

Before : J. S. Sekhon, J.

KRISHAN LAL,—Petitioner.

versus

THE STATE OF HARYANA,—Respondent.

Criminal Revision No. 511 of 1986.

January 8, 1990.

Prevention of Food Adulteration Act, 1954—Ss. 2 (ix) (a), 7, 16 (1) (a) (i)—Prevention of Food Adulteration Rules, 1955—Rule A. 29.01—Adulteration of Alcohol—Whisky—Whether can be treated as article of food—Applicability of Act—Offence of misbranding Alcohol.

Held, that the adulteration of whisky and other alcoholic beverages has to be dealt with under the provisions of the relevant Excise Act by following a different procedure. The above referred standard of alcoholic strength prescribed under the Excise Act or the rules framed thereunder, cannot be treated as statutory standard for the purpose of the prevention of Food Adulteration Act.

(Para 4)

Held, that if whisky or other alcoholic beverages are not required to be treated as food articles for the purpose of this Act, then there is no question of misbranding. The definition of "misbranded" in section 2(ix) (a) clearly reveals that it pertains to articles of food and not other articles like alcoholic beverages.

(Paras 6 and 7)

Petition for revision under Section 401 of Cr.P.C. of the order of the Court of Shri S. K. Jain, Sessions Judge, Karnal dated 4th April, 1986 modifying that of Shri M. L. Sharma C.J.M. Karnal dated 15th January, 1986. Convicting and Sentencing the petitioner.

CHARGES AND SENTENCE:—

R.I. for Six months and a fine of Rs. 1,000 or in default of payment of fine further R.I. for 2 months. Under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954. Criminal Appeal No. 10 of 1986.

Case No. 130/3 of 1980.

H. S. Gill, Advocate, for the petitioner.

J. B. Takoria, Advocate, for the State.

JUDGMENT

J. S. Sekhon, J.

(1) The petitioner was working as a salesman on the English Wine Shop of M/s Naresh Kumar and Company, Wine Traders, Gharaunda. On April 20, 1979, at 2 P.M. Shri Kali Ram, Food Inspector along with Dr. J. S. Sohi raided the said English Wine shop and found 19 quarter bottles of Imperial Whisky along with other brands of Whisky lying there. The food Inspector purchased three quarters of Imperial Whisky as sample and sent the same to the Public Analyst for analysis. The Public Analyst found the sample to be misbranded as the alcoholic strength of the sample was found to be 78.67° proof against the label declaration of 75° proof. The Food Inspector then filed a complaint against the petitioner under section 16 of the Prevention of Food Adulteration Act.

(2) The trial Court convicted the petitioner for offence under section 16 (1) (a) (i) read with section 7 of the Act and sentenced him to nine months' rigorous imprisonment besides payment of fine of Rs. 1,000 in default to further suffer three months' rigorous imprisonment. The appeal filed by the petitioner was also dismissed by the learned Sessions Judge, Karnal, except reducing the substantive sentence to six months' rigorous imprisonment and the one in default of payment of fine to two months' rigorous imprisonment. Feeling aggrieved against the above referred orders of conviction and sentence, the petitioner has filed this revision petition.

(3) Mr. H. S. Gill, learned counsel for the petitioner contends that alcohol or whisky cannot be treated as food article as no standard of alcohol has been prescribed in the rules framed under the Act. He further referred to Rule A. 29.01 of the Prevention of Food Adulteration Rules, 1955, hereinafter called the Rules whereunder under the head of Beverages—ALCOHOLIC, only the standard of toddy has been prescribed. Thus, he maintained that whisky not being a food article, there is no question of its misbranding. Mr. J. B. Takoria, learned counsel for the State, on the other hand, maintained that the term food article would embrace all articles consumed by human beings and thus even though no standard of alcohol is prescribed under the rules, it would still be a case of misbranding of food article, as defined in section 2 (ix) (a) of the Act.

(4) Admittedly, no standard of alcoholic strength in whisky or other alcoholic beverages except toddy had been prescribed under

Krishan Lal v. The State of Haryana (J. S. Sekhon, J.)

the Rules. The factum that the legislature in Rule A. 29.01 had prescribed the alcoholic strength of toddy further shows that toddy was treated by the legislature as food article and not any other alcoholic beverages. If that is so, then the alcohol cannot be treated as food article within the meaning of this Act. It cannot be said to be a lapse on the part of the legislature as strength of alcohol in different alcoholic beverages had been prescribed under the provisions of the Punjab Excise Act and the rules framed thereunder. In a way, it can be well said that the adulteration of whisky and other alcoholic beverages has to be dealt with under the provisions of the relevant Excise Act by following a different procedure. The above referred standard of alcoholic strength prescribed under the Excise Act or the rules framed thereunder, cannot be treated as statutory standard for the purpose of Prevention of Food Adulteration Act. Moreover, cognizance of an offence under the Punjab Excise Act can be taken only on the written complaint of an Excise Officer or any other person invested with such powers by the State Government. For the foregoing reasons, the Food Inspector having not been invested with any such powers, no cognizance of the offence under the Punjab Excise Act can be taken against the petitioner.

(5) A similar controversy came under the scrutiny of this Court in *Tarbalbir Singh v. State of Punjab* (1). Therein, the proceedings instituted by the Food Inspector against the accused in that case under section 16 (1) (a) of the Act regarding the alcoholic strength of the samples being more than the declared alcoholic strength were quashed by holding that no standard of alcoholic strength having been prescribed under the Act, the alcohol cannot be said to be adulterated. In that case the earlier decision of the Single Bench in Cr. M. 5600-M of 1981 (*Chaman Lal and others v. The State of Punjab*) decided on July 22, 1982, was relied upon. The Himachal Pradesh High Court in *M/s Associated Distilleries Pvt. Ltd. Hissar v. State of Himachal Pradesh* (2), had also taken a similar view. The decision of the Allahabad High Court to the contrary in *District Medical Officer of Health City Board, Mussorie, Dehradun v. Asrar Singh and another* (3), was distinguished on the ground that no reference to the rules and the standards prescribed thereunder was made in that judgment.

(1) 1986-I P.L.R. 680.

(2) 1989(2) P.F.A. cases 180.

(3) 1974 F.A.C. 470.

(6) Thus, if whisky or other alcoholic beverages are not required to be treated as food articles for the purpose of this Act, then there is no question of misbranding. The definition of "misbranded" in section 2 (ix) (a) reads as under :—

"(ix) "misbranded"—an article of food shall 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;"

(7) The above referred definition clearly reveals that it pertains to articles of food and not other articles like alcoholic beverages.

(8) The matter does not rest here as the Food Inspector found the seals to be intact on all these quarter bottles of Imperial whisky and during the trial of the case, at the time of framing the charge, the accused did raise the objection that he had purchased the whisky from Haryana Tourism Corporation but the trial Court in its detailed order dated December 7, 1983, declined to take cognizance against the Haryana Tourism Corporation on the ground that the petitioner had yet to establish whether the whisky in question was stored, kept and sold in the same condition as it was purchased. The above referred findings of the trial Court are neither here nor there as whisky is not required to be stored at a particular temperature or manner especially when according to the Food Inspector, the seals on the sample bottles were intact. At a later stage of the trial on April 9, 1984, Shri Piare Lal, Food Inspector again filed an application for summoning the proprietor of the wine shop under section 20-A of the Act but the trial Court dismissed this application,—*vide* order dated May 10, 1984 holding that the accused having not disclosed the full particulars and names of the partners of Naresh Kumar and Company, allowing the impleading of the partners would result in further delaying the proceedings. The accused petitioner did produce the copy of the purchase bill dated April 1, 1979, on the file, which reveals the purchase of the above-referred quarter bottles of Imperial Whisky and other kinds of liquor from the Karnal office of the Haryana Tourism Corporation Ltd. Haryana. In view of the factum that the seals on the bottles were found intact, the trial Court as well as the appellate Court were bound to take into consideration this aspect of the defence of the petitioner available to him

Union of India and another *v.* Birbal Dass and another
(A. L. Bahri, J.)

under section 19(2) of the Act. It cannot be said that the accused-petitioner had not discharged the onus as the seals were found intact by the Food Inspector and the samples were taken only after 19 days of the purchase of liquor from the above referred Corporation, no further proof was required regarding the keeping of the whisky in the same condition in which it was purchased from the Corporation.

(9) For the foregoing reasons, the conviction and sentence for the above referred offences being not sustainable, the same are hereby set aside by accepting this revision petition. The fine, if paid, shall be refunded.

R.N.R.

Before : A. L. Bahri, J.

UNION OF INDIA AND ANOTHER,—*Petitioners.*

versus

BIRBAL DASS AND ANOTHER,—*Respondents.*

Civil Revision No. 3508 of 1989.

February 15, 1990.

Administrative Tribunal's Act, 1985—Ss. 2, 14—Civilian employed with M.E.S.—Such employee allotted Government accommodation—Claim for exchange of such accommodation—Refusal to consider such claim by authorities—Suit for Mandatory injunction—Jurisdiction of Civil Court—Whether barred.

Held, that in view of section 14(b) (iii) of the Act, it is made clear that Administrative Tribunal will have jurisdiction in all service matter concerning a civilian (not being a member of All-India Service or a person referred to in clause (c) appointed to any defence service or a post connected with defence. In view of the provisions of the Act, Civil Court has no jurisdiction to entertain the suit as allotment of Government accommodation would be a matter relating to service of a civilian though working in the military.

(Para 3)