

*** "REPORTABLE"**
HIGH COURT OF DELHI AT NEW DELHI

+ Crl.M.C.3307/2007

Reserved on : October 3, 2008
Pronounced on : February 06, 2009

S.S. GOKUL KRISHNAN & ORS. ..PETITIONER

! Through : Mr. P.R. Thakur,Adv.

Versus

\$ STATE THR. FOOD INSPECTOR
GOVT. OF N.C.T. OF DELHI ...RESPONDENTS

^ Through : Mr. Lovkesh Sawhney,APP

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

ARUNA SURESH, J.

1. By way of this petition under Section 482 of Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) the petitioner has sought quashing of complaint case no. 232/2006 titled Food Inspector

(PFA) vs. Ashok Chhabra and Ors. and order of the trial court dated 06.10.2006 summoning the petitioners herein and all the proceedings emanating from the aforesaid complaint.

2. On 24.09.2005 at 4.00 p.m., Food Inspector Arun Kumar purchased a sample of 'processed cheese' for analysis from Sh. Ashok Chhabra, son of Sh. B.R. Chhabra of M/s. New Cake Palace, 36, J Block Market, Saket (vendor) where the said food article was stored for sale. Sample consisting of three sealed tin packs of 400 gms. each bearing identical declaration, was taken under the supervision and direction of Sh. Manish Garg, SDM/LHA. Vendor disclosed that the sample article was supplied through M/s. NGS Commerce vide bill no. 1677 dated 22.09.2005 and accordingly a notice was also sent to the supplier by registered post. Notice was given to the vendor and price of the sample was also paid to the vendor vide receipt dated 24.9.05. All documents prepared by the Food Inspector were signed by the vendor and other witness Sh. S. Massey, F.A. The sample was divided into three

equal parts i.e. one sealed tin pack in each counterpart and each packet was separately packed, fastened and sealed.

3. On 26.09.2005 one counter part of the sample bearing LHA code No. 72/LHA/13788 was received by Public Analyst, Delhi. Report of public analyst dated 10.10.2005 stated:- “the sample is misbranded because it gives misleading statement regarding BEST BEFORE. However, processed cheese conforms to standard.” “Best before declared 9 months from the date of packing but date of packing not declared on label.”
4. In the notice in Form IV prepared on 24.09.2005 it is stated that the month and year of manufacturing was declared on the label as August, 2005.
5. On investigation it was revealed that M/s NGS Commerce is a partnership concern. Sh. Uttam Kumar Shah and Sh. Soma Shah are its partners, who are accordingly made accused in the complaint. The said sample was supplied to NGS Commerce by M/s. Gujrat Co-operative Milk Marketing Federation Ltd., Barakhamba Road, New

Delhi, now shifted to Institutional Area, Janak Puri, New Delhi, who in turn was supplied cheese by Kaira District Co-operative Milk Producers Union Ltd., Kheda Satellite Dairy Khatraj, Gujrat. Sh. S.K. Chopra is the nominee of petitioner No. 4 under the provisions of the Prevention of Food Adulteration Act (hereinafter referred to as 'PFA Act') and Sh. S.S. Gokul Krishnan is the Deputy Manager (Quality Assurance) of petitioner no. 2. Both are accordingly made accused in the complaint.

6. On 26.09.2006 K.S. Wahi, Director, Prevention of Food Adulteration, Govt. of NCT of Delhi, in exercise of power vested vide Section 20 PFA Act, gave consent for instituting prosecution against the accused.
7. On 6.10.2006 complaint under Section 16 PFA Act was filed in the court of Sh. Pritam Singh MM for the violation of Section 2(ix)(g) & (k) PFA Act and also Rule 32(f) and Rule 37 of PFA Rules punishable under Section 16(1)(a) read with Section 7 of PFA Act. The Court took cognizance of the offence under Section 7/16 PFA Act vide order

dated 6.10.2006 and summoned the accused to appear on 3.7.2007.

8. It is argued by Mr. P.R. Thakur, counsel for the petitioners, that the said violation of Rule 32 by the petitioners, even if admitted for the sake of arguments, is admittedly a first violation and vide policy No. F6(228)/85/ENF/P.F.A. decision was taken by the Department of PFA, Govt. of NCT of Delhi as far back as in 1985, that in case, the contents of the sealed packet or container conformed to the standard laid down under the PFA Rules, deficiency with regard to Rule 32 which pertained to the particulars of the labeling on the container or packets is only a technical offence. In such a case the party concerned be given a written warning drawing its attention to Rule 32 and in case the practice is repeated after a written warning, the party committing the offence second time should be prosecuted.
9. It is further submitted that the consent accorded for launching the prosecution against the petitioners is wholly mechanical and without

application of mind; even a passing reference to the existing policy decision who not made.

10. It is further urged by the counsel for the petitioners that in modern times manufacturing and packaging are continuous and uninterrupted process in automatic plants, and there is no noticeable time gap between the two processes of manufacturing and packaging and therefore non mentioning of the date of packaging on the packing of the product will not amount to violation of PFA Act. Also that the month and year of manufacturing being already mentioned, the date of manufacturing is not required to be mentioned as it is only the month of manufacturing or packing from which the best consumption period is to be reckoned. Under these circumstances, prima facie no offence under the PFA Rules has been made out against the petitioners. Hence the complaint and summoning order dated 6.10.2006 being bad in law are required to be quashed.

11. Counsel for the petitioners has relied on the following judgments:

- a. Dwarka Nath and another v. The Municipal Corporation of Delhi - 1972 FAC 1.***
- b. Municipal Corporation of Delhi v. Modern Flour Mills and General Industries and others - 1984 (II) FAC 144.***
- c. Inderjeet v. State of Uttar Pradesh and another -1979 SCC (Crl.) 966.***
- d. Mahashian Di Hatti Pvt. Ltd v. State (Delhi Administration) - 1993 (2) FAC 245.***
- e. K. Ranganatha Reddiar v. the State of Kerela -1973 FAC 270.***

12. Mr. Lovkesh Sawhney, learned APP for the State (respondent), has submitted that by Order No. 5/07 dated 14-09-07 the Directorate of Prevention of Food Adulteration, Govt. of NCT of Delhi has ordered that Section 20 of the PFA Act does not confer any power on the consenting authority to issue warning to vendors found violating Rule 32 of PFA Rules for the first time for commission of an offence the practice which was being followed earlier in view of the order of the year 1985 and therefore all cases for violation of Rule 32 of PFA Rules have to be processed for obtaining consent of F(H)A to prosecute the offenders u/s 20 of the PFA Act. It is argued that the policy No. F6(228)/85/ENF/P.F.A. has been subsequently withdrawn by the department and is no longer in

existence. Therefore Rule 37 under the facts and circumstances of the case is otherwise also attracted as the said policy is not applicable to cases pertaining to violation of Rule 37.

13. It is further submitted by the learned APP for the State that the petitioners have not declared the date of manufacturing nor the date of packaging. The manufactured products are packed later on and the declaration contained is "BEST BEFORE 9 MONTHS FROM DATE OF PACKING" and the date of packing is not given. Therefore, prima facie an offence is made out against the petitioners. The petitioners are required to prove in evidence that the date of packaging and the date of manufacturing is in close proximity. Therefore it is a case for trial.

14. Complaint has been filed by the respondent-department against the petitioners and other accused persons on the basis of report of public analyst. Relevant part of report reads as follows:

"The sample is misbranded because it gives misleading statement regarding best before. However Processed Cheese conforms to Standard."

This report is dated 10.10.2005.

15. The sample was lifted on 24.09.2005 at about 4 p.m. It contained the following information :

“Best before 9 months from packing when
stored refrigerated at 4⁰C
Net wt 400 gm. MRP (incl.of all taxes)Rs.83.00
Batch No. T 219 021
Month & year of manufacture
Aug.05”

16. Thus it is clear that the year and month of manufacture has been disclosed on the packet but, the date of manufacturing is not mentioned. The declaration regarding best before is 9 months from packaging. The date of packaging is not disclosed on the packet.

17. Rule 32(f) of the PFA Rules framed under the PFA Act requires for a manufacturer to declare the date, month and year in which the commodity is manufactured, packed or pre-packed on the packet. This declaration is required to be given if the ‘best before’ date of the product is more than 3 months.

18. Rule 32(i) of the PFA Rules, demonstrates the manner in which the said information is required to be displayed on the packet.

19. In the instant case, declaration under rule 32(i) is 'best before' 9 months from packing. Since the month and year of manufacture of the food article i.e. processed cheese is clearly disclosed on the packet, it cannot be said that the consumer would be mislead from the terms 'best before 9 months from packing'. The consumer, under these circumstances, would be clear in his mind to consider the best before from the date of manufacturing. The processed cheese conformed the standard on analysis.
20. Prima facie, therefore, it cannot be said that the sample was misbranded because misleading statement was given on the label with respect to best before date. The consumer is provided with sufficient information as required under the Act and Rule 32 to know about the genuineness of the product and also to enable him to make a decision whether to purchase the said food article or not. Even if, the words 'best before 9 months from manufacturing or packing' are not contained on the packet; instead the words best within 4 months are

mentioned on the packet, it would not in any way mislead the consumer. Hence by no stretch of imagination the product could be termed as misbranded. There is no adulteration in the product. As per the information disclosed on the packet, it cannot be said that there is misbranding, only because the date of packaging has not been disclosed; specially when the month and year of manufacturing is specifically disclosed.

21. Section 95 of the Indian Penal Code can also be invoked to support the case of the petitioner, as the law takes no account of trifles and the proceedings based on such flimsy grounds like the one in the present case, should be quashed.
22. ***Dwarka Nath and another v. The Municipal Corporation of Delhi (supra)*** is of no relevance to the facts and circumstances of this case as in the said case, Rule 32 (b) and (e) and not Rule 32(f) were under challenge.
23. Similarly, ***Municipal Corporation of Delhi v. Modern Flour Mills and General Industries and others (supra)*** is of no assistance to the

petitioner as the said case dealt with adulterated Besan having a mixture of Kesari Dal and the question before the Bench was if only a negligible amount of Kesari Dal was found in the sample, was it correct to say that the sample was a mixture of Kesari Dal and Besan and the Besan was adulterated.

24. ***Inderjeet v. State of Uttar Pradesh and another (supra)*** also has no bearing to the facts and circumstances of the present case as it deals with the sentencing policy adopted by the legislature for offences under the PFA Act.
25. In ***Mahashian Di Hatti Pvt. Ltd v. State (Delhi Administration) (supra)***, the question for consideration before this Court was if deficiency of 3% or so of common salt in Chane Ka Masala than indicated on the label would detriment the product to misbranding and it was observed that there was no misleading statement with regard to any material particulars made on the label so as to condemn the sample as misbranded. It was further observed that the mis-statement must be with

regard to material particulars and then only it could be covered by the definition given in clause (g).

26. ***K. Ranganatha Reddiar v. the State of Kerela (supra)*** pertained to a case in which the declaration given in the cash memo as 'quality is upto the mark' was in question.

27. The alleged offence of violation of Rule 32 (f) and (i) was found to have been committed in the year 2005. At the relevant time department policy No. F6(228)/85/ENF/P.F.A. was in force and the said policy was cancelled, modified or withdrawn vide order No. 5/07 dated 14.09.2007. As per the said policy, cases of breach of Rule 32, since pertained to the particulars of the labeling on the container or packet, were technical offences, the party affected was to be given a written warning drawing its attention to Rule 32, which required of date, month and year of manufacturing to be exhibited on the labels affixed on tin or the packet. It was only if the violation was repeated after a written warning, the party committing the offence second

time had to be prosecuted. As per this policy, pending cases pertaining to breach of Rule 32 being of technical nature were decided to be disposed of accordingly.

28. It is not the case of the prosecution that petitioners were given warning by way of a notice drawing their attention to Rule 32 which provided for particulars to be exhibited on the sampled tin or the packet, and it was a case of second breach of Rule 32, i.e. in other words the offence was committed for the second time and therefore, the petitioners were liable to be prosecuted.
29. The policy being in force at the relevant time should have been adhered to by the department before it decided to file a complaint in the court for offences under Section 7/16 of the PFA Act. The petitioners are therefore within their rights to seek protection under the said policy which was in existence at the relevant time.
30. In view of my discussion as above, it is not a case of misbranding within the meaning of Rule 32 of the Act. Also there is non-compliance of the policy No.

F6(228)/85/ENF/P.F.A. by the department. The complaint deserves to be quashed and is accordingly quashed. The impugned summoning order dated 6.10.2006 and other proceedings conducted therein also stand quashed. Petition stands allowed accordingly.

Attested copy of the order be sent to the trial court as well as to the State.

(ARUNA SURESH)
JUDGE

February 06, 2009
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