

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 18 OF 2004

Suresh Narayanan,
Age: 51 years, Occ: Branch Manager and
nominee of the erstwhile company
M/s. Brooke Bond Lipton India Limited,
having its office at 9, Shakespeare
Sarani, Kolkatta 700 071.

...Petitioner

versus

1. The State of Maharashtra
2. Y.T. Daunde, Food Inspector,
Office of the Asstt. Commissioner,
Food & Drug Administration
(Mah. State)
Dr. Korde Hospital Building
1st Floor, Jathar Peth Chowk,
Akola 444001.

...Respondents

.....
Mr. Joydeep Chatterji, Advocate for petitioner
Ms. R.P. Gour, A.P.P. for respondents
.....

CORAM : N.W. SAMBRE, J.

DATE : 28th APRIL, 2016

ORAL JUDGMENT :

By way of present petition, the petitioner has questioned the legality and validity of the tenability of Regular Criminal Case No. 207 of 2000 initiated against him and the order dated 03/06/2003 and 17/07/2003 passed by learned Judicial Magistrate, First Class, Kannad on the above referred complaint taking cognizance which

was preferred for contravening provisions of Prevention of Food Adulteration Act, 1954 and rules framed thereunder.

2. Present petitioner was added as accused No. 3 in the aforesaid complaint, wherein charge alleged against the present petitioner is contravention of Section 7(v) read with Rule 42(A) punishable under Section 16(1)(a)(ii) and Section 7 (v) read with Rule 42(A) punishable under Section 16(1) (a)(ii) and Section 17 of the Prevention of Food Adulteration Act, 1954 and Rules thereunder. The nature of allegation against the petitioner was that accused No. 1 is the vendor and proprietor of the firm M/s. Rajendra Kirana at Post Chikalthan, Taluka Kannad, District Aurangabad from whom the sample of Coffee (Dilkhush Brooke Bond) was drawn by the complainant. Accused No. 2 is the salesman from M/s. Brooke Bond India Limited, 9, Shakespeare Sarani, Calcutta-700071 from whom the said food article was purchased by accused No. 1. Accused No. 3 is the nominee and branch manager at Bombay of above said company who is responsible of manufacturing, distributing for sale and selling food article Coffee. Accused No. 4 is the firm who manufacture, distribute the said food article.

3. Food Inspector of Food and Drug Administration, Aurangabad vide Complaint dated 05/02/1997 initiated against the present petitioner and other three accused prayed that process be

issued against the accused persons and they be dealt with in accordance with law. The main crux of the matter as against the present petitioner is violation of provisions of Rule 42(A) of the rules framed under the Act.

4. It is then required to be noted that the public analyst submitted report pursuant to sample drawn by Food Inspector on 21/04/1994 adverse to the interest of the present petitioner with following observations:-

Microscopic Examination :- Coffee + Chicory structures observed and he is of the opinion that the sample is a mixture of Coffee and Chicory, however the name of article viz. Coffee blended with chicory is not prominent on the label as against the word "Dilkhush", so also the nature of article and its contents are mentioned in different places and is not in accordance as per rule 42(A) of the Prevention of Adulteration Rules, 1955.

5. Learned Magistrate, before whom the complaint was initiated, passed an order on 03/06/2003 and 17/07/2003 rejecting the application moved by the petitioner for conducting proceedings against him through his lawyer and seeking personal exemption. Learned Magistrate then issued non bailable warrant against the petitioner.

6. Heard Mr. Joydeep Chatterji, learned Counsel for the petitioner. According to him, perusal of the complaint as is initiated against the present petitioner even if taken to be correct to its face value, still no offence could be made out against the present petitioner. Mr. Chatterji, learned Counsel for the petitioner would then urge that statute does not prescribe as to mode and manner in which the wording as regards contents will be displayed on label, so also percentage of contents thereof. So as to substantiate his contention, he has relied upon the judgment of this Court in ***Criminal Writ Petition No. 362 of 2000 (Suresh Narayanan vs. The State of Maharashtra & anr)*** delivered on 18/12/2000 covering the entire controversy as is sought to be canvassed against the present petitioner through the complaint in question. He would then submit that the complaint, as such, is required to be quashed and set aside.

7. Ms. Gour, learned A.P.P. opposed the petition on the ground that the judgment as is sought to be raised in the present petition could be gone into at appropriate stage and this Court, having regard to the nature of offence alleged, which is against the public interest, should be slow in interfering in favour of the petitioner. She would then submit that the proceedings are pending since 1997 and it will be in the interest of justice, to direct the Magistrate to decide the proceedings itself on merit. According to her, the petition

lacks merit and be dismissed.

8. From the record, what is required to be noted is, charge that has been alleged against the petitioner is, contravention of Section 7(v) read with Rule 42(A) punishable under Section 16(1)(a) (ii) and Section 17 of the Food Adulteration Act, 1954 and rules framed thereunder. It is then required to be noted that the sample in question was drawn from accused No.1 on 16/03/1994 and the proceedings were initiated on 05/02/1997 i.e. after three years. What has been alleged as against present petitioner is that the petitioner is nominee and branch manager of accused No. 4 Brooke Bond India Limited, a company responsible for manufacturing, distributing and for sale and consumption of food article Coffee. It is claimed that accused No. 4 is a company, who manufactures, distributes the said food article.

9. It is then claimed that the sample Coffee (Dilkhush Brooke Bond) is a food article and contravention as was noticed was that the contents of sample drawn from the custody of accused No.1 manufactured for sale and consumption by accused No.4 and accused No. 3 being its nominee are responsible for offence in question. It is then claimed that the sample is mixture of Coffee, however, name of article (Coffee blended with Chicory) is not

prominently displayed on the label as against words "Dilkhush". It is also claimed that the nature of article and its contains are mentioned at different places and there is violation of Rule 42(A) of the Food Adulteration Rules, 1955.

10. It is then required to be noted that to evaluate whether there is violation of Rule 42(A), the express provision mentioned in the said rule is required to be analyzed and it is to be noted that the said rule does not require to display any information i.e. part dimension, measurement in comparison with size of the packet, vide Rule 36, the same was inserted from 09/07/1998 and on the date of drawing of sample, no such specification was provided under the rules.

11. In my opinion, the issue is squarely covered by the judgment of this Court in ***Criminal Writ Petition No. 362 of 2000 (Suresh Narayanan vs. The State of Maharashtra & anr)*** cited supra. Paragraphs-8, 11, 12 and 16 of the said judgment reads thus :

"8. Perusal of the complaint discloses the allegations against the accused are to the effect that the declaration on the wrapper of the product 'coffee blended, with chicory' does not appear prominently against the name of the product "Dilkhush" as also that the nature and contents of

the product are mentioned at different places and are not in accordance with the requirement of the provisions of law contained in Rule 42(A) of the Rules of 1955. Apparently the said allegations in the complaint are based on the report dated 26.6.1995 of the Public Analyst which has been reproduced in the complaint itself and the same read thus:

“On the label of the sample bearing code No. ABVD/22/N & Sr. No. 3100 of the L.(H) A the name of article viz. Coffee blended with chicory is not prominent as against the word “Dilkhush”. So also the nature of articles and its contents are mentioned at different places and is not in accordance as per rule No. 41(A) of the P.F.A. Rules 1955”. It cannot be disputed that the complaint regarding commission of offence under the said Act and the Rules made thereunder is entirely based on the said observation in the Public Analyst's report quoted hereinabove. Undisputedly the learned Magistrate issued process under Section 16(1)(a)(ii) read with Section 17 of the said Act.”

“11. Perusal of the Rule 42(A) discloses that the same requires in cases of coffee chicory mixture to disclose the percentage of coffee as well as that of chicory in the mixture. Sub-clause (iv) thereof requires that every package containing instant coffee-chicory mixture shall have affixed to it at a label with a printed declaration thereon regarding percentage of the coffee and chicory and the fact that the mixture is made from blends of coffee and chicory. Such a declaration is required to be made on the packet containing the instant coffee and chicory mixture.

Rule 42, however do not require display of the such information with particular dimensions or measurement in comparison with the size of the packet. It is only recently that a provision for specific size and measurement has been made in Rule 36 of the said rules which came into force with effect from 9th July, 1998. Undisputedly the purchase of the product from the petitioner by the Inspector was on 15th May 1995 and the report of the Public Analyst is dated 26th June 1995. In other words, the requirement of the displaying of information in the form of labels with particular size, measurement and dimensions was not there at the time when the product was either purchased by the food inspector or when the report was made by the Public Analyst. In the absence of size, measurement and dimensions of declaration on the wrapper being specified, can be said that the provisions regarding forms of label in Rule 42 were mandatory in nature and if so to what extent? There cannot be any doubt that the provisions regarding disclosure of the fact of mixture being of coffee blended with chicory and of the percentage of both the constituents in the mixture are mandatory in nature. Apparently it is with the intention of avoiding misbranding of the product and thereby avoiding the consumer from being cheated and at the same time being made aware of the contents of the product. Same cannot be said about the diagrammatic representation of such declaration in the absence of specific rules in that regard. Besides, the allegation that the nature of the article and its contents were mentioned at different places and are not in accordance with as per Rules 42(A) is neither here nor there. It cannot be forgotten that in a criminal prosecution it is necessary for

the prosecution to give clear idea about the accusation which the accused has to face and the vague allegations of violation of any rule cannot amount to constitute an offence. In other words, as rightly submitted by the learned Advocate for the petitioner the entire accusation in the complaint being that the mixture is of coffee blended with chicory is not prominent as against the word "Dilkhush" and since Rule 42(A) on the face of it nowhere required in the year 1995 to display the said information with particular diagram with specific dimensions and measurements, there was apparently no offence disclosed to have been committed by the petitioner either relating to the labels or wrapper as is otherwise alleged in the said report or in the complaint filed by the respondent."

"12. Perusal of the sanction granted for prosecution clearly discloses that the same has been granted solely on the basis of the Public Analyst's report. The entire sanction being based on the Public Analyst's report which itself does not disclose any offence under any of the provisions of the said Act, the same is ex-facie bad-in-law. That apart, the sanction apparently has been granted for prosecution of the petitioner for contravention of the provisions of Section 7(v) read with Rule 42(A) punishable under Section 16(1) (a)(ii) and Section 17 of the Prevention of Food Adulteration Act, 1954. Clause (i) of Section 7 of the said Act refers to any adulterated food, clause (ii) refers to any misbranded food, clause (iii) refers to any article of food for the sale of which a licence is prescribed except in accordance with the conditions or the licence and clause (iv) refers to any article of food the sale of which is for the time being prohibited by

the Food (Health) Authority in the interest of public health. Clause (v) provides that no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any article of food in contravention of any other provision of the Act or of any rule made thereunder. Obviously, clause (v) of Section 7 refers to any article of food dealt with in contravention of any other provision of the Act to mean that the provisions other than which are referable to clauses (i) to (iv) of the said section. In other words, in case of misbranding of any food, certainly the prosecution would be for violation of the provisions contained in Section 7(ii). Likewise, Section 16(1)(a)(ii) provides that subject to the provisions of sub-section (1-A) if any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores or distributes any article of food other than an article of food referred to in sub-clause (I) in contravention of any of the provisions of this Act or of an rule made thereunder, he shall, in addition to the penalty to which he may be liable under the provisions of Section 6 be punishable with imprisonment and fine. This clearly discloses that the penalty under Section 16(1)(a)(ii) is for contravention of any provisions of the Act or the Rules in relation to any article of food other than those referred to in Sub-cause (i). Sub-clause (i) refers to food which is adulterated within the meaning of sub-clause (m) of the clause (i-a) of Section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of the Act or any rule made thereunder or by an order of the Food (Health) Authority. Section 2(ix)((k) defines misbranded articles to mean an article of food if it is

not labels in accordance with the requirement of the Act or rules made thereunder. In other words, as is held hereinabove, considering the accusation in the complaint, based on the Public Analyst's report, the same being in the nature of failure to have the label in accordance with the requirement of Rule 42(A), the penalty could be under Section 16(1)(a)(i). Of course, mere mention of wrong section or rule may not constitute a major lapse on the part of the prosecution, however, one cannot forget while dealing with the matter of sanction, it is necessary for the sanctioning authority to analyse the materials placed before it in order to find out whether the alleged offence is disclosed therefrom and to satisfy itself about the sufficiency of material to warrant prosecution in the facts and circumstances of the case before granting the sanction. Even wrong mentioning of provisions of the Act and the Rules in the sanction in the facts and circumstances of the case in hand, however, discloses non application of mind on the part of the sanctioning authority and that itself vitiates the sanction granted by the authority."

"16. In the result, therefore, the petition succeeds and the impugned order is hereby quashed and set aside and the proceedings against the petitioner in Regular Criminal Case No. 84/97 on the file of the Judicial Magistrate, First Class, Dharmabad are hereby quashed and set aside. In view of quashing of the said proceedings against the petitioner on the ground that the complaint absolutely does not make out commission

of any offence and the allegations therein do not disclose any offence under any of the provisions of the said Act and the Rules made thereunder, the proceedings, are also liable to be quashed against all other accused in the said case applying the law laid down by the Apex Court in the matter of Ashok Chaturvedi and others v. Shitu H. Chanchani and another reported in (1998) 7 SCC 698. Consequently the entire proceedings in the said Regular Criminal Case No. 84/97 on the file of the Judicial Magistrate, First Class, Dharmabad stand quashed. Rule is made absolute in above terms."

12. In view of above, in my opinion, the contention as is canvassed by Mr. Chatterji, learned Counsel for the petitioner that the complaint being vague in nature and since the statute does not provide for violation as is claimed to be an offence, is not sustainable/maintainable, and is liable to be quashed and is required to be accepted.

13. In view thereof, writ petition stands allowed in terms of prayer clause (A) and (B). Rule made absolute in above terms.

[N.W. SAMBRE, J.]