorded.

Held, that fruit cream *prima facie* does not come within the description of ice-cream, *kulfi* or chocolate ice-cream nor can it be basically described as a frozen product as given in Appendix B, Item A. 11.02.08 of the Prevention of Food Adulteration Rules 1955. In ordinary parlance fruit cream does and can mean merely the admixture of fruit with cream and this would be so irrespective of any element of even cooling far from freezing. For example, strawberry with cream, or mixed fruit with cream and similar products which may be fairly labelled as fruit cream have no identity with the frozen product implied in the term ice-cream or *kulfi* etc. Therefore, there is no warrant to hold that fruit cream and ice cream are either identical or inter-changeable terms. As such no conviction can be recorded under section 16(1) (a) (i) of the Prevention of Food Adulteration Act 1954 in those cases where fruit cream does not conform to the standard prescribed for ice cream. (Para 7).

Petition under section 401 Cr.P.C. for revision of the Order of Shri H. S. Bakshi, Additional Sessions Judge, Amritsar, dated 30th September, 1977, maintaining Judgment, dated 14th September, 1976, passed by Shri P. S. Bajaj, J.M.I.C. Amritsar, convicting & sentencing the petitioner.

Harinder Singh, Advocate, *for the Petitioner.*

T. N. Bhalla, Advocate, *for the State.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether 'fruit-cream' is a commodity identical with ice-cream and therefore, within the ambit of the standard prescribed for its purity by item A. 11,02.08 of Appendix 'B' of the Prevention of Food Adulteration Rules, 1955, is the somewhat interesting question which falls for consideration in this criminal revision.

2. As would be evident the issue is primarily legal and the facts would therefore, pale into relative insignificance, nevertheless reference *albe-it* briefly is inevitable. On July 23, 1975, Dr. Satya Nand, the Food Inspector of the Municipal Committee, Amritsar, visited the Hyderabad Sindh Hotel, Hall Bazar, Amritsar where the petitioner representing himself as the Manager of the concern was present. About 2½ Kgs. of fruit-cream contained in a brass vessel was found lying in the refrigerator, out of which the Food Inspector purchased 900 grams as a sample for analysis on payment of Rs. 10 *vide* receipt Ex. PB. In the relevant documents executed in accordance with the rules with regard to the purchase etc. thereof, the commodity was expressly described as fruit-cream. Even when the sample was forwarded to the Public Analyst, it was so described. However, the Public Analyst, in performing its analysis applied thereto the standard prescribed for ice-cream, *kulfi* and chocolate-ice-cream in item A. 11.02.08 of Appendix 'B' of the prevention of Food Adulteration Rules, 1955 and as the same did not conform strictly thereto, he opined that it was adulterated. In the complaint filed by the Food Inspector, as a consequence of the aforesaid opinion of the Public Analyst, it was again in terms specified therein that what had been purchased was a sample of fruit-cream from the premises of the petitioner, where he carried on the business of selling fruit-cream etc.

3. It appears that even though the specific case of the prosecution was that what had been purchased from him was fruit-cream and indeed in the framing of the charge, it was expressly mentioned that the petitioner was in possession of fruit-cream, (as also in putting the prosecution allegations to him in the statement under Section 313 of the Criminal Procedure Code 1973), yet the learned trial Court failed to advert to this meaningful aspect of the case,

Applying the standards prescribed for ice-cream, *kulfi* and chocolate-ice-cream by item A. 11.02.08 to the fruit-cream purchased from the petitioner, he was held guilty under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and sentenced to nine months' rigorous imprisonment and a fine of Rs. 1,000.

4. In appeal, however, the argument that what was taken as a sample from the petitioner was of fruit-cream only, was specificially raised and it was contended that since no standard in terms was prescribed for this commodity in the Act or the Rules, the petitioner could not be convicted and in any case item A. 11.02.08 had no application to his case and could not be foisted upon fruit-cream to maintain his conviction. The learned Additional Sessions Judge, however, did not accept this contention and took the view that fruit-cream could well be brought within the ambit of item A.11.02.08 by conveniently labelling it as fruit ice-cream. He concluded as follows:—

> ".....It will thus appear that the term 'fruit-cream' is specifically covered by A.11.02.08 of Appendix 'B'. The contention of Shri Sharma, therefore, carried no substance."

5. Before adverting to the legal aspect of the case, it deserves highlighting that the factual position is more than amply clear and very fairly has not been contested on behalf of the respondent-State. Reference to the documents prescribed by law, for taking the sample etc. and the subsequent despatch of the same to the Public Analyst makes it manifestly clear that what was purchased by the Food Inspector was in terms 'fruit-cream' and nothing else. Indeed this aspect is concluded by the admission of P.W. 1 Dr. Satya Nand himself in his cross-examination in the following terms:—

> ".....It is correct that sample taken by me was of fruit-cream and it was not of ice-cream or mixed ice-cream....."

As has already been noticed earlier, even in the charge and in the statement under Section 313 of the Criminal Procedure Code, 1973, specifically the possession of fruit-cream has been recorded. It must, therefore, be concluded that what the petitioner was offering for sale was fruit-cream and nothing else.

6. In order to fully appreciate the argument, it is first necessary to notice the provisions of item A.11.02.08, which read as under:—

> "Ice-cream, Kulfi, Kulfa and Chocolate Ice-cream mean the frozen product obtained from cow or buffalo milk or a combination thereof or from cream and/or other milk products, with or without the addition of cane sugar, eggs, fruit juices, preserved fruits, nuts, chocolate, edible flavours, permitted food colours. It may contain permitted stabilizers and emulsifiers, not exceeding 0.5 per cent, by weight. The mixture shall be suitably heated before freazing. The product shall contain not less than 10 per cent milk fat, 3.5 per cent protein and 36 per cent total solids, except that when any of the aforesaid preparations contains fruits or nuts or both, the content of milk fat may be proportionately reduced, but shall not be less than 8.0 per cent by weight, (Starch may be added to a maximum extent of 5 per cent under a declaration, on a label as specified in sub-rule (2) of rule 43. The standards for ice-cream shall also apply to softy ice-cream)."

The very heading of the aforesaid item would first show that it is to apply only to ice-cream, *kulfi* and chocolate-ice-cream. This apart, the language implies that the same is to govern the frozen product obtained from cow and buffalo milk with or without the addition of the ingredients mentioned in the item. It is then specified therein that the mixture shall be suitably heated before freezing. Another indication that the description of commodities in the item aforsaid is not to be easily extended, appears from the amendment introduced in the item by notification No. G.S.R. 205, dated February 13, 1974. Therein *inter alia* it has been stated that the standards for ice-cream shall apply to softy ice-cream. This would make it evident that perhaps softy ice-cream, which obviously is a species of genus of ice-cream, was beyond the pale of ice-cream and it, therefore, had to be expressly included.

7. In the other hand, fruit-cream *pima facie* does not come within the description of ice-cream, *Kulfi* or chocolate ice-cream nor can it be basically described as a frozen product. In ordinary parlance fruit-cream does and can mean merely the admixture of fruit with cream and this would be so irrespective of any element of even

cooling far from freezing. For example, strawberry with cream, or mixed fruit with cream, and similar products which may be fairly labelled as fruit-cream have no identity with the frozen product implied in the term ice-cream or *kulfi etc.* Therefore, there is no warrant to held that fruit-cream and ice-cream are either identical or inter-changeable terms. I am conscious of the fact that food adulteration is a great social menance which deserves to be put down with a heavy hand, yet the known canons of interpretation of a penal statute, namely, that it must be strictly construed, cannot be either lost sight of. It must, therefore, be held that fruit-cream being not ice-cream would not come within the ambit of the standards prescribed in item A.11.02.08 of the Prevention of Food Adulteration Rules, 1955.

8. In fairness to the learned counsel for the respondent-State, I must notice that he took the candid stand that though perhaps ice-cream and fruit-ice-cream may well be covered by the standards prescribed in the item, yet the same cannot be elongated to bring within its ambit what is plainly called and known as 'fruit-cream' which may not necessarily be a frozen product obtained from cow's or buffalo's milk with or without ingredients. However, I would make it clear that I am not at all basing myself on this concession and as would appear earlier, have examined the matter on principle.

9. Once it is held that fruit-cream is not covered by item A.11.02.08, it seem to be the common case that the Rules do not prescribe any separate standard for fruit-cream. That being so, it is plain that under the existing provisions, there is no yard-stick by which to judge the purity or otherwise of the product taken from the petitioner and in the absence of a prescribed standard, no conviction is possible, seems to be manifest both on principle and precedent. Reference in this connection to *M. V. Krishnan Nambissan* v. *State of Kerala* (1), *Hari Shankar Banerjee* v. *Corporation of Calcutta* (2) and the Division Bench judgment of the Delhi High Court in *Municipal Corporation of Delhi* v. *Kanshi Ram, son of Tota Ram, partner M/s. Kanshi Ram Bhim Sen r/o 25 Gagodia Market, Khari Bhaoli* (3), is instructive.

(1) A.I.R. 1966 S.C. 1670.

(2) 1973 Cr. Law Journal 1264.

(3) 1972 Food Adulteration cases 41.

10. In view of the above, the petitioner is plainly entitled to an acquittal on the aforesaid ground and it is unnecessary to examine the other submissions raised on his behalf. The revision petition succeeds and the conviction and sentence of the petitioner are hereby set aside.

H. S. B.

FULL BENCH

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

JAIMAL SINGH,—*Appellant.*

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE

and another,—*Respondents.*

First Appeal From Order No. 145 *of* 1976.

April 29, 1980.

Sikh Gurdwaras Act (VIII of 1925)—*Sections* 87, 88 (3) *and* 142—*New Committee nominated for the management of a Gurdwara—Petition under Section* 142 *filed with the Judicial Commission seeking handing over of property and accounts etc. to the new Committee—Constitution of the Committee challenged—Judicial Commission—Whether could adjudicate on the validity of the constitution of the Committee—Notification constituting a Committee under section* 88 (3)—*Whether conclusive.*

Held, that section 142 of the Sikh Gurdwaras Act 1925 is couched in language which seems to have a wide ranging amplitude. It provides that any person having an interest in the notified Sikh Gurdwara may make an application before the Judicial Commission against the Board or a number of other persons specified therein in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by the Act or any alleged expenditure on the purpose not authorised by the Act and if the same is proved before the Commission, it may award damages or costs against such a person or body and impose other penalties provided in the said section. It does not seem to be easy to impose any artificial limitations on the relatively wide ranging powers conferred