

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1741 of 2009

PEPSICO INDIA HOLDINGS PVT. LTD.
VS.
SMT. JYOTI GUPTA

For the Petitioner	: Mr. Rajesh Batra, Adv. Mr. Navanil De, Adv. Mr. Ritam Ghosh, Adv.
For the Opposite Party	: Mr. Saswata Gopal Mukherjee, Id. P.P.
Hearing concluded on	: 29 th November, 2022
Judgement on	: 23 rd December, 2022

Siddhartha Roy Chowdhury, J.:

1. By filing this proceeding under Section 482 of the Cr.P.C. the petitioner is seeking an order of quashment of proceeding being T.R. Case No. 330/08 arising out of C Case No. 565 of 2008 pending before the learned Judicial magistrate, 1st Class, 2nd Court, Sealdah, North 24 Parganas under Section 272/273 of the Indian Penal Code and all orders passed therein including the order dated 21st July, 2008 passed by learned Additional Chief Judicial Magistrate, Sealdah.
2. Briefly stated, Smt. Jyoti Gupta, an advocate has filed a complaint case before the learned Additional Chief Judicial Magistrate, Sealdah, under Section 272/273 of the I.P.C which was registered as complaint case no. 565 of 2008. It is contended that on 17th April, 2008 the

complainant purchased one unit of Pepsi, one unit of 'O' Mirinda, one unit of '7UP', one unit of 'M. Dew' and two units of 'Slice (M)' containing 200 ml bottle each @ Rs. 168/- per unit and paid Rs. 1008/- to the vendor Sri Shyam Sundar Kamila who had purchased the bottles from Raman Agency. During the party time the complainant found that there were some sediments looking like cockroach, vacillating inside the bottle of slice. Then the complainant raised alarm and requested the members not consume the drink any more. It was found by complainant that there was no indication as to the date of expiry or 'Best before date' and Batch number etc. on the bottle or cap of the bottle. Sri. S.S. Kamila could not say anything as to the genuineness of content of the bottles other than the fact the bottles were supplied by the dealer Raman Agency. Soft drink bottles were noxious and unfit for use. Those were supplied without proper checking and inspecting. The factory manager of the company was also responsible for marketing these spurious contaminated drinks. The complainant sent written notice dated 9th May, 2008 to the petitioner company and the distributor and, thereafter, filed the complaint. Learned Additional Chief Judicial Magistrate upon receipt of such complaint was pleased to take cognizance and issued process upon the accused persons including the petitioner.

3. Assailing such order of learned Trial Court Mr. Rajesh Batra, learned Counsel representing the petitioner argues that the petition of complaint under Section 272/273 of the I.P.C. is not maintainable. No sample was collected and forwarded to public analyst and without the report of public analyst proceeding on the ground of adulteration

of food product is not maintainable. The P.F.A. Act envisages the procedure to collect the sample by a duly qualified persons and it gives the right to a person from whom sample was taken to apply for re-analysis of the report which may supersede the analysis report in view of Sub Section 285 of Section 13 of the P.F.A. Act. The proceeding under Section 272/273 of the I.P.C. is bereft of such procedure and as such this detrimental to the interest of the person facing a charge of selling or dealing in any noxious or adulterated food product.

4. True it is without the report of Public Analyst, the criminal trial is bound to fail. When since inception the complaint case is destined to cave in, to allow the proceeding pending before the learned Trial Court to remain in force would amount to abuse of process of law.
5. Accordingly, I am inclined to quash the proceeding.
6. Let a copy of this judgement be sent down to learned Trial Court for information and necessary action.
7. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)