

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1499 of 2015 ()

CC 28/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-III, THIRUVANANTHAPURAM

REVISION PETITIONER(S)/ACCUSED:

MARTIN JOSEPH, AGED 62 YEARS
MARTIENO BAKERY, T.C-25/1374/20, THAMPANOOR,
THIRUVANANTHAPURAM, RESIDING AT PRASANTHI, 122
CHATHIODE ROAD, MUTTADA PO, THIRUVANANTHAPURAM

BY ADV. SRI.MANU V.

RESPONDENT(S)/STATE AND COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
AT THE HIGH COURT OF KERALA AT ERNAKULAM
 2. K.P. RAMESH
FOOF INSPECTOR, CORPORATION OF THIRUVANANTHAPURAM
THIRUVANANTHAPURAM-695 001

R1 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 17-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

C.R.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1499 of 2015

Dated this the 17th day of December, 2015

ORDER

The revision petitioner is the accused in C.C.No.28 of 2006 on the files of the Court of the Judicial Magistrate of First Class-III, Thiruvananthapuram.

2. The revision petitioner was indicted by the Food Inspector, Thiruvananthapuram Corporation for the offences under Sections 2(i-a) (a) (j) (ix) (k), Section 7 (i) (ii) and Section 16 (1A) (i), 1 (a) (i) of the Prevention of Food Adulteration Act, 1954 and Rules 23 and 29 of the Prevention of Food Adulteration Rules, 1955.

3. Heard both sides.

4. The prosecution allegation can be briefly stated as follows:

The revision petitioner was the salesman of Martino Bakery, Thampanoor, Thiruvananthapuram. On 18.5.2005, at

1.30 p.m., the Food Inspector of Thiruvananthapuram Corporation inspected the said bakery. The Food Inspector purchased three packets of banana chips from the shop. Thereafter, he took samples from the packets. After complying with all legal formalities, one sample was sent to the Public Analyst, Thiruvananthapuram, for analysis. The Public Analyst issued form III report with an opinion that the sample contained synthetic food colour Tartrazine and was therefore adulterated under the Prevention of Food Adulteration Rules, 1955. It was further reported by the Public Analyst that the sample was misbranded under Section 2 (ix) (k) of the Prevention of Food Adulteration Act, 1954, as it was not labelled in accordance with the requirements of the Prevention of Food Adulteration Act and Rules. Thereafter, one sample was sent to the Central Food Laboratory through the court. The Director, Central Food Laboratory, Pune filed form II report, stating that the sample contravened Rule 32 (i) of the Prevention of Food Adulteration Rules, 1955.

5. The complainant and three witnesses were examined

and Exts.P1 to P19 were marked for the prosecution under Section 244 (1) of the Code, after complying with the legal formalities. Thereafter, the court below as per the order impugned decided to frame charge under Section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 r/w Rule 32 (i) of the Prevention of Food Adulteration Rules, 1955. However, the court below discharged the revision petitioner for the other offences.

6. The learned Public Prosecutor has argued that since there are materials before the court to *prima facie* show that there was misbranding of the food item, contravening the provisions of Rule 32 (i) of the Prevention of Food Adulteration Rules, the court below was perfectly correct in ordering to frame charge against the revision petitioner under Rule 32 (i) of the Prevention of Food Adulteration Rules r/w Section 16(1) (a) (i) of the Prevention of Food Adulteration Act and consequently, the order impugned does not warrant any interference by this court.

7. Per Contra, the learned counsel for the revision

petitioner has argued that the label on the food item was perfectly in accordance with the provisions of Rule 32 (i) of the Prevention of Food Adulteration Rules, even though the words used on the label were different from the words mentioned in Rule 32 (i) of the Prevention of Food Adulteration Rules and consequently, no offence under Rule 32 (i) of the Prevention of Food Adulteration Rules r/w Section 16(1)(a)(i) of the Prevention of Food Adulteration Act would be attracted in this case, particularly when the food item was not adulterated and in the said circumstances, the revision petitioner is entitled to be discharged.

8. In this context, it is profitable to understand rule 32 (i) of the rules, which is extracted hereunder:-

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:

- (a) xxxxx
- (b) xxxxx
- (c) xxxxx
- (d) xxxxx

(e) xxxxx

(f) xxxxx

(g) xxxxx

(h) xxxxx

(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 packing"

OR

"Best beforemonths 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)

9. In this case, the label contained the following particulars:

Label: --- Martino Bakery Product - Banana Chips
Batch No.21, Mfg. Date 12-05-03
Assurance 30 days, Net Wt. - 250 gms.
Price Rs.20/- Vegetarian Symbol observed.
Ingredients:- Banana & Salf, Fried in
Sunflower Oil. K.S.R.T.C. Bus Station,
Thampanoor, Thiruvananthapuram.

10. It is alleged that the label did not contain "best

before date” and hence the food item was misbranded, as it contravened Rule 32 (i) of the Prevention of Food Adulteration Rules. Since the item involved in this case was having a short shelf life of less than three months, it was necessary to mention only the date of manufacture on the label. Therefore, the only violation alleged by the Public Analyst was that instead of showing “best before date” on the label, the food item in this case had the label “assurance 30 days”.

11. I may now consider as to whether by writing the words 'assurance 30 days' instead of 'best before date', it would contravene Rule 32 (i) of the Prevention of Food Adulteration Rules, 1955. By using the words “best before date”, the meaning intended to be conveyed is that the consumer must use it before that date. I may now examine whether the public would be misguided by writing the words 'assurance 30 days’ instead of writing 'best before date' on the label. For that purpose, it is necessary to understand the meaning of the word “assurance”. In *P.Ramanatha Aiyar's Advanced Law Lexicon, fourth edition*, the word 'assurance' in contract means

“making secure” or “insure”. In *Oxford Advanced Learner's Dictionary of Current English, Ninth Edition*, the synonym of the word 'assurance' is 'guarantee'. Therefore, even though the terminology found in 'assurance 30 days' and 'best before date', differs in appearance, actually, no consumer would definitely be misguided, if he happens to see the words 'assurance 30 days'. In the said circumstances, even if the words 'best before date' are not there and instead, the words 'assurance 30 days' are there, it will not, in any way mislead the consumer, and hence by no stretch of imagination, it can be said that the product had been misbranded, particularly when the product was not adulterated.

12. In an identical case in *Nehrudasan v. Food Inspector, Madurai Corporation* [2010 (1) FAC 49], a learned Single Judge of the High Court of Madras held that the absence of the words “best before date” and use of words “use within six months from the date of manufacture” would not in any way mislead the consumer and hence, it could not be termed as misbranding of the product.

13. By using the language 'best before date', the meaning to be conveyed is that the consumers must use it before the period mentioned therein and if such a meaning can be conveyed by the language 'assurance 30 days', it cannot be said that there was misbranding of the food item. In this case, it is clear from the words 'assurance 30 days' that there was guarantee for the product only for thirty days. The date of manufacture was also mentioned on the label. Therefore, any consumer, who reads 'assurance 30 days' would be able to know that the product would be guaranteed only for a period of thirty days from the date of manufacture. The mere change of words would in no way, in my view, mislead the usage of the product among the public and hence, it cannot be said that the product had been misbranded. In the case on hand, the absence of the words 'best before date' would not in any way mislead the consumer and hence, by no stretch of imagination, it could be treated as misbranding of the product contravening the provisions of Rule 32 (i) of the Rules, particularly when the food item was not adulterated.

14. In view of the above reasons, this Court is of the considered view that no case against the revision petitioner has been made out which, if unrebutted, would warrant his conviction. Therefore, the revision petitioner is entitled to be discharged.

In the result, this revision petition stands allowed, setting aside the order impugned and the revision petitioner stands discharged.

**Sd/-
B. SUDHEENDRA KUMAR
JUDGE**

Sc/17.01.2016

True Copy

PA to Judge