

CRM-M No.19228 of 2014 (O&M)

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**252 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M No.19228 of 2014 (O&M)**

**Date of decision : 21.11.2016**

Hindustan Unilever Limited

..... Petitioner

versus

State of Punjab

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

Present : Mr. R.S.Rai, Senior Advocate with  
Mr. Ashim Aggarwal, Advocate  
for the petitioner.

Mr.Ashish Sanghi, DAG, Punjab.

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**AJAY TEWARI, J. (Oral)**

This petition has been filed for quashing of complaint No.PFA/1958 dated 28.02.2012 filed under Section 7/16 of the Prevention of Food Adulteration Act, 1954 and under rule 50 of the Prevention of Food Adulteration Rules, 1955 and summoning order dated 28.02.2012 at the behest of the present petitioner.

The petitioner is a manufacturer and distributor of Kwality Frozen Desserts and those were being offered for sale by a retailer. On 28.05.2011 the Food Inspector raided the premises and drew samples of the frozen desserts and the Public Analyst reported that the sample contained only 3.6% fat as opposed to the requirement of 10% fat. Moreover the retailer did not have a license to sell the frozen desserts and on these two grounds the complaint was filed against the petitioner and the retailer.

The precise contention of learned counsel for the petitioner is that on 28.05.2011 the extant parameters were satisfied by the product of the petitioner and the requirement of having 10% fat content actually came into force much later. As per the reply also the revised parameters came into force only in the year 2012.

Learned counsel for the petitioner has relied upon a decision of the High Court of Allahabad passed in ***Ajit Singh and others Vs. State of U.P. and others*** decided on 03.10.2016, wherein it has been held as follows :-

23. *Thus, there is absolutely no denial of the specific stand taken by the learned counsel for the applicants by the opposite parties in the counter affidavit that neither at the time when the product was seized and sent for analysis nor when the public analyst submitted its report, there existed any such rule prescribing standards for Frozen desert.*

24. *Having heard learned counsel for the parties on their rival submissions and perusing the record and the relevant rules, it is clearly evident that no such rule fixing any prescribed standard for Frozen dessert was in force at the time of analysis of the seized product i.e. Kwaliti Walls Frozen desert by the public analyst. Therefore, in the absence of any prescribed standard, it cannot be held that the seized product was substandard or adulterated.*

25. *The similar circumstances arose before the Hon'ble Apex Court in Hindustan Lever Ltd. Vs. Food Inspector, (2006 ) 1 SCC (Cri) 288, where the criminal proceedings were initiated on a complaint filed by the Food Inspector against the appellants after collecting the skimmed milk powder from a grocery shop alleging that the sample does not conform to the standard prescribed for 'Skimmed Milk Powder' under the Food Adulteration Rules. However, later on it was found that*

*on the date when the public analyst submitted its report, no standards were prescribed for "Skimmed Milk Powder", the Apex Court held that the prosecution of the appellant was not sustainable.*

26. *Similarly, in the case of M.V. Krishnan Nambissan Vs. State of Kerala, AIR 1966 SC 1676, the Hon'ble Apex Court held that if there was no standard of contents of buttermilk specified, it cannot be said that the appellant has committed any offence under Section 16 (1) (a) (i) and Section 7 of the Act.*

27. *Likewise, in the case of Harish Kumar Vs. State of Punjab, 1979 (2) FAC 105 (P&H), a sample of palm oil was purchased but at the time of purchase of the sample, no standard for palm oil had been fixed in the Act and the rules. The ld. judge of Punjab High Court held that as no standard of the palm oil had been prescribed under the Act and Rules, therefore, the seller could not be convicted. Accordingly, the proceedings pending against the seller before the trial court were quashed under Section 482 Cr.P.C.*

28. *In the case of "Premier Vegetable Products Ltd. Vs. State of U.P. 1984 (1) FAC 138 (Allahabad)" also a sample of refined palm oil had been purchased at a time when no standard was prescribed for palm oil under the Act or Rules. The learned single judge of the Allahabad High Court quashed the proceedings which had been started against the seller in the court of the Magistrate, by invoking the power under section 482 Cr.P.C, on the ground that the proceedings could not be continued because no standard for refined palm oil were fixed and it was extremely difficult and impossible to hold in such a case whether there is any deficiency in the sample of such an oil. It was further held that in these circumstances no offence could be said to have been committed by the petitioner."*

Learned Deputy Advocate General has not been able to cite any contrary judgment.

In view of the aforesaid precedents the present petition is allowed and the complaint and the charge-sheet is quashed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

**21.11.2016**  
*Pooja sharma-I*

( **AJAY TEWARI** )  
**JUDGE**

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable :      | Yes/No |