

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 07.12.2018

ORDER PRONOUNCED ON : 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P.Nos.23429 & 23430 of 2009

and

M.P.Nos.1, 1, 2, 2 & 3 of 2009

1.J.M.Mubarak Ali

2.T.Valliappan ...Petitioners / Accused Nos.1 & 2
in Crl.O.P.(MD).No.23429 of 2009

1.P.R.Prasana Chary

2.M/s.Pryagh Nutri Products (Private) Limited,
Survey No.279-280,
Pedamnagadda,
Gaganpahad, Hyderabad-501 323.
R.R.District, Andhrapradesh,
(Represented by its representative P.R.Prasana Chary)

...Petitioners / Accused Nos.3 & 4
in Crl.O.P.(MD).No.23430 of 2009

Vs.

N.Ramasamy,
Food Inspector,
Chittode Town Panchayat,
(HQ) Govt. Primary Health Centre,
Chithode-638 102.

... Respondent / Complainant
in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petitions filed under Section
482 Cr.P.C. to call for the records in C.C.No.237 of 2009,
pending on the file of the learned Judicial Magistrate No.III,
Eorde and quash the same.

For Petitioners : Mr.C.Manishankar
Senior Counsel
for M/s.Krishnamoorthy

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl. side)
(In both Crl.O.Ps)

COMMON ORDER

The petitioners / Accused Nos.1, 2, 3 and 4 in C.C.No.237 of 2009, on the file of the learned Judicial Magistrate No.III, Erode, have filed these Criminal Original Petitions to quash the complaint filed as against them for the offences punishable under Sections 7 (ii); 16 (i) (a) (i) and 2 (ix) (a) and (k) of the Prevention of Food Adulteration Act, 1954 and Rule 32 (a) of the Prevention of Food Adulteration Rules, 1955.

2. The gist of the complaint is that the respondent / Food Inspector, Chittode Town Panchayat, attached to the Government Primary Health Centre, Chittode, has conducted an inspection of food items in Chittode Panchayat on 30.03.2007 at 12 noon. He purchased forty pockets of "Candyman Eclairs" Dhoom Pichak Dhoom, from the consignment of M/s.Valli Agency, took food samples in the presence of a witness and sent the same in Form VII to the Food Analytical Laboratory, King Institute Campus, Guindy, on the same day. The Government Analyst, on examination of those samples, opined that the sample is found to be mis-branded as it was not labelled in accordance with the requirements under the provision of the Prevention of Food Adulteration Rules, 1955. Thereafter, the respondent issued a show cause notice to the manufacturer viz., M/s.Pryagh Nutri Products (Private) Limited, Hyderabad / forth accused and their agency; examined them and after recording their statements, filed a complaint that the company, in order to augment their sales, has misbranded the product by not printing its description 'Principal panel sugar boiled confectionary' in the label and thereby committed the offence punishable under Sections 7 (ii); 16 (i) (a) (i) and Section 2 (ix) (a) and (k) of the Prevention of Food Adulteration Act, 1954 and Rule 32 (a) of the Prevention of Food Adulteration Rules, 1955.

3. Sum and substance, the learned Senior Counsel appearing for the petitioner has raised the following points in support of his case:

- The allegations made in the complaint are vague;
- The Food Analyst has proceeded on an erroneous impression that the declaration, "Sugar boiled confectionary" is not found place in the principal display panel, when it has been clearly stated in the wrapper that it is a sugar boiled confectionary, which indicates its true character;
- Even in the report of the Food Analyst at page No.1 the declaration "sugar boiled confectionary" which is available in the wrapper is noted;
- As per Rule 32 (a) of the Prevention of Food Adulteration Rules, 1955, every package of food shall carry a label with name, trade name or description of food contained in the package. The wrapper in question clearly shows the above

specifications, as such there is no violation of Rule 32 (a) of the Act. The Rule did not specify the place, location for the declaration to be made. It only defines the principal display panel to mean that a part of a label; and

- The nature of food article, namely, sugar boiled confectionary was mentioned in the wrapper and it is not disputed and therefore, the question of mislead or misdirection does not arise.

4. Per contra, the learned Government Advocate (Crl. side) appearing for the respondent would submit that the complainant had purchased the samples in the presence of one witness, namely, A.Govindasamy and also sent the same for the Public Analyst and the Public Analyst by his report dated 26.04.2007 had given an opinion that the said sample is found to be misbranded, since it is not labelled in accordance with the requirements of Section 2 (ix) (a) and (k) of the Act and Rule 32 (a) of the Rules.

5. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

6. The issue to be decided in this case is as to whether the prosecution is succeeded in making out a prima facie case against the petitioners that the sample is a misbranded one as per the provision under Section 2 (ix) (a) and (k) of the Act and Rule 32(a) of the Rules. This Court, therefore, feels that it is relevant to refer to the very provisions of the Act and Rule, which reads thus:

"Section 2 Definitions-

(ix) "Misbranded"-an article of food shall be deemed to be misbranded-

(a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and it not plainly and conspicuously labelled so as to indicate its true character;

...
(k) If it is not labelled in accordance with the requirements of this Act or rules made thereunder;"

"Rule 32. Package of food to carry a label-Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label:-

(a) the name, trade name or description of

food contained in the package;"

7. The reading of the above said provisions makes it crystal clear that an article of food shall be deemed to be misbranded only if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character. As per Rule 32(a), it is required that every package of food shall carry a label specifying the name, trade name or the description of food contained in the package.

8. In this context, the report of the Public Analyst dated 26.04.2007 is analysed. The analyst, on examination of the label, has mentioned that the declaration of the food's name in the label is mentioned as 'Candyman Eclairs', whereas, the exact nature of the product, ie., 'sugar boiled confectionary' and the same is not mentioned in the principal panel. But, on analysing the label, as extracted in the Public Analyst's report, it is mentioned as follows:-

"Candyman Eclairs 5 Units 50p per unit
Free
Dhoom Pichak Dhoom Kuch Bhi Karega for
Candyman
Back Panel : ITC a quality product from ITC
Limited, wholesale package to be opened and sold
loose.
Sugar Boiled Confectionary Modified Toffees
Ingredients : Liquid Glucose, Sugar,
Hydrogenated Vegetable oils contains added
natural-identical (Cream) and artificial
flavouring substances. Net weight : 420G (400
+20Gm free) (105 units) (100 +5 free) recommended
prices Rs.50/- Md03/07 Batch No.PEF 150307
P.MFD.By-Prayagh Nutri Products (Private)
Limited,
Sy.No.279 * 280 Pedammagada, Gagonpahad,
Hyderabad-501 323.
Best before 9 months from manufacture.
ITC A Brand owned by ITC Limited, 37,
J.L.Nehru Road, Kolkatta-700 071."

9. From the report of the Public Analyst itself, it could be seen that the nature of the product, namely, 'Sugar Boiled Confectionary Modified Toffies' is mentioned in the back panel of the product.

10. Rule 32(a), as extracted supra, mandates that all the manufacturers shall describe the food items, so that the

purchaser is aware of the contents of the food articles. It does not specify the place where it should be described.

11. In the present case on hand, the name and description of the food article is very much available in the back panel. In the absence of specific guidelines that it must either be stated in the front side wrapper or in the back side of the wrapper, it would not be appropriate to hold it as an offence committed in violation of the Rule 32(a) of the Act. From the reading of the Public Analyst report, it is crystal clear that no prima facie case is made out that the sample is misbranded.

12. It is also brought to the notice of this Court that the Food Safety and Standards Authority of India vide communication dated 13.03.2018, proposed to withdraw the cases for violation of the old norms and standards, ie., under Prevention of Food Adulteration Act, subsequent to the introduction of the New Act, namely, Food Safety and Standards Act, subject to the satisfaction of the Commissioners concerned and accordingly, several cases instituted under the Prevention of Food Adulteration Act were withdrawn by the State Government.

13. Under the above circumstances and also considering the fact that the prosecution has failed to make out a prima facie case, this Court is inclined to quash the proceedings pending as against the petitioners in C.C.No.237 of 2009, on the file of the learned Judicial Magistrate No.III, Erode and the same is accordingly, quashed. In fine, the Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

tsg

To

1.The Judicial Magistrate No.III,
Erode.

2.The Food Inspector,
Chittode Town Panchayat,
(HQ) Govt. Primary Health Centre,
Chithode-638 102.

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3.The Public Prosecutor,
Madras High Court, Chennai.

+lcc to Mr.C.Manishankar, Advocate, S.R.No. 21084

Crl.O.P.Nos.23429 & 23430 of 2009

KS (CO)
GN(24/04/2019)



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