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STATE OF MAHARASHTRA

v.

BABURAO RAVAJI MHARULKAR & ORS.

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26th October, 1984

[O. CHINNAPPA REDDY, A.P. SEN AND E.S. VENKATARAMIAH, JJ.]

C

Deemed Adulteration Prevention of Food Adulteration Rules 1955 Rule 5 read with paragraph A.11.02.08 of Appendix B there to and sections 2 (ia) (i) and 2(ia) (m) of the Prevention of Food Adulteration Act, 1954—The circumstance that the standard of milk fat for buffalo milk is 5% should not render it impossible for Ice cream to contain milk fat less than 10% Ice cream containing than 10% must be deemed to be adulterated within the meaning of Section 2(ia)(m) of the Prevention of Food Adulteration Act, 1954 incurring liability under section 16(1)(a) (ii) of the said Act.

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Based on the report of Public Analyst which showed that the sample of ice cream purchased by the Food Inspector, 'E' Ward, Rajarampuri from the shop of the 4th respondent firm, the partners of which were respondents 1 to 3, contained 5.95% of milk fat, as against the minimum of 10% prescribed by paragraph A. 11.02.08 of Appendix B of the Prevention of Food Adulteration Rules 1955, all the respondents were brought to trial before the Chief Judicial Magistrate of Kohlapur. The learned Magistrate thought that it was impossible to attain the standard of purity prescribed by the rules as ice cream was but a preparation of milk and [the standard] of purity prescribed for buffalo milk was but a minimum of 5% milk fat. He was, therefore, of the view that Rules 5 read with paragraph A.11.02.08 of Appendix B was impossible of compliance and, therefore, bad in law and thus acquitted all the respondents. On appeal by State, learned Single Judge of the High Court of Bombay dismissed the appeal *in limine*. Hence the State appeal under Art. 136 of the Constitution.

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Allowing the appeal in part, the Court

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HELD : 1:1. The circumstance that the standard of milk fat for buffalo milk is 5% should not render it impossible for ice cream to contain a minimum per centage of 10 of milk fat. There are several ways by which the higher per centage of milk fat in ice cream may be attained. The most elementary method is to heat the milk sufficiently to reduce the per centage of water and increase the per centage of milk fat. Another obvious method is to add cream containing a high per centage of milk fat separately to the milk before making ice cream out of it. [1055B-D]

- 1 : 2. Rule 5 of the Prevention of Food Adulteration [Rules 1955 provides

II

A that standard and quality of the various articles of food specified in Appendix B thereto are to be defined in that Appendix. Paragraph A.11.02.08 of Appendix B prescribes a minimum standard of 10% milk fat in the case of ice cream, kulfi and chocolate ice cream. Section 2 (ia) (m) provides that an article of food shall be deemed to be adulterated if the quality or purity of article falls below the prescribed standard but which does not render it injurious to health. Therefore, the ice cream sold by the first respondent was adulterated within the meaning of section 2(ia) (m) of the Prevention of Food Adulteration Act, 1955.

[1055D-G]

C 1 : 3. In the circumstance, the 1st and the 4th respondents are, therefore, liable to be convicted under section 16(1)(a)(ii) of the Food Adulteration Act while respondents 2 and 3 are entitled to acquittal as there is nothing to indicate that they were in charge of or were in any way responsible for the conduct of the business of the firm. [1055G-H, 1056A]

D 1 : 4. As to sentence, in view of the fact that the offence was committed quite some years ago, the offence happens to be the first offence and the Supreme Court was now interfering with an order of acquittal, the ends of justice will be met by the imposition of the minimum sentence of three months prescribed by the proviso section 16(1) of the Act and a fine of Rs. 2,000 each. [1056B-C]

E CRIMINAL APPELLATE JURISDICTION :Criminal Appeal No. 460 of 1984.

Appeal by Special leave from the Judgment and Order dated the 14th September, 1982 of the Bombay High Court in Criminal Appeal No. 440 of 1982

M.N. Shroff for the Appellant.

V.S. Desai, and Mrs. J.S. Wad for the Respondent.

F The Judgement of the Court as delivered by

CHINNAPPA REDDY, J. Special Leave garnted.

G The Food Inspector, 'E' Ward, Rajarampuri, purchased a sample of ice cream from the shop of the 4th respondent-firm, the partners of which were respondents 1 to 3. After following the procedure prescribed by statute, one part of the sample was sent to the Public Analyst for analysis. The report of Public Analyst showed that the sample of ice cream contained 5.95% of milk fat as against the minimum of 10% prescribed by paragraph A. 11.02.08 of Appendix B of the Pervention of Food Adulteration Rules, 1955.

H The learned Chief Judicial Magistrate of Kohlapur thought that it

was impossible to attain the standard of purity prescribed by paragraph A.11.02.08 of Appendix B of the Prevention of Food Adulteration Rules, 1955, as ice cream was but a preparation of milk and the standard of purity prescribed for buffalo milk was but a minimum of 5% milk fat. The learned Magistrate was, therefore, of the view that Rule 5 read with paragraph A.11.02.08 of Appendix B was impossible of compliance and, therefore, bad in law. On appeal by the State, a learned Single Judge of the High Court of Bombay dismissed the appeal *in limine*. The State has preferred an appeal to this Court under Art. 136 of the Constitution. We do not have the slightest hesitation in allowing the appeal. We are unable to appreciate why the circumstance that the standard of milk fat for buffalo milk is 5% should render it impossible for ice cream to contain a minimum percentage of 10% milk fat. There are several ways by which the higher percentage of milk fat in ice cream be attained. The most elementary method is to heat the milk sufficiently to reduce the percentage of water and increase the percentage of milk fat. Another obvious method is to add cream containing a high percentage of milk fat separately to the milk before making ice cream out of it. We do not have to advise caterers and restaurateurs about how ice cream containing the minimum prescribed percentage of milk fat should be prepared. Section 2 (ia) (1) of the Prevention of Food Adulteration Act, 1954 provides that an article of food shall be deemed to be adulterated if the quality or purity of the article of food falls below the prescribed standard, which renders it injurious to health. Section 2(ia) (m) provides that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard, but which does not render it injurious to health. In the case before us, there is nothing to show that the low percentage of milk fat renders the ice cream injurious to health. Rule 5 of the Prevention of Food Adulteration Rules, 1955 provides that standard of quality of the various articles of food specified in Appendix B to these rules are to be as defined in that Appendix. Paragraph A. 11. 02. 08 of Appendix B prescribed a minimum standard of 10% milk fat in the case of ice cream, kulfi and chocolate ice cream. There cannot be the least doubt that the ice cream sold by the first respondent was adulterated within the meaning of s. 2 (1a) (m) of the Prevention of food Adulteration Act, 1954. The first and the fourth respondents are, therefore, liable to be convicted under s. 16 (1) (a) (ii) of the Food Adulteration Act, 1954. So far as respondents 2 and 3 are concerned, there is nothing

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A to indicate that they were incharge of or were in any way responsible for the conduct of the business of the firm. Their acquittal is confirmed' Respondents 1 and 4 are convicted under s. 16 (1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 and each of them is sentenced to suffer imprisonment for a period of three months and a fine of Rs. 2, 000/- each. In default of paymetn of fine they shall suffer a imprisonment for a further term of one month. We are imposing the minimum sentence of imprisonment prescribed by the proviso to s. 16 (1) as the offence was committed quite some years ago and we are now interfering with an order of acquittal and this appears to be a first offense.

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S.R.

Appeal partly allowed.