

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: November 09, 2010

+ **CRI. M.C. NO.3228/2009 & CRL.M.A.No.10930/2009 (STAY)**

M/s. KITCHNRAMA FOOD SERVICE EQUIPMENT PVT. LTD. & OTHERS

....PETITIONERS

Through: Mr. Arvind Chaudhary, Advocate

Versus

FOOD INSPECTOR, GOVT. OF NCT OF DELHI

.....RESPONDENT

Through: Mr. R.N. Vats, APP along with Mr. S.K. Gupta, Food Inspector(PFA).

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Through this petition, petitioners M/s. Kitchnrama Food Service Equipment Pvt. Ltd., Vikas Suri and Manisha Suri seek quashing of complaint case No.148/07 under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as PFA Act) titled Food Inspector Vs. Gagan Gambhir & Ors. Pending before the court of M.M., New Delhi and the impugned order dated 20.11.2007 issuing process against the petitioners as also the proceedings emanating therefrom.

2. Briefly stated, the facts leading to filing of this petition are that on 20.11.2007 Shri S.B. Sharma, Food Inspector filed a complaint before the learned M.M. under Section 16 of PFA Act against the company and the petitioners inter alia alleging that the Food Inspector had carried out an inspection at M/s. Fun Multiplex Pvt. Ltd. on 26.12.2006 and had taken a sample Tortila Chips from one Gagan Gambhir. This sample was sent to Public Analyst and as per the report of Public Analyst, on 11.01.2007 the sample was found to be misbranded because "Best Before" was declared in a misleading manner". However, the Chips were not found to be adulterated.

3. Petitioner M/s. Kitchnrama Food Service Equipment Pvt. Ltd. Is a company who had allegedly supplied these chips to the cinema run by M/s. Fun Multiplex Pvt. Ltd. Petitioners No.2 and 3 namely Vikas Suri and Manisha Suri are stated to be the Directors of the company. Neither of the petitioners is the manufacturer of those Chips.

4. It is submitted by the learned counsel for the petitioners that the complaint was filed by the Food Inspector against 22 accused persons, including the petitioners. As per the complaint, only a case of misbranding was made out as the date of manufacture was missing from the sample. It is submitted that the learned M.M. has failed to appreciate that there is no allegation in the complaint nor there is any whisper of evidence that may lead to an inference that any wrongful act was committed by the instant petitioners.

5. Learned counsel for the petitioners submits that the petitioners are merely suppliers of Tortila Chips and not the manufacturer of alleged misbranded Chips. Learned counsel further submits that the respondents have failed to comply with their policy No. F6(228)/85/ENF/P.F.A. dated 20.09.1985 in prosecuting the petitioners without issuing a warning to them in terms of the policy. It is not in dispute that this very policy stood withdrawn subsequently in September, 2007. Learned counsel argued that on the date when the sample was taken, the policy was very much in force and thus it would be applicable to the petitioners.

6. It is also contended that this very policy was subject matter in the case **S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector Govt. of NCT of Delhi** in Crl.M.C. No.3307/2007, wherein the learned Single Judge of this Court has quashed the complaint based on the said policy.

7. Learned Shri R.N. Vats, APP for the State submits that this notification cannot be read against Rule 32 of Prevention of Food Adulteration Act. However, he does not dispute the fact that this case is fully covered in fact and law by the decision of **S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector Govt. of NCT of Delhi.**

8. I have considered the rival contentions and gone through the material on record. In order to properly appreciate the contention of learned counsel for the petitioners, it would be appropriate to

reproduce the relevant policy relied upon by the petitioners. It reads thus:

“2. It would be noted from the perusal of the above Rule that an elaborate procedure has been prescribed for labelling sealed contents indicating therein the cod number date of packing etc. however, it has been noticed that in quite a few cases contents of the sealed article of food was found conforming to the standard prescribed under the Rules, whereas the labelling done on the container or the packet was deficient in certain respect and was not in conformity with the provision contained in Rule 32 of the PFA Rules, 1955. After detailed discussion on the subject, it was appreciated that in case the contents of the sealed packets or container conform to the standard laid down under the PFA Rules, deficiency with regard to Rule 32 which pertains to the particulars of the labelling on the container or packet, was only a technical offence, though it attracted Rule 32 and there was breach of this Rule in some respect in the course of packing the article of food. In such cases there was unanimous view during the course of discussion that the party effected may be given a written warning drawing his attention to Rule 32 which provides for labelling particulars to be exhibited on the sampled Tin or the packet and in case the practice is repeated after a written warning to the party concerned, the party committing the offence second time should be prosecuted. However, this could not apply in case where the contents of the sealed packed or container are not conforming to the prescribed standard and hence are adulterated. In such cases, prosecution would be launched both for adulteration and for breach of Rules 32. After the Secretary (Medical), as the consenting Authority, has approved the above proposal all the pending cases would be disposed of accordingly.”

9. In the matter of **S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector Govt. of NCT of Delhi**, wherein the above policy was subject matter of dispute, this Court observed thus:

“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

labelling 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.”

10. The present case is fully covered in facts and law by the decision of this Court in **S.S. Gokul Krishnan** (supra) and by virtue of F6(228)/85/ENF/P.F.A., respondent is liable to issue a notice/warning to the petitioners drawing to their attention to violation of Rules regarding labelling particulars before any complaint could have been instituted against the petitioners. Admittedly, neither any notice nor any warning was issued to the petitioners. The respondent has not placed the evidence on record to rebut the same. Petitioners have also pointed out that proceedings against five co-accused persons arrayed as accused No.1 to 5 in the complaint filed by the Food Inspector have already been quashed on the same ground applying the ratio of **S.S. Gokul Krishnan & Ors.**(supra) by this Court vide order dated

23.04.2009 in Crl.M.C. No.763/2009. Certified copy of said order is placed on record.

11. In view of the above and taking into account that the petitioners are only the suppliers and not the manufacturer of misbranded Chips, the complaint No.148/07 titled Food Inspector Vs. Gagan Gambhir & Ors under Section 7/16 of PFA Act, 1954 and the proceedings emanating therefrom are quashed against the petitioners.

12. Petition stands dismissed.

13. Copy of the order be given Dasti.

(AJIT BHARIHOKE)
JUDGE

NOVEMBER 09, 2010

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