

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

% Decided on: 16<sup>th</sup> January, 2017

+ **CRL.M.C. 2274/2012 & Crl.M.A. 12133/2012 (stay)**

**PRADEEP KUMAR MANTRI & ORS**

..... Petitioner

Represented by: Mr. D.K. Mathur, Adv.

versus

**STATE THR. FOOD INSPECTOR (PFA)**

..... Respondent

Represented by: Mr. Ashok Kr. Garg, APP.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. In complaint case bearing No.135/2007 titled as '*Food Inspector, Department of PFA Vs. Shri Santokh Singh & Ors.*' Pradeep Kumar Mantri, Praveen Kumar Mantri, Santokh Singh, Sumitra Devi and M/s. Vijay Oil Mills, the petitioners herein were summoned for offence punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (in short the PFA Act). In the complaint it was alleged that on 6<sup>th</sup> June, 2007 at 11.00 AM the Food Inspector purchased a sample of mustard oil from the premises of Babneet Store, B-471/D, Budh Nagar, Inderpuri where the food article was found stored for sale. The sample consisted of 3 sealed bottles of mustard oil of 1 litre each bearing identical label declarations including the batch number. The report of the Public Analyst did not find any irregularity except that the same was misbranded because 'best before'

was declared in a misleading manner for the reason the date of manufacture was not mentioned. However, the sample conformed to the standards.

2. Vide the impugned order dated 15<sup>th</sup> September, 2008 the learned Metropolitan Magistrate noted that since no date of manufacture was given and simply the month and year of packaging was mentioned as May 2007 it was a misleading statement and no case for dropping of proceedings was made out. Notice was directed to be framed on 24<sup>th</sup> December, 2008 when petitioner preferred the present petition.

3. Vide order dated 11<sup>th</sup> July, 2012 this Court following its earlier decisions in S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector, Govt. of NCT of Delhi 2009 (1) JCC 675 and Ravinder Garg Vs. State through Food Inspector, Govt. of NCT of Delhi Crl.M.C. 27/2010 decided on 8<sup>th</sup> March, 2011 issued notice to the State and in the meantime proceeding before the Trial Court were stayed.

4. The submission of the learned counsel for the petitioner is two-fold; firstly the mustard oil not being of a perishable nature within 2-3 days, no date of manufacture was required to be mentioned and since its best use could be for six months, the month of manufacture was shown as May 2007 and it was stated 'best before six months from manufacture'. Thus, there was no misleading statement made. Further even if this Court considers the said statement to be misleading in terms of Rule 32 of the Prevention of Food Adulteration Rules, 1955 (in short PFA Rules), this being the first violation if any, the petitioners were required to be given a written warning drawing their attention to Rule 32, in terms of the Policy No. F6(228)/85/ENF/PFA which provided that if the sealed packet/ container confirms the standard laid down, deficiency in Rule 32 pertaining to the

particulars of the labeling on the container or packet was only a technical offence and a written warning should be given to the party committing the breach drawing its attention to Rule 32.

5. Learned APP for the State contradicting the submissions of the learned counsel for the petitioner submits that Policy No. F6(228)/85/ENF/PFA is no more in vogue and thus no benefit could be taken from the same by the petitioner. Further Rule 32 PFA Rules prescribes that not only month and year should be mentioned but the date of manufacture should also be mentioned. Hence, there is no illegality in the order impugned.

6. The short issue in the present case, came up for consideration before this Court in S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector, Govt. of NCT of Delhi 2009 (1) JCC 675 wherein on similar facts this Court held:

*“17. Rule 32(f) of the PFA Rules framed under the PFA Act requires for a manufacturer to declare the date, month and year in which the commodity is manufactured, packed or pre-packed on the packet. This declaration is required to be given if the „best before” date of the product is more than 3 months.*

*18. Rule 32(i) of the PFA Rules, demonstrates the manner in which the said information is required to be displayed on the packet.*

*19. In the instant case, declaration under rule 32(i) is “best before 9 months from packing. Since the month and year of manufacture of the food article i.e. processed cheese is clearly disclosed on the packet, it cannot be said that the consumer would be mislead from the terms „best before 9 months from packing”. The consumer, under these circumstances, would be clear in his mind to consider the best before from the date of manufacturing. The processed cheese conformed the standard on analysis.*

*20. Prima facie, therefore, it cannot be said that the sample was misbranded because misleading statement was given on*

*the label with respect to best before date. The consumer is provided with sufficient information as required under the Act and Rule 32 to know about the genuineness of the product and also to enable him to make a decision whether to purchase the said food article or not. Even if, the words “best before 9 months from manufacturing or packing” are not contained on the packet; instead the words best within 4 months are mentioned on the packet, it would not in any way mislead the consumer. Hence by no stretch of imagination the product could be termed as misbranded. There is no adulteration in the product. As per the information disclosed on the packet, it cannot be said that there is misbranding, only because the date of packaging has not been disclosed; specially when the month and year of manufacturing is specifically disclosed.*

*X X X X*

*27. The alleged offence of violation of Rule 32 (f) and (i) was found to have been committed in the year 2005. At the relevant time department policy No. F6(228)/85/ENF/P.F.A. was in force and the said policy was cancelled, modified or withdrawn vide order No. 5/07 dated 14.09.2007. As per the said policy, cases of breach of Rule 32, since pertained to the particulars of the labeling on the container or packet, were technical offences, the party affected was to be given a written warning drawing its attention to Rule 32, which required of date, month and year of manufacturing to be exhibited on the labels affixed on tin or the packet. It was only if the violation was repeated after a written warning, the party committing the offence second time had to be prosecuted. As per this policy, pending cases pertaining to breach of Rule 32 being of technical nature were decided to be disposed of accordingly.*

*28. It is not the case of the prosecution that petitioners were given warning by way of a notice drawing their attention to Rule 32 which provided for particulars to be exhibited on the sampled tin or the packet, and it was a case of second breach of Rule 32, i.e. in other words the offence was committed for the second time and therefore, the petitioners were liable to be prosecuted.*

*29. The policy being in force at the relevant time should have been adhered to by the department before it decided to file a complaint in the court for offences under Section 7/16 of the PFA Act. The petitioners are therefore within their rights to seek protection under the said policy which was in existence at the relevant time.”*

7. Policy No. F6(228)/85/ENF/PFA was revoked only on 14<sup>th</sup> September, 2007 and when the alleged offence was committed i.e. on 6<sup>th</sup> June, 2007 the Policy was in vogue. In the present case as noted above, the three samples have conformed to the standards and the only violation is that though month and year of manufacture is mentioned and ‘best before six months’ has been mentioned, however the date of manufacture has not been mentioned. Since on the date of alleged offence the Policy No. F6(228)/85/ENF/PFA was in vogue, the prosecution was bound to follow the same and give a written warning to the party committing breach of Rule 32 drawing its attention to the said Rule and only if they were found committing the offence second time they could be prosecuted. It is not the case of the prosecution that this is the second offence.

8. Consequently, the impugned order of framing notice and the consequent proceedings arising out of the complaint case No.135/2007 are hereby quashed.

9. Petition and application are disposed of.

**(MUKTA GUPTA)**  
**JUDGE**

**JANUARY 16, 2017**  
**‘ga’**