

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.M-10982 of 2008

.....

Date of decision:14.05.2019

The Hindustan Coca-Cola Beverages Pvt. Ltd.

.....Petitioner

v.

State of Punjab and another

.....Respondents

.....

(2) Criminal Misc. No.M-12790 of 2008

.....

M/s Pepsico India Holdings Private Ltd. and another

.....Petitioners

v.

State of Punjab and another

.....Respondents

.....

(3) Criminal Misc. No.M-12791 of 2008

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M/s Pepsico India Holdings Private Ltd. and another

.....Petitioners

v.

State of Punjab and another

.....Respondents

.....

(4) Criminal Misc. No.M-6744 of 2009

.....

M/s Nestle India Limited and another

.....Petitioners

v.

State of Haryana and another

.....Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Cheema, Senior Advocate with Mr. Rajesh Bhatra, Mr. Rohit Khanna and Mr. Arshdeep Singh Cheema, Advocates for the petitioners in CRM-M-10982, 12790, 12791 of 2008 and 6744 of 2009.

Ms. Monika Jalota, Deputy Advocate General, Punjab for the respondent-State.

Mr. Sharad Kumar Yadav, Deputy Advocate General, Haryana for the respondent-State.

Mr. Jagdish Narwana, Special Counsel for U.O.I.

None for respondent No.2 in CRM-M-12790 and 12791 of 2008.

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Inderjit Singh, J.

This order will dispose of the above mentioned four petitions filed under Section 482 Cr.P.C. praying for staying the proceedings in complaint bearing No.285/2/2001, (Cr. Misc. No.M-10982 of 2008) pending in the Court of Additional Chief Judicial Magistrate, Jalandhar, Punjab and for staying of the summoning order dated 10.11.2001, whereby the petitioner-company and accused No.3 have been summoned for the contravention of offences, under Rule 49(28) and Rule 50 of PFA Rules, 1955 read with Sections 7 and 16 of the PFA Act, 1954 and for staying the operation of the impugned order dated 28.3.2007, issuing non-bailable warrants against the petitioner and for staying of the operation of impugned order dated 22.7.2007 and order dated 18.3.2008 issuing proclamation against the petitioner and/all other proceedings taken thereafter in the said

Court. These petitions have been taken-up for hearing together as the dispute in all these cases is of the same nature.

The facts have been taken from Criminal Misc. No.M-12790 of 2008, in which the petition has been filed by M/s Pepsico India Holdings Private Limited and Mr. Sandeep Bhargava-petitioners against State of Punjab and Food Inspector, Northern Railways, Jalandhar under Section 482 Cr.P.C. for setting aside impugned order dated 4.5.2002 (Annexure-P.1) issuing process and order dated 18.3.2008 (Annexure-P.2) ordering framing of charge against the petitioners by the Court of Additional Chief Judicial, Magistrate, Jalandhar and quashing of the consequent proceedings in the complaint No.145/2/02 titled “State Versus Shri Hans Raj and others” under Section 2(ix)(k) and Section 7(ii) and 16(1)(A)(i) of PFA Act, 1954 read with Rule 49(28) of PFA Rules, 1955.

I have heard learned senior counsel for the petitioners as well as learned counsel for the State/respondents and have gone through the record.

A perusal of the record shows that on 28.8.2001, Food Inspector inspected the vehicle loaded with the Sweetened Carbonated Water (Pepsi)and packed drinking water (Aquafina). As per the complaint, the sample of Aquafina water was taken which was sent to the Public Analyst, Punjab, who found that the product has not been labeled in accordance with the BIS standard under Rule 28 of 49 of the PFA Rules, 1955 and the criminal complaints were filed.

Learned senior counsel for the petitioners argued that the notification was issued on 29.9.2000 and it was to be enforced from

29.3.2001. The amendment in question was that in Rule 49 after sub-rule (27), the following sub-rule shall be inserted, namely:-

“(28) No person shall manufacture, sell or exhibit for sale packaged drinking water except under the Bureau of Indian Standards Certification Mark.”

Learned senior counsel argued that as per amendment, there was a huge rush with the Bureau of Indian Standards and it became impossible to issue certification to various applicants within the prescribed time. In order to meet with this extraordinary situation, the Government of India vide memo dated 3.4.2001 (Annexure-P.5) directed that in all those cases where applications were received by BIS for certification before 29.3.2001, the time was required to be extended and it was extended till 30.6.2001, provided they conform to the standards. The period to sell these products was extended by six months commencing from 29.3.2001 i.e. upto 29.9.2001. Learned senior counsel further argued that the samples taken in these cases satisfied the standard. No sample was found sub-standard and all other conditions were duly satisfied. The product was manufactured within the extended time permitted by the Government of India and samples were also taken before the last permissible date for sale i.e. 29.9.2001. He argued that Government of India also issued a press release extending the period of certification upto 30.6.2001 (Annexure-P.6) and period of sale by six months from 29.3.2001 and the samples were taken before 29.9.2001. Therefore, he argued that all these complaints are liable to be quashed as these are between the stipulated period.

The learned counsel opposite have not contested these facts.

Keeping in view the arguments of the learned senior counsel for the petitioners, as well as the documents on record and after perusing the complaints and being admitted position that the samples were taken within the stipulated period as extended by the Government of India and there was still date for taking the BIS certificate and the petitioners have already applied to BIS, therefore, filing of these complaints amount to miscarriage of justice and are liable to be quashed.

Finding merits in these petitions, the same are allowed and all the criminal complaints in the above four petitions along with all subsequent proceedings arising out of the same are here quashed.

May 14, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No