

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.04.2018

DELIVERED ON: 26.04.2018

CORAM :

THE HONOURABLE Mrs.JUSTICE R. HEMALATHA

Crl.O.P.No.17788 of 2011

and

Crl.M.P.No.1 of 2011

1. Ramesh
2. M.Sivakumar
3. P.Subramaniam
4. G.Krishnasamy
5. P.Murugesan, Manager,
Lion Dates Impex Private Limited,
27/3, Cauvery Road, Trichy 620 002.
6. M/s Lion Dates Impex Private Limited,
represented by its Manager,
27/3 Cauvery Road, Trichy 620 002. ... Petitioners/Accused

//vs//

The Food Inspector,
Erode City Municipal Corporation,
Erode. ... Respondent/Complainant

Prayer

Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.253 of 2011 on the file of Judicial Magistrate No.III, Erode and to quash the same.

For Petitioners : Mr.R.G.Narendhiran,

For Respondent : Mrs. Saradhadevi,
Government Advocate (Crl.Side)

ORDER

Heard Mr.R.G.Narendhiran, learned counsel for the petitioners and Mrs.Saradhadevi, Government Advocate (Crl.Side), learned counsel appearing for the respondent.

2. This petition filed under Section 482 of Cr.P.C. praying to quash the criminal proceedings in C.C.No.253 of 2011 on the file of the Judicial Magistrate No.III, Erode.

3. The brief facts of the case are as narrated below.

The 6th petitioner company is incorporated and registered under the Companies Act 1956. The said company was originally engaged in products and sale of dates under the brand name of "LION DATES". The business was diversified further into "oats" in the same brand of "LION OATS". The entire packing of oats is done at Trichy under stringent quality control and in conformity to the provisions of Food Adulteration Act 1954 (herein after called for PFA Act), especially in strict compliance of Rule 30(2) of the PFA Rules. The 5th petitioner is the nominee of the 6th petitioner company and the 1st petitioner being the sales man of Sakthi Super Market India Private Limited of which, the 2nd, 3rd and 4th petitioners are partners.

4. The respondent inspected the Sakthi Super Market India Private Limited on 04.03.2010 and on suspicion of the "Lion Australian Oats" products, samples were taken from three 200 grams packets of Lion Australian Oats and sent for analysis to the Public Analyst, Food Analysis Laboratory, King Institute Campus, Guindy, Chennai under clause (b) of sub-section (1) of Section 10 and Clause (c) (i) of Sub Section (1) of Section 11 of the Prevention of Food Adulteration Act, 1954.

5. The sample was found to bear mislabeling of the packet. According to the respondent, when the food is manufactured out side India and is packed in India, the package containing such food shall bear on the label, the name of the country of origin of the food article and that the petitioners have contravened the provisions of Section 7 (ii), 16(1) (a) (i) and 2 (ix) (k) of Prevention of Food Adulteration Act 1955 and connected Prevention of Food Adulteration Rules.

6. In the instant case, non mentioning the name of the Country of origin for the imported food was found to be in contravention to the labeling requirement contemplated under the Prevention of Food Adulteration Act and Rules.

7. The contention of the learned counsel for the petitioner is that there is no contravention of the labeling requirement mandated in PFA Rules as the name "Lion Australian Oats" in itself contains the name of the origin country, from where the product is imported. He also relied on the decision in A. Rajasingh & Others Vs. The Food Inspector, Lakkampatty Panchayat, Erode District reported in 2008(1)MWN (Cr.) 4 Madras High Court in which it has been held thus:-

"15. Even though the terminology found in both the terms differ in appearance, actually, no consumer would definitely be misguided, if he happens to see the term : best within four months". Even if the

words "best before four months from manufacture or packaging" are not there, and instead, the words "best within four months" are there, it will not in any way, mislead the consumer and, by no stretch of imagination, it could be termed that the product has been misbranded. It is to be seen that the product is not adulterated and only an allegation of misbranding is there.

16. As stated supra, it is to be held that no question of misbranding has arisen in this case and the mere change of words would in no way mislead the usage of the product among the public. Hence, it is futile to contend that the product has been misbranded. As the subject in question has been repeatedly enlightened by this court as to the employment of words on the packets, it must be concluded that there is no misbranding in this case, in legal parlance."

Reliance was also placed in K.Ganesan and others Vs. The Food Inspector, Periyakulam Municipality, Theni District reported in 2009(1) MWN (Cr.) 183, High Court of Madras (Madurai Bench), in which it has been held thus:-

"Now coming to the provision under Rule 32(a) of the Rules, it is relevant to note that the said Rule contemplates that every package of food shall carry a label and every label should specify the name, brand name or description of food contained in the package. As already pointed out, in the sample pack involved in this case it is clearly mentioned as "SAKTHI KULAMBU CHILLI POWDER" both in English and Tamil. The packets further contains the brand name as "SAKTHI" and the description of the food also contained in the packets clearly indicating the ingredients of the contents of the food and added to that the recipe also stated on the backside of the pack both in English and in Tamil. All these factors were incorporated in the Public Analyst report itself. Therefore, there is absolutely no contravention of provision under Rule 32(a) of the Rules."

8. As far as the first decision is concerned, the fact of that case would not apply to the present case, since in the instant case, there is an allegation of misbranding. Further more, in the said decision, it was found that the absence of words "best before 4 months" and use of the words "best within 4 months" would not in any way mislead the consumer.

9. In the second cited decision, the product in question was not an imported one and the name itself was found to be not misleading, since the ingredients of the products are clearly mentioned on the pack. Here, it is the specific case of the respondent that there is contravention of labeling requirement mandated under PFA Act and Rules, when the food is manufactured out side India and packed in India.

10. Mr. R.G.Narendhiran, learned counsel appearing for the petitioner also relied on the decision in R.Nagarajan and Another Vs.The Food Inspector, Periyakulam Municipality, Theni District reported in 2009(3) MWN (Cr.) 85. I fail to see how this ruling is applicable to the present case, since in the said decision, it was held where pictures of prepared food using the packed food as an ingredient cannot be termed as misleading as the pictures are leading and would not tantamount to misbranding as contemplated under the Prevention of Food Adulteration Rules 1955.

Similarly, the decision in 1.M.N.Katharmytheen, 2.K.Masthanin Vs. State, represented by Food Inspector, Tirunelveli Corporation, Tirunelveli, Tirunelveli District reported in 2010(3) MWN (Cr.57) would not also apply to the present case, since it was ruled that an absence of a specific averment that the customers, were mislead due to misbranding without mentioning as to how it was misbranded was adequate for quashing of the criminal proceedings. The facts of the present case are entirely different.

11. As already observed, the petitioner has been prosecuted by the respondent herein for not complying with the Prevention of Food Adulteration Act and the relevant Rules, since food is manufactured outside India and packed in India. It is the contention of the respondent that the petitioner has not mentioned the name of the Country of origin of the food article on the label. Therefore, all the above decisions would not apply to the facts of the present case.

12. Another contention of the learned counsel appearing for the petitioner is that Section 11 (4) of the Act also mandates 7 days' time limit for the respondent to take action, which has not been complied with by the respondent, and that he has lodged the complaint after a period of 14 months. At this juncture, it is to be pointed out that the deficiency found in the product of the petitioner was not regarding the quality of the product, but regarding the labelling and the second opinion could not have further the case of the petitioner. The wordings "made in Australia " or " imported from Australia and packed in India" were not found on the label. When the mandate for labeling is spelt out clearly that the Country of origin has to be specifically mentioned, the contention of the learned counsel

for the petitioners that the name of the product itself mentioned the country lacks substance. Many products manufactured in India may also contain the names of foreign countries which need not necessarily imply that the products are imported from the said Countries. Since in the instant case, there is an un-controverted allegations in the complaint as regards misbranding and the evidence collected in support of the same discloses a commission of offence and make out a case against the accused, the criminal proceedings cannot be quashed, at the threshold level. Inview of all these reasons stated by me, I hold that the present criminal original petition is liable to be dismissed.

13. In the result, the criminal original petition is dismissed. Consequently, connected criminal miscellaneous petition is closed. The petitioners are directed to appear before the learned Judicial Magistrate No.III, Erode within a period of two weeks from the date of receipt of a copy of this order. The Judicial Magistrate No.III, Erode is directed to dispose of the case within a period of 3 months from the date of receipt of a copy of this order.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.III,
Erode.

2. The Food Inspector
Erode City Municipal Corporation
Erode.

3. The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.R.G. Narendiran, advocate sr 31125.

Cr1.O.P.No.17788 of 2011

NRI (CO)
SP(10/05/2018)