

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

% *Judgment pronounced on: April 10, 2015*

+ **CrI. M.C. No.3530/2010 & CrI. M.A. No.17304/2010**

VINOD CHAWLA & ORS Petitioners
Through Mr.S.S. Gandhi, Sr. Adv. with
Mr.Arun K. Sharma and
Mr.Gyan Ganwar, Adv.

versus

STATE THR FOOD INSPECTOR GOVERNMENT OF NCT
..... Respondent
Through Mr.Ravi Nayak, APP for the
State

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The petitioners have filed the present petition under Section 482 of the Cr.P.C. for setting aside the order of summoning dated 16th August, 2010 and for quashing of consequent proceedings arising out of complaint case bearing No.128/10 titled as *Food Inspector (Department of PFA) vs. Shri Vinod Chawla & Ors.*, under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act") pending in the Court of Additional Chief Metropolitan Magistrate - II, New Delhi.

2. The petitioner No.1 was the vendor of M/s Advance Bakery, A-8, Shivpuri, Delhi and was looking after the business of the shop. The petitioner No.2 is the proprietor of the M/s Advance Bakery, a proprietorship concern and who is the Incharge and responsible for day to day business of the concern along with petitioner No.1. Petitioner No.3 is the supplier of the sampled product Choco Pie to M/s Advance Bakery, M/s Chawla Traders is a proprietorship concerned and Shri Charanjit Singh is the proprietor of the said firm. Petitioner No.4 Shri Myung Ki Min is the Managing Director of the company M/S Lotte India Corporation Limited who is Petitioner No.5 and imported the sampled article "Choco pie" and supplied the said material to the petitioner No.3.

3. The relevant facts are that Complaint bearing No.128/10 was filed by the respondent/complainant on 16th August, 2010. Subsequently, the trial court took cognizance on the same day by order dated 16th August, 2010, the petitioner along with other accused persons and company namely M/s Lotte India Corporation Limited were summoned to face trial in the above noted case. It was alleged in the complaint that on 17th April, 2008 at about 7.30 P.M., Food Inspector V.P.S. Chaudhary purchased a sample of "Choco Pie" a food article for analysis from petitioner No.1 where the said article was stored for sale and petitioner No.1 was found conducting the business of the said food article at the time of sampling. The said sample was taken under the supervision of Shri Radh Charan, SDM/LHA.

4. One counter part of the said sample was sent to Public Analyst, Delhi and remaining two counterparts of the said sample were deposited with the SDM/LHA. The said sample, as per report dated 14th May, 2008, was found to be not conforming to the standard laid down in the Rules of the Act. However, the sample was stated by the Public Analyst to be misbranded because it was without declaration of "Batch No. and "Best Before date" on the label i.e. the label declared date of manufacture but "Best Before date" was not mentioned on the label. It was therefore alleged that the aforesaid label declaration gave a misleading statement which amounted to misbranded product.

5. The Department prosecuted the following accused persons (including the petitioner No.1 herein) namely 1) Shri Vinod Chawla(vendor) 2) Shri Desraj (proprietor of M/s Advance Bakery) 3) M/s Charanjit Singh, M/S Chawla Traders(supplier of sampled article to M/S Advance Bakery) 4) Shri Myung Ki Min, Managing Director of M/s Lotte India Corporation Ltd.(importer of Choco Pie) 5) M/s Lotte India Corporation Limited (supplier of Choco Pie).

6. It is pleaded by the petitioners that the impugned order has been passed without any valid reason as while issuing the process against the petitioners, the trial court completely overlooked the fact that mere reading of the complaint would show that complainant has not produced any document to establish that the "misbranding of the product in question" occurred on account of any act or omission on part of the

petitioner. Thus in absence of any incriminating material against the petitioner, the trial court ought not to have proceeded against them on the basis of some erroneous presumption which is not even borne out from the records. There is no definition of the expression "batch number" or "code number" either in the Act or the Rules of the Act. It is also admitted that even assuming that the "batch" or "code number" has to be given, there is no further obligation to specify the label the date of packing and manufacture of the article of food or the period within which the articles of food has to be utilised, used and consumed. In the absence of any obligation to give the particulars mentioned above, the purchaser or public will not be able to find out even the freshness of the contents of the container. Therefore, merely giving the artificial "batch number" or "code number" will not be of any use to the public or to the purchaser.

7. It is stated that the date of manufacture has already been mentioned in the label as 22nd January, 2008. Therefore, if a product is manufactured on the first day of January, 2008, the "best before" period will enure/last till the date of expiry which has already been mentioned on the pack. Therefore, it does not matter if a manufactured product is packed a day or a couple of days after its manufacture because it is only month of manufacture or packing from which the best consumption period is to be reckoned with. Mr.S.S. Gandhi, learned Senior counsel for the petitioners has shown the said label during the course of hearing and in support of his submissions on merit, he referred few decisions.

8. It is submitted by Mr.Gandhi, learned Senior counsel that the continuation of the criminal proceedings is likely to take many years and it would be merely a torture to the petitioners. The offence at all, if committed, is technical in nature for which the petitioners should not be put to rigmarole for a long period of time and procrastinated trial.

9. The arguments of Mr.Ravi Nayak, learned APP is that the declaration of “Best Before” and “Batch Number” is not concerned and it is not understood how the giving of the “Batch No.” or the “Code No.” without giving the date of manufacture when the article is in a container would prevent the purchaser being deceived or mislead as there is a statutory provision in regard to disclosing the “Batch No.” and “Best Before date” in a particular descend in the Statute of the Act. His further submission is that a Statute is a written legislation and the form of “Batch No.” and “Best Before” and the manner it is to be declared in the label of a food article has been specified under the Act which is being duly legislated in the Parliament.

10. Mr. Nayak, learned APP argues that there is no force in the submission of the petitioners that the non-declaration of “Best Before” and “Batch No.” will mislead a purchaser but the only question to be considered is the non-compliance of the statutory provisions and the law prescribed under the Act which is mandatory for every packaged food item when meant for sale as Section 19 of the Act defines that the purchaser having purchased any article was not prejudiced by the sale is no defence. Thus the

plea of the petitioners taken for quashing cannot be a defence at this stage of summoning.

11. Learned APP has referred the case of ***Bharat Arora Vs. State***, 83 (2000) DLT 122 wherein the judgment of Supreme Court in ***Dwarka Nath and another Vs. The Municipal Corporation of Delhi***, (1971) 2 SCC 314 has been discussed and distinguished in the facts and circumstances of the present case. Therefore, according to him none of the decisions referred by Mr. Gandhi, learned Senior counsel is applicable in the matter. The facts of the present case to some extent are similar to the facts of ***Bharat Arora*** (supra) wherein the decision of ***Dwarka Nath*** (supra) was followed.

12. It is argued by Mr. Nayak that the said decision of Dwarka Nath (supra) has come in the year 1971 pronounced by Supreme Court on 23rd April, 1971. On the date on which this judgement was delivered, there was no requirement on the label to give the month, year in which the commodity is manufactured or packed. The same was, for the first time, inserted vide Notification No. GSE-243 dated 13th January, 1980. Thereafter, again the said whole Rule-32 was substituted vide GSE-422(E) dated 27th April, 1987 w.e.f. 29th April, 1989. After these notifications, it became mandatory for the manufacturer or the packaging unit to provide the date of manufacturing or packaging and also the time within which the said product is to be consumed.

By way of these notifications, the grounds on which the judgement of ***Dwarka Nath*** case (supra) was passed, was

rectified by the concerned Health Authority. The said judgement had stated that the batch number/lot number/code number is not required, at that point of time, as there was no obligation under the law to disclose on label, the date of manufacturing/packaging or time within which the said food product is to be consumed.

13. Mr.Nayak, learned APP says that said judgement was a good law at that relevant point of time as there was aforesaid legal vacuum which was later on removed by the notification already referred. So, on account of these reasoning, the law laid down by **Dwarka Nath** (supra) is not at all applicable in the present circumstances. Again in **Bharat Arora** (supra), it is clearly held that it was simply a case of non-furnishing of some more particulars, i.e. the number of the premises and the locality or the area where the premises was situated, whereas in the present case, it is not so. The offence relating to violation of Rule-32 (f) of the Act prima facie has been committed, the petition has to be rejected as that was a case of multi piece packaged and the present case is not a multi packaged case.

14. It is also argued by him that in summon case, accused cannot indirectly pray for discharge by a remote way of quashing. He has referred the following cases :

i) In the case of **Raj Nath Gupta & Ors Vs. State and Anr.**, 81 (1999) DLT 805, it was observed as under :

“Section 251 Cr. P.C. provides that when in a summon case, the accused appears or brought before the Magistrate, the particular of offence of which is accused shall be stated to him and he shall be asked if he pleads

guilty or has any defence to make. This being a case of summon trial of label violations, there is no provision in Chapter XX of the Code for discharge of the accused.”

ii) In Crl. M.C. No.458/2009 titled as **Sarabjeet and Ors. vs. State**, the Court has observed in its judgement dated 11th January, 2010 that the procedure for trial of summons cases, which has been prescribed in Chapter XX of the Code provides in Section 251, that when the accused appears or is brought before the Magistrate, the particulars of the offence of which is accused shall be stated to him and shall be asked if he pleads guilty or has any defence to make and it is not necessary to frame a formal charge. Unlike Section 239 of the Code, Chapter XX does not envisage discharge of the accused at this stage.

15. The present case is still at the stage of appearance of accused persons. That on perusal of notice, in Form VI prepared at the time of taking sample, it would reveal the contents of the label as they appeared on the sampled product.

16. Section 2(ix) (K) of the Act reads as follows :-

"(ix) misbranded" - as article of food shall be deemed to be misbranded-

(a) to (g)

(h) to (j).....

(k) if it is not labelled in accordance with the requirements of this Act or Rules made thereunder".

17. Rules 32(e) and (i) of the Act lays down the requirements to declare the lot/batch/code identification and "Best Before period". The said provisions reads as follows:-

"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) to (d)

(e) a distinctive batch number or lot number or code number, either in numerals or alphabets or in combination, the numerals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words "Batch No" or Batch or "Lot No", or "Lot" or any distinguishing prefix.

Provided that in case of canned food, the batch number may be given at the bottom, or on the lid of the container, but the words, "Batch No." given at the bottom or on the lid, shall appear on the body of the container.

(g) to (h)....

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

"BEST BEFOREMONTHS AND YEAR"

OR

"BEST BEFOREMONTHS FROM PACKAGING"

OR

"BEST BEFOREMONTHS FROM MANUFACTURE"

OR

"BEST BEFORE UPTO MONTHS AND YEAR

OR

"BEST BEFORE WITHIN.....MONTHS

FROM THE DATE OF PACKAGING/MANUFACTURE

for the period upto and inclusive
of 1st September, 2001

18. As per provision under Section 13(2) of the Act, it is for accused persons to prove their innocence and defence by sending the second counterpart of the samples to a higher expert, i.e. Director of Central Food Laboratory and without that there is no other statutory provision to prove the innocence except on merit.

19. No doubt it is settled law that the inherent powers should be sparingly used and not in each and every case that to where there is admittedly a violation of the rules and statute of the Act.

20. As per the Public Analyst Report, the sample was found misbranded for non-declaration of “Batch No./Lot No.” and “Best Before” as per the Rule 32(e) and (i) of the Act as enshrined and defined there in the Act. There is also no dispute that where there is statutory requirement of mentioning of the “Batch Number” and “Best Before” in a particular mode and when these rules have not been declared, void or unconstitutional or illegal before any court of law, then the petitioners are required to follow them.

21. In the present case, it is not in dispute that the month of manufacture is clearly mentioned as 22nd January, 2008. The period will last till the date of expiry which has already been mentioned on the pack.

22. The argument of the petitioners is that what was the “best before” date of manufacture of Choco Pie and this omission, according to the prosecution, made the sample misbranded despite the fact that the date and month of manufacture had been

mentioned as 22nd January, 2008 and date of expiry was also mentioned. When Date of expiry was mentioned then there is no need to mention about “best before” because the purchaser will after taking a look on date of expiry buy the said product. There is a force in the submission of the petitioner but at the same time the submissions of the learned APP for the State are also correct that the petitioners are supposed to follow the statutory law and rules and its violation cannot be made a valid defence which is clear from Rule-32, Explanation IV and Section 2 (ix) of the Act which defines misbranding from (a) to (k). Hence, the Food Inspector is not supposed to establish any relation of giving batch number and code number. Since, it is a Special Act, the provisions of the said Act are to be complied with strictly. No different interpretation can be given by the Court.

23. In the present case, there was a clear declaration of “Best Before” and “Batch Number” on the packaging. The said aspect has been discussed and decided by various Courts and benefit of doubt was given to the accused parties. The said judgments are referred as under:-

- i) In the case of ***S.S.Gokul Krishnan & Ors. Vs State through Food Inspector, Govt, of NCT of Delhi***, 2009 CriLJ 1386, this Court had held that since the month and year of manufacture of food article is clearly disclosed on the sample pack, it cannot be said that the consumer would be misled from the terms “best before”. The consumer under these

circumstances would be clear in his mind to consider best before from the date of manufacturing. As per the information disclosed on the packet, it cannot be said that there is misbranding only because the best before date of packaging has not been disclosed especially when the month and year of manufacturing is specifically disclosed.

- ii) In the case of ***Dwarka Nath and another Vs. The Municipal Corporation of Delhi***, (supra) wherein in paras 20 & 21 held as under:-

“20. It is difficult for us to appreciate how the giving the batch number or the code number alone without any further particulars such as date of manufacture of the article of food and the period within which the said article has to be utilized or used or consumed and the quantity of the article in a container, will prevent the public or the purchaser being deceived or misled as to the character, quality or quantity of the article. No attempt has been made by the Respondent to establish any relation between the giving of a batch number or the code number with the public or purchaser being prevented from being deceived or misled in respect of the matters referred to in clause (d). We are not able find any rational or even a remote connection between the batch number or code number artificially given by a packer and the public or the purchaser being prevented from being deceived or misled as to the character, quality or quantity of the article, contained in a sealed tin.”

21. There is no definition of the expression “batch number” or “Code number” either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within

which the article of food has to be utilised, used or consumed..... Therefore, it follows that merely giving the artificial batch number or code number will not be of any use to the public or purchaser. In view of all these circumstances we are of the opinion that Rule 32(e) is beyond the rule making power even under Section 23(1) (d) of the Act. The appellants could not be convicted for any violation of clause (e) of Rule 32 as the said provision, as pointed out above is invalid."

24. It is also a matter of fact that the Government inserted the requirement on the label to give the month and year in which the commodity was manufactured or packed vide Notification No.GSE-243 dated 13th January, 1980. Thereafter, again the said whole Rule-32 was substituted vide GSE-422(E) dated 27th April, 1987 w.e.f. 29th April, 1989. I have been informed by the learned counsel for the parties that later on, the said notification has been withdrawn by the Government. The implication of the said notification has not been discussed in the case of **Dwarka Nath** (supra). In case, the terms of said notification is applied in the facts of the present case strictly, then it appears that there may be violation of the provision, but the said notification has been withdrawn and even despite of notification, in the similar proceedings, the proceedings were quashed in the case of **Prince Gutka Ltd. Vs State and Anr.** 78 (1999) DLT 693. The said judgment is binding upon this Court and there is also a force in the explanation given by the petitioners that the petitioners were not aware about the said notification. The petitioners in the present

case are given benefit of doubt of the same who are now strictly complying with all the provisions of the Act.

25. For the aforesaid reasons and under the peculiar facts and circumstances of this case, no useful purpose will be served if the proceedings may continue before the trial court for the years together.

26. Although, this Court is agreeable that in normal case when the summons are issued, it would be appropriate for the accused parties to go to the trial court and raise all their contentions, but in the present case, in view of the aforesaid facts and circumstances of the case, the order of summoning dated 16th August, 2010 and the consequent proceedings arising out of complaint case bearing No.128/10 titled as *Food Inspector (Department of PFA) vs. Shri Vinod Chawla & Ors.*, under Section 7 read with Section 16 of the Act are quashed, subject to the petitioners' depositing of Rs.50,000/- as cost with the Prime Minister's National Relief Fund within four weeks from today.

27. The present petition is accordingly disposed of. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

APRIL 10, 2015