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THE HIGH COURT OF DELHI AT NEW DELHI

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Crl.M.C. No. 1360/2011

Reserved on: 16.12.2011

Pronounced on: 22.12.2011

RAM BABU RASTOGI & ORS.

..... Petitioner

Through : Ms. Aashaa Tiwari, Advocate.

versus

STATE THROUGH FOOD INSPECTOR (PFA),

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through : Ms.Fizani Husain, APP.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a petition under Section 482 CrPC filed by the petitioners assailing the order dated 25.10.2010 whereby the petitioners were summoned by the learned M.M. in the complaint filed by the Food Inspector of the Department of PFA, alleging the violation of Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (for short, the 'Act').

2. On 11.4.2008, a sample of "Flavoured Chewing Tobacco" was purchased for analysis from Vijay Krishan Prem S/o Sh. Ram Gopal Sharma of M/s. Dharam Pal Prem Chand Ltd. The said article was found stored for

sale and Mr.Vijay Krishan Prem was found vending the article at the time of taking the sample. The sample consisted of 3 original sealed tin having identical label declaration and batch number. The same was reproduced on notice form VI. The sample was divided into three equal parts and then put in one sealed tin as one counterpart of the samples. Each counterpart containing the sample was separately packed, fastened and sealed according to the Act, 1954 and Rules, 1955. The rest of the formalities were completed. One counterpart of the sample was got analyzed from the Public Analyst and the two remaining counterparts of the sample were deposited with Local Authority in intact condition. On analysis, the P.A. gave opinion that the sample is covered under the ‘Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003’ (hereinafter referred to as CTP Act, 2003 in short). The sample was also reported as misbranded because the language of best before declaration was not as per Rule 32 (i) of Rules. The sample of “Flavoured Chewing Tobacco” was also reported to be ‘proprietary food’ and the sample on testing, gave positive result for the presence of Nicotine. It was reported that the tobacco being an ingredient and the presence of Nicotine in the sample article “Flavoured Chewing Tobacco” was in violation of Rule 44J and Rule 37A(2)(c) of the Rules, 1955. Thus sample was reported to be adulterated as it contained Nicotine and Tobacco which are injurious to health. It was alleged in the complaint that in view of clear provisions of Act and the Rules, and the findings of the P.A. about the presence of Nicotine and tobacco in the sample, and the sample being so adulterated, the opinion of the Public Analyst regarding the sample being covered under CTP Act, 2003 had no relevance.

3. The learned M.M. took cognizance of the offences and vide the impugned order dated 25.10.2010, issued summoned against the petitioners.

4. The impugned order has been assailed by the petitioners mainly on two grounds. Firstly, the “Flavoured Chewing Tobacco” was not a food item much less a proprietary food and so, the provisions of Act and the Rules were not applicable. It was submitted that the sample item was a tobacco product within the meaning of Section 3(p) of the CTP Act, 2003. Secondly, the sample item was not covered within the Rule 44J and also Rule 37A (2) (c) of the Rules and that there was no misbranding in violation of Rule 32(i) of the Rules, 1955

5. First question that requires consideration is as to whether the sample article ‘Flavoured Chewing Tobacco’ was a food item and so within the provisions of the Act and the Rules. Section 2(v) of the Act defines ‘food’ as under:

“(v) “food” means any article used as food or drink for human consumption other than drugs and water and includes---
(a) Any article which ordinarily enters into, or is used in the composition or preparation of, human food,
(b) Any flavouring matter or condiments, and
(c) Any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purposes of this Act”

6. A plain and simple reading of the aforesaid provisions would reveal that only those articles which are used as food or drink for human consumption and which ordinarily enter into or are used in the composition and preparation of human food including any flavouring material or condiments that may be used, are the items which are within the ambit of definition of ‘food’ under this provision. As per the opinion of P.A., the sample article was ‘proprietary food’ and within the ambit of Appendix B of the Rules. Appendix B provides for definition and standards of quality of the food articles which are within the ambit of the Rules and the Act. In this Appendix, “Pan Masala” finds mention at Item No. A.30 as a food

generally taken as such or in conjunction with 'Pan'. There is no mention of the 'Flavoured Chewing Tobacco' in the Appendix B. With regard to the 'Pan Masala', Mouth Freshener and 'Supari', there are plethora of judgments which lay them as items which are within the meaning of 'food' under Section 2(v) of the Act. The reference can be made to the decisions of **Sri Krishan Gopal Sharma & Anr. Vs. Govt. of NCT of Delhi**, 1996 (4) SCC 513 and **Pyarali K.Tejani Vs. Mahadeo Ramchandra Dange & Others**, 1974 SC 228.

7. The ingredients of Pan Masala as specified in Item A.30 consists of Betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits etc. All these ingredients are used as food for human consumption in one form or the other. As against this, Section 3(p) of CPT Act defines the 'tobacco products' as the products specified in the Schedule. 'Flavoured Chewing Tobacco' finds its place along with other items like Cigarettes, Cigars, Cheroots, Beedis, Hukkah tobacco, snuff, gutka etc. In Entry 8 of the Schedule to the Act 'pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called) also finds mention therein. To clarify that, it is not the pan masala which has been discussed above as food items with the aforementioned ingredients, but the pan masala having tobacco as one of its ingredients by whatever name it may be called that is within the definition of 'tobacco products' of Section 3(p) of the Act. None of the items mentioned in Section 3(p) including the chewing tobacco could be said to be falling within the meaning of 'food' under Section 2(v) of the PFA Act, since none of these items could be said to be used as food for human consumption, or ordinarily entering into or used in the composition or preparation of human food. In the case of **Godawat Pan Masala Products I.P.Ltd. and Another Vs. Union of India and Others**, 2004(2) FAC 33, the Supreme Court held that the CPT Act, 2003 is a special Act to deal with tobacco and tobacco products particularly, while the PFA Act,

1954 is a general enactment. The former being a Special Act, and of later origin, overrides the provisions of Section 7(iv) of the PFA Act, 1954 with regard to the powers to prohibit the sale or manufacture of tobacco products which are listed in the Schedule to the former Act.

8. In view of the above discussion, Rule 37A(2) (c) which provides for standards for the ‘proprietary food’ was not applicable. This Rule reads thus:

“37A- Manufacture of proprietary food:-

(2) In addition to the provision including labeling requirements as prescribed under these Rules, all proprietary foods shall also conform to the following requirements:-

(c) tobacco and nicotine shall not be used as ingredients in the manufacture of proprietary food products;”

9. From the reading of the above, it is clear that the standard that are prescribed for proprietary food in Sub-Rule 2 clause ‘c’ of Rule 37A was that the proprietary food shall not contain tobacco or nicotine as ingredients. The sample article could not be said to be proprietary food and thus, was not within the ambit of Rule 37A. I fail to understand as to how clause ‘c’ of Sub-Rule 2 was sought to be applied when it was not the case of the prosecution that tobacco or nicotine was used as ingredients in proprietary food.

10. Rule 44J provided for the products not to contain any substances which may be injurious to health and stated that tobacco and nicotine shall not be used as ingredients in any food products. For the same reason as noted above, this Rule 44J was also not applicable to the present case.

11. Section 2(ix) of the Act describes ‘misbranding’ of an article of food. The relevant clause ‘k’ relating to label reads as under:

“2(ix) misbranded—*an article of food shall be deemed to be misbranded-*
(a) to (j).....

(k) If it is not labeled in accordance with the requirements of this Act or Rules made thereunder”.

12. The Rule 32 (i) lay down the requirements to declare “Best Before period”. This provision reads thus:

“32. Package of food to carry a label—Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label:

(b) to (h)....

(i) the month and year in capital letters upto which the product is best for consumption, in the following manner, namely:

“BEST BEFORE.....MONTHS AND YEAR”

OR

“BEST BEFORE..... MONTHS FROM PACKAGING”

OR

“BEST BEFORE.....MONTHS FROM MANUFACTURE”

OR

“BEST BEFORE UPTO MONTH AND YEAR....

OR

“BEST BEFORE WITHIN MONTHS FROM THE DATE OF PACKAGING/MANUFACTURE”

(Note:

Blank be filled up)

[For the period upto and inclusive of 1st September, 2001

13. The allegations of misbranding against the petitioners were that the sample product declared the label as “Best before within 6 months from date of packaging”. The only grievance of the Department was that the word “within” which stood omitted after 01.09.2001 was added by the petitioners in the label and that made the same as misbranded because of clear violation of Rule 32(i). Had the grievance been that there was no declaration at all, the things would have to be viewed differently with different observations. The objective of the declaration of the label was that the purchaser should know at the time of purchase, as to whether the article, which is purchased was capable of being used and till what time.

14. The actual label found at the sample article i.e. “Best before within 6 months from date of packaging” conveyed much more than which was

required to be conveyed to the purchasers about the genuineness of the product. Mere use of word “within” as a surplusage would not bring the petitioners under the penal provisions of the Act. By any means, the purchasers could not be said to have been deceived or misled as regards the character, quantity, quality or date of manufacture and the limit of use of the product.

15. In the case of **Nehrudasan Vs. Food Inspector, Madurai Corporation, Madurai**, 2010(1) FAC 49, the Madras High Court in somewhat similar case of prosecution based on the contravention of Rule 32 of the Act referred to a decision of the same High Court in **A.Rajasingh & Ors. Vs. The Food Inspector**, 2008(1) FAC 172 wherein it was held as under:

*“Prevention of Food Adulteration Rules, 1955, Rule 32(i)-
Packet of food product/Wheat Atta-Misbranding by use of
term “best within four months” instead of “best before”
-Effect- Even though terminology found in both terms
differ in appearance, actually no consumer would be
misguided if he happens to see term “best within four
months”-Absence of words “best before four months...”
and use of words “best within four months” would not
in any way mislead consumer, and by no stretch of
imagination could be termed as misbranding of product-
It is to be seen that product is not adulterated and only
allegation of misbranding is there”.*

16. In another case titled **T.Prabhu & Another Vs. The State**, 2007(1) FAC 314 also, the Madras High Court held that though the word “within” stands omitted after 01.09.2011, but by merely adding such word, the customers could not be said to have been misled or misdirected as there was no difference otherwise in the meaning conveyed. In another case titled **Hindustan Lever Limited and Others Vs. Food Inspector**, 2007(1) FAC 299, the Madras High Court held similar view on the label which contained the similar word as in the instant case i.e. “best before within 6 months from date of packaging”.

17. In view of the discussion above, I am of the view that no case against the petitioners is made out and hence the impugned order whereby they were summoned is hereby quashed.

18. Petition stands disposed of accordingly.

M.L. MEHTA, J.

DECEMBER 22, 2011

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