



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22969 of 2023
and Crl.M.P. Nos.16110 & 16111 of 2023

M/s.Hindustan Unilever Limited,
Rep. by its Authorised Signatory,
Mr.Bharadwaj Sekar,
A-5, Phase -II, Focal Point,
Rajpura District, Patiala,
Punjab - 140 401.

... Petitioner

-VS-

The Food Safety Officer,
Area Code No.348, Sholinghur Block,
Office of the Appointing Officer,
Tamil Nadu Department of Food Safety
and Drug Administration,
2nd Floor, B-Block,
District Collector Office Complex,
Vellore - 632 009.

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 407 of Criminal Procedure Code, to call for the records relating to the S.T.C. No.132 of 2023 on the file of the learned Judicial Magistrate, Sholingur and quash the same by allowing this criminal Original Petition.



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For Petitioner : Mr.Jose John &
Mr.G.Joshua Akkil Ebinezar
For Respondent :Mr.Leonard Arul Joseph Selvam,
Government Advocate (Crl.Side)

ORDER

This petition is filed to quash the complaint filed otherwise than the police report and taken cognizance by the learned Judicial Magistrate, Sholingur in S.T.C. No.132 of 2023.

2.The respondent is the Food Safety Officer. The petitioner is the Authorised Signatory of M/s.Hindustan Unilever Limited which manufactures the “Kissan Chotu Fresh Tomato Ketchup”. As per the complaint, inspection was conducted on the premises of the first accused, who is the proprietor of Bala Ganapathy Agencies, the provision store at Sholingur. The sample of “Kissan Chotu Fresh Tomato Ketchup” stored for sale was drawn and sent for analysis. The FSL report indicated that the food product is “Unsafe” and therefore after causing show cause notice calling for explanation, prosecution has been launched after obtaining sanction from the Commissioner.

3. The said complaint is challenged on two grounds primarily, on the ground that the complaint is barred by limitation, hence the cognizance taken by the learned Magistrate after three years of the occurrence is barred by Section



46(3) of the Food Safety and Standard Act, 2006. Secondly, the substances found in the sample is not a prohibited substance and it is incorrect to say that the food product is “Unsafe”.

4. The learned Government Advocate (Crl.Side) fairly concedes that the prosecution was launched, since the analysis report conducted on the food product reported that Benzoic Acid been used as a preservative by the manufacturer and the quantitative analysis showed the presence of Benzoic Acid to be 602.30 mg/Kg and as per Regulation No.2.3.27 r/w 12.6.2 of Food Category System in Appendix -A of FSSR (FPS & FA), 2011, it should be negative, but the said analysis report is not in consonance with the entries found in the said Schedule which actually permits the presence of Benzoic Acid as a preservative or Additive upto 1000 mg/Kg.

5. The examination of the Schedule indicates that under Entry 12.6 Food Category System in Appendix -A of FSSR (FPS & FA), 2011, for the food products like sauces, Benzoic Acid is permitted upto 1000 mg/per Kg. In respect of sauces like ketchup, additives exclusive for those non emulsified sauces are mentioned. Thus use of Bezoic Acid in Tomato Ketchup is permitted upto 1000mg/kg.



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6. The chemicals mentioned in 12.6 is common for all the food products which is followed under Entry 12.6 as per the explanation provided under the Appendix -A which explains Food Category System. The additive which is permitted for use in a general category to be deemed to be recognized for use in all sub categories, unless they said otherwise. Under 12.6, Benzoic Acid is recognised for use and therefore, it is applicable to the sub categories viz., ketchup which is mentioned in 12.6.2.

7. The learned counsel also draws the attention of this Court, the earlier version of the Appendix-A under Regulation 2001, wherein Tomato Ketchup been specifically mentioned and use of Benzoic Acid permitted upto 1000 mg/Kg.

8. In view of the above facts, it is clear that though the analysis report which is relied by the complainant indicates Benzoic Acid as preservative should not be added in a Tomato Ketchup, the Schedule and Appendix to the Rule says otherwise. Benzoic Acid is a permissible additive upto 1000 mg/Kg under law. As per the analysis report, it is found less than 1000 mg/Kg in the sample drawn during inspection. Therefore, Regulation No.2.3.27 r/w. 12.6.2 of Food



Category System in Appendix-A of the FSSR (FPS & FA) Regulation, 2011

apparently not violated in the present case. Hence, on that ground, the petition to quash is sustainable. Accordingly, the petition is **allowed** and the criminal complaint is quashed. Consequently, connected Miscellaneous Petitions are closed.

07.12.2023

Index :Yes
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp

To

1. The Judicial Magistrate,
Sholingur.
2. The Food Safety Officer,
Area Code No.348, Sholinghur Block,
Office of the Appointing Officer,
Tamil Nadu Department of Food Safety
and Drug Administration,
2nd Floor, B-Block,
District Collector Office Complex,
Vellore - 632 009.
3. The Public Prosecutor,
Madras High Court,
Madras.



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Dr.G.JAYACHANDRAN,J.

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