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

+ **CRL.M.C. 1141/2017**

DINESH KUMAR & ANR.

..... Petitioner

Through: Mr. Avinash Trivedi, Advocate with
petitioner in person.

versus

DELHI ADMINISTRATION THROUGH FOOD INSPECTOR

..... Respondent

Through: Ms. Aashaa Tiwari, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

31.07.2017

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1. By the present petition under Section 482 of Cr. P.C., the petitioners seek setting aside of the order dated 22.08.2016 of the Trial Court in Complaint Case No. 106/2008 under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter, referred to as the "PFA Act") whereby, the charges were amended.
2. The brief facts of the case are that on 29.05.2007, a food inspector purchased a sample of Vanilla Splash for analysis from a vendor namely Sh. Arun Kumar. The sample showed that the product was misbranded as the colour was misleading and the language of the declaration of the 'Best Before' date was not as per Rule 32(1) of the Prevention of Food Adulteration Rules (hereinafter referred to as the "PFA Rules"). Thereafter on 22.07.2008, a complaint was filed in the Trial Court under Section 16 of the PFA Act against the petitioner, wherein it was stated that the accused persons had violated the provisions of Section 2 (ix)(g) & (k) of the PFA

Act and Rules 37 & 32(i) of the PFA Rules and therefore punishable under Section 16(1A) read with Section 7 of the PFA Act. Consequently, the Trial Court vide order dated 20.11.2009 framed notices under Section 2 (ix)(g) and (k) of the Act and provisions of “**Rules 32 and 32(1) of the PFA Rules**”.

3. The matter was at the stage of recording defence evidence when the respondent filed an application under Section 216 Cr.P.C., for amendment of charge against the petitioner from violation of “**Rules 32 and 32(1) of the PFA Rules**” to violation of “**Rules 37 and 32(1) of the PFA Rules**”. The aforementioned application was allowed by the Trial Court vide the order dated 22.08.2016 and the charge was amended.

4. Mr. Avinash Trivedi, learned counsel for the petitioner contended that the amendment in charge to add Rule 37 vide order dated 22.08.2016, has caused serious prejudice to the petitioner as the notice under “Rules 32 and 32(1)” of the PFA Rules was framed after due consideration and application of mind and as per the policy of the Delhi Government bearing No. F6(228)/85/ENF/PFA, at most, only a written warning could be issued to the petitioner, being his first violation under Rule 32 of the PFA Rules but a violation under Rule 37 would entail a punishment of imprisonment for a term not less than six months which may extend to three years and with fine of not less than one thousand rupees. To substantiate this argument, he relied upon the judgment of this Court in the case titled “***S.S. Gokul Krishan & ors. Vs State Thr. Food Inspector Govt. Of N.C.T. Of Delhi***” reported as **157 (2009) DLT 456**.

5. Moreover, the counsel for the petitioners contended that the application under Section 216 of the Cr.P.C. suffered from inordinate delay

as the impugned notice dated 20.11.2009 was never challenged in the past seven years and had attained finality. He added that there is no explanation as to why there was a delay of about seven years in challenging the notice dated 20.11.2009.

6. On the converse, Ms. Aashaa Tiwari, learned APP appearing for the State refuted the contentions of the petitioners and contended that the complaint was filed against the accused persons for violation of “**Rule 37 and Rule 32(i)**” of the PFA Rules and it is merely an oversight and a typographical error that the notice only mentioned violation of “**Rule 32 and Rule 32(i)**”. Therefore, the charge was amended in accordance with law.

7. I have heard the arguments of the counsel appearing for both the parties and have perused the matter available on record.

8. At the outset, the complaint dated 22.07.2008 has been perused. It is evident that the food inspector had filed the original complaint against the petitioner for violation of the provisions of Section 2(ix)(g) and (k) of the PFA Act and the provisions of Rules 37 and 32(i) of the PFA Rules. The relevant part of the said complaint is produced as under:-

“4. That is in view of the above facts accused person as mentioned above has violated the provisions of section 2 (IX) (g) & (k) of PFA Act and also violated the provision of rule 37 & 32(i) of the PFA Rules 1955 and therefore punishable under section 16(1A) of PFA Act 1954 read with Sec. 7 of the PFA Act.”

9. It is also relevant to reproduce the notice dated 20.11.2009, whereby, charges under “**Rule 32 and Rule 32(i)**” of the PFA Rules were framed. The relevant portion of the said notice is recapitulated as under:-

“That sh. Arun kumar S/o Sh. Niranjan Dutt on 29.05.2007 at about 5:30 p.m. being the vendor cum

proprietor M/s Arun Trading co., 184, Tilak Bazar, New Delhi, sold for analysis consisted of 3x200 ml of vanilla splash (sealed packets of identical label declaration) taken as such in the form of three sealed packets having label declaration to FI OPS Ahlawat in the presence of LHA and witness and the sample commodity was manufactured by M/s Deep Jyoti Industries and you being a nominee of M/s Deep Jyoti industries was incharge and responsible for day to day affairs of the business of M/s Deep Jyoti industries which was meant for human consumption and the same was analysed by the public analyst vide certificate bearing No. PFA /Enf/1085/2007 dated 15.6.2007 and found that the sample is misbranded because declaration of colour is misleading. The language of best before declaration is also not as per Rule 32(i) of PFA Act and Rules and thereby you have violated the provisions of section 2(ix) (g) & (k) of PFA Act, 1954 and also violated the provisions of rule 32&32 (i) of PFA Rules, which is punished u/s 16 () of PFA Act, 1954 read with section 7 of the PFA Act and within my cognizance.”

10. On perusal of the above, it is evident that the original complaint was filed by the Food Inspector for violation of **Section 2(ix) (g) and (k)** as well as **“Rules 37 and 32(1)”** of the PFA Rules. However, the notice dated 20.11.2009 was framed for violation of **“Rules 32 and 32(1)”** of the PFA Rules.

11. Rule 32 in itself is a very detailed rule containing a lot of sub provisions and that there was no reason for the court below to have mentioned Rule 32(i) in addition to Rule 32 as a whole, since Rule 32(i) had been specifically stated in the notice once. Hence, there was no reason for the Trial Court to mention the larger Rule 32 separately which covered Rule 32(i) as well. Mentioning the violation of Rule 32(i) would be a violation of the Section 2(ix)(k) of the PFA Act. But, since a violation of Section

2(ix)(g) is also mentioned, it would obviously mean a violation of Rule 37. Therefore, omission of Rule 37 from the notice seems to be a mere inadvertent typographical error.

12. Moreover, on perusal of *S.S. Gokul's case (supra)*, it is clear that the aforesaid case is different from the case at hand. In *S.S. Gokul's case (supra)*, the alleged violation was only with regard to the declaration of the 'Best Before' date, which falls under the provisions of Rule 32 of the PFA Rules wherein, this Court held that the sample collected was not misbranded. However, in the instant case the alleged violations are not only in respect of Rule 32(i) but also Rule 37 of the PFA Rules as the colour of the sample product was misleading and the declaration of the 'Best Before' date was also not in accordance with Rule 32(i) of the PFA Rules.

13. Taking the aforesaid facts and circumstances into consideration, no grounds for interfering with the view taken by the Trial Court are made out and therefore, the petition is dismissed.

Crl. M. A. No. 4709/2017 (Stay)

In view of the order passed in the main petition, the present application is rendered infructuous.

SANGITA DHINGRA SEHGAL, J

JULY 31, 2017

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