

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1606 OF 2010

SAILENDRABHAI DAMODARBHAI SHAH & ORS.

....APPELLANT(S)

VERSUS

THE STATE OF GUJARAT

....RESPONDENT(S)

ORDER

1. Heard the learned senior counsel appearing for the appellants and the learned counsel appearing for the State.
2. A complaint was filed by the Food Inspector alleging violation of Rules 47(iii) and Rule 42(zzz) of the Prevention of Food Adulteration Rules, 1955 (for short 'the said Rules'). The Rules have been framed under the Prevention of Food Adulteration Act, 1954 (for short 'the said Act'). Though the complaint does not say so, for the time being, as contended by the learned counsel appearing for the State, we are proceeding on the footing that the complaint alleges the violation of Rules 47(3) and 42(zzz)(12) of the said Rules.
3. We may note here that Rule 47 deals with the restrictions on use and sale of artificial sweeteners. Sub-Rule (1) of Rule 47 lays down the general rule that no artificial sweetener should be added to any article or food. The proviso to sub-Rule (1) creates an

exception. In this case, the basic allegation is of the violation of sub-Rule (3) of Rule 47 of the said Rules, which reads thus: -

“(3) No person shall sell table top sweetener except under label declaration as provided in sub-clauses (1) and (2) of sub-rule (ZZZ) of rule 42.

Provided that aspartame may be marketed as a table top sweetener in tablet or granular form in moisture proof package and the concentration of aspartame shall not exceed 18 mg per 100 mg of tablet or granule.”

4. Sub-Rule (3) of Rule 47 provides that no person shall sell table top sweeteners except under a label declaration as provided in sub-Clauses (1) and (2) of the sub-Rule (zzz) of Rule 42. Under Section 16 of the said Act, any violation of the said Rules has been made an offence. Rule 47(3) applies only to table top sweeteners.

5. However, perusal of the complaint shows that it is not even the case made out by the Food Inspector that the appellants were manufacturing table top sweeteners. In fact, a specific averment made by the Food Inspector in the complaint is that on 29.04.2005, when he reached the factory of the third appellant, he found that the production, packing and storing of zero calorie sweetener was continuing. It is not the case made out in the complaint that what was being manufactured and sold by the third appellant was a table top sweetener. There is a report of the public analyst, which is relied upon in the complaint. The opinion given by the public analyst is that the sample was of zero calorie sweetener, which is mis-branded as the same does not comply with Rule 42(zzz)(12) as well as Rule 47(3) of the said Rules.

6. In the cross-examination of the Food Inspector, he admitted that he has filed a case for violation of Rule 42(zzz)(12). The said provision provides that every package of food which is permitted to contain a mixture of espartam methyl ester and s. sulfame potassium must contain label in the form prescribed. In fact, that is not the case made out in the complaint at all. In paragraph '86' of the cross-examination, the witness admitted that he has not taken any sample of table top sweetener. Even in the examination-in-chief, no case is made out that what was being manufactured by the third appellant, was a table top sweetener.

7. Then, we come to the charge framed on 02.12.2006, which reads thus: -

"Thus, You, the accused nos. 2, 3 firm have manufactured, packed and stored the adulterated and misbranded sample for sale and sold the same as sample to the complainant through accused no. 1 and thereby violating section 7 (I) (ii) and (5) of the Prevention of Food Adulteration Act, You have committed the offence punishable under Section 16 of the said Act within the jurisdiction of this Court."

8. The charge does not allege that the appellant was dealing with table top sweeteners. In the examination under Section 313 of the Code of Criminal Procedure, 1973, it was not even put to the accused that they were manufacturing and selling table top sweeteners. Thus, in absence of material averments in the complaint, it was not surprising that the Trial Court passed the

order of acquittal. By the impugned order, in an appeal against acquittal, the learned Single Judge of the High Court has interfered and passed a drastic order of *de novo* trial after framing a proper charge. The learned Single Judge also found fault with the report of the public analyst.

9. After the learned senior counsel appearing for the appellants pointed out the aforesaid flaws, the learned counsel for the respondent made her best endeavour to satisfy us that even the basic flaw in the complaint will not be fatal. Her submission is that though there may not be any specific averment in the complaint that the appellants were manufacturing and selling table top sweeteners and though, the Food Inspector may not have said that he collected sample of table top sweetener, in fact, the appellants were fully aware that they were not manufacturing zero calorie sweetener and they were manufacturing table top sweetener. Her submission is that the appellants should not be allowed to take advantage of technicality. She justified the order of remand.

10. We find that on the plain reading of the complaint, the learned Magistrate ought not to have taken cognizance. The reason is that even if we ignore all mistakes in the complaint about the manner in which Rules are mentioned, the offence alleged is under Rule 47(3), which deals only with table top sweeteners. In absence of a case made out in the complaint that the appellants were found manufacturing and selling the table top sweeteners, we wonder what purpose will be served by the order of remand. Moreover, the Food

Inspector, on oath, has stated that he did not collect sample of table top sweeteners from the factory of the appellants. As stated earlier, cognizance of the complaint ought not to have been taken. Moreover, even the report of the public analyst proceeds on the footing that what was collected was a sample of zero calorie sweetener. He opined that it does not comply with the provisions of Rule 47(3) of the said Rules.

11. No Court can put a burden on the accused to prove that they were not manufacturing table top sweeteners as it is not a case of the respondent-State that the accused were manufacturing table top sweeteners. Therefore, in our view, the learned Magistrate was right when he passed the order of acquittal and therefore, there was no occasion for passing an order of remand in appeal against acquittal.

12. Even if we decide to adopt a very liberal approach, which is not contemplated in case of a criminal trial, there is no way to come to a conclusion that even *prima facie*, an offence under Rule 47(3) was made out. It is also interesting to note that the learned Single Judge of the High Court has relied upon the decision of this Court in the case of "*Zahira Habbullah Sheikh v. State of Gujarat*"<sup>1</sup> and has quoted manu samhita, which has no relevance at all to the facts of this case.

13. We set aside the impugned judgment and order dated 28.10.2009 in Criminal Appeal No. 81 of 2008 and restore the impugned judgment

and order dated 20.10.2007 passed by the Trial Court in Complaint Case No. 25 of 2005.

14. The appeal is, accordingly, allowed.

15. Pending application(s), if any, shall stand disposed of.

.....J.  
[ABHAY S. OKA]

.....J.  
[UJJAL BHUYAN]

NEW DELHI;  
FEBRUARY 08, 2024.

ITEM NO.101

COURT NO.7

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1606/2010

SAILENDRABHAI DAMODARBHAI SHAH &amp; ORS.

Appellant(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

Date : 08-02-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Dr. S Muralidhar, Sr. Adv.  
Mr. Ajay Bhargava, Adv.  
Mr. Sahil Narang, Adv.  
Mr. Dhritiman Roy, Adv.  
Mr. Madhavam Sharma, Adv.  
Ms. Sania Abbasi, Adv.  
M/S. Khaitan & Co., AOR

For Respondent(s) Ms. Swati Ghildiyal, AOR  
Ms. Devyani Bhatt, Adv.  
Ms. Srujana Suman Mund, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)  
COURT MASTER (SH)

(AVGV RAMU)  
COURT MASTER (NSH)

(Signed order is placed on the file)