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

+ CRL.M.C. 3837/2009 & CRL.M.A. 13069/2009

M/S PANTALOON RETAIL
(INDIA) LTD. & ORS

..... Petitioners

Through: Mr. D.C. Mathur, Senior Advocate with
Mr. Rajeev Agarwal, Advocate and
Mr. Sanjay K. Sharma, Advocate.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP for State with
Mr. Rajpal Singh, Food Inspector.

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Date of Decision: 1st November, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (ORAL):

1. Present petition has been filed under Section 482 Cr.P.C. seeking quashing of criminal case bearing CC No. 1902/2009 pending in the Court of Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.
2. The relevant facts of the present case are that M/s. Pantaloon Retail (India) Ltd.—petitioner No.1 herein is a company incorporated under the Companies Act, 1956. It runs retail stores in the name of M/s. Food Bazar.
3. On 12th June, 2008, the Food Inspector, Delhi lifted three sealed packets of 'Malathi Madras Mixture' from the petitioner No.1's retail store

at Vikas Surya Shopping Mall, Plot No.18, Manglam Place, Sector-3, Rohini, Delhi-85. The aforesaid packets had been purchased by petitioner No.1 from Rajendra Products, B-400, Mahavir Enclave, Part-II, New Delhi-110059 vide Bill No. 858, Book No. 18, dated 06th June, 2008 and the said fact had been mentioned by petitioner no. 1-company's representative in Form VI prepared by the Food Inspector as per the procedure of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'Act'). The Form VI reads as under:-

"Govt. of N.C.T. Delhi
PREVENTION OF FOOD ADULTERATION ACT, 1954

xxx

xxx

xxx

Three sealed packets each contains 400 gms. of Mixture taken as such in originally sealed conditions and having the following main identical label declarations:

MALATHITM

MADRAS MIXTURE

Ingredients: Made in pure Vegetable oil, Besan, Rice, G. Nut, Cidwa, Spices & Salt

Malathi Namkeen Mix. 4000.

S.P. Rs.64.00

Incl. of all taxes

RAJENDRA PRODUCT,

B-400, Mahavir Enclave, Part-II, New Delhi-110059.

Packet on—June-2008

Batch No.101,

Best Before 2 Months

Net Wt.400 g., M.R.P. 64/

(inclusive all Taxes)

Ph.25500210

65965543

Sd/-

Food Inspector

Date: 12.06.08

Place: Delhi.

Area: N.C.T. of Delhi

These packets of Namkeen (Malathi – Madras Mixture) 400 gm has been purchased from Rajendra Product, B-400, Mahavir Enclave, Part-II, New Delhi-110059, vide Bill No.858, Book No.18 dated 06.06.2008. Received one copy.”

4. The Public Analyst vide her report dated 04th July, 2008 opined that though the aforesaid samples were not adulterated, they were misbranded.

The relevant portion of the Public Analyst report reads as under:-

“.....(III) Label: Best before declared without reference to date of packing or manufacturing. The size of label is only 22.85% of the size of packet.....”

xxxx

xxxx

xxxx

Opinion:- The sample is Misbranded because Best before is not declared as per Rule-32(i) of PFA Act & Rules. There is also violation of Rule-36(2)(a). However, Mixture is not Adulterated.....”

5. The relevant portion of Rules 32(i) and 36(2)(a) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as ‘Rules’) are reproduced hereinbelow:-

“32. Every prepackaged food to carry a label. –

xxxx

xxxx

xxxx

xxxx

(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”*

}

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

xxxx

xxxx

xxxx

xxxx

36. Principal display panel, its area, size and letter, etc.-

xxxx

xxxx

xxxx

xxxx

(2) *The area of the principal display panel shall not be less than-*

(a) in the case of a rectangular container, forty percent of the product of height and width of the panel of such container having the largest area:.....”

6. The Designated Authority under the Act consented to the launch of prosecution against the petitioners herein for alleged violation of Section 7 of the Act read with Section 2(ix)(k) of the Act and also for violation of Rules 32(i) and 36(2)(a) of the Rules. Some of the relevant averments in the complaint are reproduced hereinbelow:-

“2. Public Analyst analysed the sample and found the sample is misbranded because best before is not declared as per Rule-32(i) of PFA Act & Rules. There is also violation of Rule-36(2)(a), however mixture is not adulterated. The Public Analyst has also reported the above said report regarding label-Best before declared without reference to date of packing of manufacturing. The size of label is only 22.85% of the size of packet.....

3. It was found that Sh. Rajesh Dahiya S/o Sh. Col. R.P. Dahiya was the vendor cum Asstt. Sales Manager of M/s Food Bazar (A division of Pantaloon Retail (India) Ltd.) Vikas Surya, Shopping Mall, Plot No.18, Manglam Place adjacent to M2K, Sec-3, Rohini, Delhi-110085 at the time of taking sample and as such he is incharge of and responsible for day to day conduct of the business of the said unit of Company. M/s Pantaloon Retail (India) Ltd. is a company having eight Directors namely 1) Sh. Anil Harish, 2) Sh. Kishore Laxmi Narayan Biyani, 3) Sh. Gopi Kishan Bansi Lal Biyani, 4) Sh. Rakesh Gopi Kishan Biyani, 5) Sh. Shailesh Vishnubhai Haribhakti, 6) Smt. Bala Chaitanya Deshpande, 7) Dr. Darlie Oommen Koshy, 8) Sh. Doreswamy Seshagiri and as such all the Directors are incharge of and responsible for day to day conduct of the business of the company. M/s Pantaloon Retail (India) Ltd, has its Regd. Office at Knowledge House, Shyam Nagar, Off Jogeshwari – Vikhroli, Link Road, Jogeshwari (East), Mumbai-

400060. Being a company M/s Pantaloon Retail (India) Ltd is also liable. The said sampled article of food i.e. "Mixture" was manufactured and supplied by M/s. Rajendra Product, B-400, Mahavir Enclave, Part-II, Gali No.29, New Delhi-110059 to M/s. Food Bazar (A division of Pantaloon Retail (India) Ltd). M/s. Rajendra Product is a proprietorship concern and Sh. A. Rajendran S/o Sh. Algu Sudhar Nadar being the proprietor is incharge of and responsible for day to day conduct of its business for complying with the provisions of the PFA Act 1954 and the Rules made there under.

4. That in view of the above facts accused persons as mentioned above have violated the provisions of Section 7 of the PFA Act, 1954 read with Section 2(ix)(k) of the PFA Act, 1954 and also violated the Rule 32(i) and 36(2)(a) of PFA Rules 1955 which is punishable under Section 16(1)(a) of the PFA Act, 1954."

7. In the complaint itself the list of witnesses and relevant documents relied upon by the prosecution are mentioned. Some of the documents relied upon by the prosecution are as under:-

<i>LIST OF DOCUMENTS</i>		
<i>xxxx</i>	<i>xxxx</i>	<i>xxxx</i>
<i>9. Photo copy of text invoice No.858 dated 06-06-2008.</i>		
<i>xxxx</i>	<i>xxxx</i>	<i>xxxx</i>
<i>16. Letter dated 18-07-2008 to LHA (Nomination) regarding the nomination of M/s Food Bazar and reply of LHA on it.</i>		
<i>17. Copy of Letter dated 18-07-2008 sent by F.I. to M/s Rajendra Product, B-400, Mahavir Enclave Part-II, New Delhi-59 regarding the constitution.</i>		
<i>18. Letter from M/s Rajendra Product along with photo copy of text invoice No.858 dated 06-06-2008, Photo copy of MCD license, Photocopy of allotment TIN, receipt No. REGSTN/2004-05/20020549513 dated 15-04-2004 from office of STO, Photo copy of certificate of Registration No.A047661 (Two copies),Photo copy of Registration order No. ST/W/20020139748 dated 12-05-2004 (Three pages) and Photocopy of central sales tax (Registration and Turn over) Rules, 1957 Form (B) NO. 0283518.</i>		

6. Mr. D.C. Mathur, learned senior counsel for petitioners submitted that the Magistrate could not have taken cognizance against the petitioners as according to the report of the Public Analyst itself, the article of food conformed to the standard laid down in the Rules and there was substantial compliance with respect to the declarations to be made on the packet. He pointed out that in Form VI prepared by the Food Inspector, the date June 2008 had been recorded as 'packed on' and the same must be treated to be the date of packaging/manufacture since under the Act no other declaration specific to the date was required to be made.

7. Mr. Mathur also submitted that the consenting authority failed to appreciate that the petitioners were only the retailer who had duly discharged their burden by showing the bill to the Food Inspector which contained the warranty provided by the manufacturer. In this connection, he drew this Court's attention to the letter of the manufacturer as well as Invoice dated 6th June, 2008 filed by the complainant itself along with its complaint. The said letter and invoice are reproduced hereinbelow:-

i) Letter of manufacturer:-

*"M/s. Rajendra Product
B-400, Mahavir Enclave, Part-2
New Delhi-59*

To

*Govt. of Delhi
Director of Prevention of Food Adultration
A-20, Lawrance Road Industrial Area Delhi-35
No. FSDM/LHA/SV/PFA/03/08.13873*

Sub.: Reply of the letter which received by registered post.

Sir,

I A. Rajendran is the sole proprietor of M/S Rajendra Product B-400, Mahavir Enclave Part-2, New Delhi-59. Since this is sole proprietorship business, I conduct day to day working of the business. I am the only incharge of the whole business. Nobody is the Nominee of my business.

Along with the following information I am enclosing the copy of the Tax Invoice no. 858, Book no. 18 dated 06/06/08.

I am also enclosing the copy of MCD licence for sale/storage for Sale of food articles and Sale Tax registration certificate, form-viii.

*For Rajendra Product
Sd/-
Proprietor"*

ii) Invoice dated 6th June, 2008

(logo) RAJENDRA PRODUCT MADRAS MIXTURE & NAMKEEN, B-400, MAHAVIR ENCLAVE, PART-II, NEW DELHI-59, Phone : 25500210 TIN : 07490272627				Book No. 18 S. No.: 858 Date : 06/06/08
To, PANTALOON RETAIL (I) LTD., BIG BAZAR, VIKAS, ... SURYA MANGLAM PLACE, ROHINI, SECTOR-3, ... NEW DELHI				Purchaser's TN No. (if Any) 07420292793
Sl.No.	Description of Goods	Quantity	Value of Unit/Rate	Total Amount
1	Mixture (400 gms)	40 Pcs	30-80	1232-00
2	Mixture (200 gms)	50 Pcs	15-40	770-00
3	Karasev "	30 Pcs	15-40	462-00
4	Ribbon Pakoda "	60 Pcs	15-40	308-00
5	Hasala Bundi "	40 Pcs	15-40	924-00
6	Kurkure Masala Bhujia "	70 Pcs	15-40	616-00
7	Plain Bundi "	40 Pcs	15-40	1078-00
8	Moong Dal "	40 Pcs	15-40	616-00

9	Banana Chips	"	20 Pcs	20-20	808-00	
10	Plain Channa	"	50 Pcs	15-40	770-00	
	<i>Received Qty</i>		<i>440 Pcs.</i>			
Total Sale Value Before adding VAT					7584-00	
Add VAT @ 4.....%					303-00	
(STAMP) FOOD BAZAR A division of Pentaloon Retail (I) Ltd. Security WARD No. 2159 Sd/- 6/06/08			Total Sale Price with VAT		7887-00	
			For RAJENDRA PRODUCT			
				Sd/-		
				Auth. Signatory		

8. Mr. Mathur also submitted that the Magistrate has misconstrued Section 17(1)(a)(ii) of the Act and issued process against the petitioner nos. 2 to 9, the Directors of petitioner no. 1-company. According to him, just because petitioner nos. 2 to 9 were holding the office of Directors, they cannot be said to be involved in day to day administration of a branch at Delhi. He stated that petitioner nos. 2 to 9 were neither involved in day to day administration of branch at Delhi nor they resided in Delhi as is evident from the addresses given in the complaint. In this connection, he relied upon a judgment of the Gujarat High Court in ***Kishore Laxminarayan Biyani Vs. State of Gujarat & Anr, 2008 (4) Crimes 580 (Guj.)*** wherein the High Court quashed proceedings against the petitioner on the ground that prosecution had failed to establish that the petitioner being the director was responsible for day to day business affairs of the company.

9. Mr. Mathur lastly submitted that repeated use of the expression “*as such*” in the complaint showed that the complainant had merely presumed the petitioner nos. 2 to 9 to be guilty because they were holding office of

Directors in petitioner no.1 company. According to him, there was no evidence on record to show that apart from the presumption drawn by the complainant there was any act committed by the petitioner nos. 2 to 9 from which a reasonable inference could be drawn that they are vicariously liable. In this regard, he referred to Supreme Court's judgment in ***Municipal Corporation of Delhi Vs. Ram Kishan Rohatgi and Ors., AIR 1983 SC 67.***

10. On the other hand, Mr. Manoj Ohri, learned APP for State submitted that all submissions advanced by learned senior counsel for the petitioners involved disputed questions of fact which could not be adjudicated upon at the present stage. He pointed out that petitioner no. 1-company had made no nomination at the time the sample was collected by the Food Inspector.

11. Having heard learned counsel for the parties, this Court is of the opinion that it is open to the petitioners to place reliance upon the documents produced by the prosecution even in the absence of their proper proof. This Court in ***Raj Bahadur Vs. State, 1991 JCC 550*** has held as under:-

“22. The first dying declaration stated to have been made by the deceased reduced to writing was by doctor in Ram Manohar Lohia Hospital at the time of her admission. We may note that Dr. A. Mittal had prepared the MLC in respect of Smt. Bimla @ Billo and this doctor has not been examined. Prosecution has not proved MLC even by examining any doctor or a record clerk conversant with the writing and signatures of Dr. Mittal. However, for referring to a document of the prosecution it is open to the accused to place reliance upon that document even in the absence of its proper proof.....”

(emphasis supplied)

12. In view of the admitted Invoice dated 6th June, 2008 issued by the manufacturer, M/s. Rajendra Product along with MCD licence and tax

registration certificate, petitioner no. 1-company would be a retailer in possession of a warranty issued by a manufacturer. In fact, Section 19(2) of the Act states that vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he had purchased the article from any manufacturer, distributor or dealer with a written warranty and that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. Proviso to Section 14 of the Act states that if the vendor produces a bill or invoice in respect of sale of any article of food given by a manufacturer or distributor or dealer, then the same shall constitute a warranty given by such manufacturer or distributor or dealer. Sections 14 and 19(2) of the Act are reproduced hereinbelow:-

“14. Manufacturers, distributors and dealers to give warranty:- No [manufacturer or distributor of, or dealer in,] any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor :

[Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.]

xxxx xxxx xxxx xxxx

19. Defences which may or may not be allowed in prosecutions under this Act:

xxxx xxxx xxxx xxxx

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves:-

(a) that he purchased the article of food –

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.”

13. Consequently, this Court is of the view that petitioners in the present case would be entitled to benefit of Section 19(2) of the Act.

14. As far as the issue of Rule 32(i) is concerned, this Court upon a perusal of Form VI prepared by the Food Inspector is also of the view that the date of packaging was mentioned and the expression “Best Before 2 months” was sufficient to guide the consumer that the article of food was best before two months from the date of packaging, that means June 2008 as given on the packet. In fact, in a similar case of alleged misbranding, this Court in ***S.S. Gokul Krishnan and Ors. Vs. State through Food Inspector (PFA) Government of NCT of Delhi, 2009(1)FAJ 140 (Del.)*** quashed the proceedings under Rule 32(i) of the Rules after observing as under:-

“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."

15. In view of the aforesaid, this Court is of the opinion that the argument of Mr. Mathur with regard to vicarious liability need not be gone into. Accordingly, the present petition is allowed and complaint case being CC No. 1902/2009 titled as "Delhi Administration Vs. Rajesh Dahiya" pending before Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi is quashed qua the present petitioners alone.

MANMOHAN, J

NOVEMBER 01, 2012

js/rn