

201.

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

CRM-M-22320-2013

Date of decision:13.07.2018.

KAMAL KISHORE

... Petitioner

Versus

STATE OF PUNJAB THROUGH GOVT. FOOD INSPECTOR,
AMRITSAR

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Vaibhav Narang, Advocate,
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of complaint No.8/6.1.2010 dated 06.01.2010 filed by respondent-State through Government Food Inspector, Amritsar. The complaint was filed under Section 7/16 of Prevention of Food Adulteration Act, 1954 and under Rules 32 & 50 of Prevention of Food Adulteration Rules, 1955.

Learned counsel for the petitioner has argued that the petitioner is a small retailer/shopkeeper. On 31.08.2009, shop of the petitioner was inspected and the petitioner was found having 5 kg 'Elpro Tomato Sauce' in 10 sealed bottles weighing 500 gms each kept in showcase which was meant for sale to the public for human consumption. The Inspector, who is complainant in the case, had noted down all the particulars mentioned on the labels of 'Elpro Tomato Sauce', which reads as under:-

“Net weight/Volume 500 gms, Mrp Rs.30/- date of
manufacturing/packing july 2008 best before 20

months from date of Manufacturing/packing. And manufactured/packed by Nirmal Food, D-14, Food Point, Nawanshahar.”

The complainant asked the petitioner to show the licence for sale of Elpro Tomato Sauce to the public for year 2009-10, as required under Rule 50 of P.F.A. Act, 1954 and Rules 1955, but the petitioner failed to show such licence. Learned counsel states that for the same set of complaint, a petition i.e. CRM-M-7044-2010 seeking quashing of complaint was also filed by the manufacturer Gopi Chand and this Court vide judgment 29.09.2011 quashed the complaint. He has argued that the respondent had pleaded that there is no reference in the whole complaint that the product which was meant for sale was of expiry date, moreover, there is no such reference in the complaint. He refers to the opinion of the Public Analyst whereby it was pointed out that the product is misbranded.

On the other hand, learned State counsel has argued that the petitioner was a retailer and it cast a duty upon him not to sell the products which are beyond the expiry date.

I have heard learned counsel for the parties.

The opinion of the Public Analyst on the samples taken from the petitioner, reads as under:-

“The product has been labeled in accordance with the provision of rule 32 of PFA Act 1954 and rules 1955. As year of Manufacturing is not legible and also batch No./Lot No./Code No. is not given on the label. The product is therefore misbranded.”

The petitioner is merely a retailer/shopkeeper whereas the complaint filed against the manufacture-Gopi Chand had already been dismissed by this Court in CRM-M-7044-2010. The relevant observations

of this Court read as under:-

“Sample of Elpro Tomato Sauce was taken on 31.08.2009 by the Government Food Inspector, Amritsar. This is admittedly manufactured by the petitioner wherein the date of manufacture was shown in Form VI as July, 2008. It was further mentioned that the label indicated that it was best before the 12 months from the date of manufacturing/packing when kept in some cool, clean and dry condition. The report of the Public Analyst, Punjab, Chandigarh dated 30.09.2009 shows that it to be misbranded on the ground that the provisions of Rule 32 of the PFA Act and the Prevention of Food Adulteration Rules, 1955 have been violated as the year of manufacturing was not legible and the Batch No./Lot No./Code No. was not given on the label. It is not in dispute that the petitioner is the holder of licence/certificate under the FPO 1955. Clause 8 (1) of the FPO 1955 deals with the requirements which every manufacturer holding a licence/certificate with regard to the packing, marking and labeling of containers of fruit products is to comply with. As per sub-clause (d) thereof each container in which any fruit product is packed shall specify a code number indicating the lot or the date of manufacturer of such fruit product. As is apparent from the Form VI (Annexure P-1) the year of manufacture was very much there as July, 2008. The report of the Public Analyst with regard to it being not legible, cannot be accepted. As regards the Batch No./Lot No./Code No. not being on the label is concerned, the word 'or' has been used in subclause (d) of Clause 8 between the words 'code number indicating the lot' and 'the date of manufacture of such food product'. Meaning thereby if any one of them is mentioned, the condition of the clause stands fulfilled, as in this case. It is not in dispute that the

contents of the container were not found to be, in any manner, contaminated or adulterated, the only violation was on the label, which was according to the FPO 1955 and thus there was no violation.”

In view of above, this Court finds that the case of the petitioner is not different to that of manufacturer and there is no reference in the complaint that the samples of sauce so taken from the shop of the petitioner had expired. Moreover, the complaint refer that from the date of manufacturing, the product could be used for 20 months. But on the date of sampling, the product was well within permissible use.

Accordingly, present petition stands allowed and the complaint against the petitioner stands dismissed.

(HARI PAL VERMA)
JUDGE

13.07.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No