

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

**Reserved on 11th of August, 2023
Pronounced on 14th of November, 2023**

- 1. CRM-M-11125-2016**
- 2. CRM-M-11126-2016 (O&M)**

Schreiber Dynamix Dairies Private LimitedPetitioner

Versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.S. Cheema, Senior Advocate with
Mr. Rajesh Batra, Advocate,
Mr. Satish Sharma, Advocate and
Mr. Sidharth Bhukkal, Advocate for the petitioner(s).

Mr. Ramesh K. Ambavta, AAG, Haryana.

PANKAJ JAIN, J.

The petitioner has invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of complaint No.256/2011 dated 13th of June, 2011 titled as 'State through Government Food Inspector vs. Mukesh Batra' and subsequent proceedings thereto including order dated 13th of June, 2011 and that dated 21st of March, 2014 whereby process has been ordered to be issued *qua* the petitioner-company by Chief Judicial Magistrate, Rohtak in exercise of power under Section 20A of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the 1954 Act').

2. Complaint was moved by Food Inspector, Rohtak (respondent No.2) alleging violation of Section 7 of the Act claiming that the statement made by the petitioner on the label of the sample is to the effect : 'World's No.1 Juice Brand' is misleading and misbranded and thus amounts to violation of Rule 37 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as '1955 Rules'). Along with the complaint report of Public Analyst was filed. Vide impugned order dated 13th of June, 2011, Chief Judicial Magistrate, Rohtak ordered the complaint to be treated as warrant case and vide order dated 21st of March, 2014 (Annexure P-2) process stands issued against the petitioner-company.

3. Ld. Senior Counsel representing the petitioner submits that the complaint preferred against the petitioner is completely silent w.r.t. commission of any offence. Rule 37 of 1955 Rules mandate that there should not be any false or misleading statement concerning the food contained in the package or concerning the quality or the nutritive value or in relation to the place of origin of the said food. The statement that forms gravamen of the allegation in the complaint i.e. 'World's No.1 Juice Brand' does not concern the food contained in the package or the quality or the nutritive value or in relation to the place of origin of the said food and thus the same would not constitute offence as defined under Rule 37 of the 1955 Rules. It is further being

claimed by learned Senior Counsel representing the petitioner that as per the scheme of the legislation in form of PFA Act and Rules thereunder it is the claim w.r.t. nutritional value of the food item that can form basis of prosecution. So far as statement w.r.t. the petitioner being No.1 Juice Brand is concerned, the same does not concern the food item contained in the package and apart therefrom the claim is not false. The brand of the petitioner i.e. Tropicana is indeed No.1 brand in packaged 100% juice in the world and in order to hammerforth his contention reliance has been placed by Senior Counsel on certificate issued by Euromonitor International placed on record as Annexure P-10. In furtherance of his contention Senior Counsel relies upon the law laid down in the case of '**Parakh Food Limited vs. State of Andhra Pradesh and another**', (2008) 4 SCC 584, '**Bal Kishan Thapar vs. Municipal Corporation of Delhi**', (1979) 2 SCC 459, '**Smt. Sukhrani (dead) by LRs and others vs. Hari Shankar and others**', (1979) 2 SCC 463, '**Municipal Corporation of Delhi vs. Bal Krishan Thaper**', Criminal Revision No.58 of 1973 *decided on* 6th of August, 1974, '**State vs. Virubatchi and others**', Criminal Appeal No.848 of 1977 *decided on* 29th of September, 1978, '**R. Nagarajan and another vs. The Food Inspector, Penyakulam Municipality, Theni District**', 2009(3) MWN (Cr.) 85, '**Kaliaperumal @ Perumal vs. K. Ramesh and**

others', 2009 (3) MWN (Cr.) 87, 'Sterling Agro Industrial Ltd. and another vs. State of Uttarakhand', 2014 SCC OnLine Utt 147 and 'Tata Chemicals Ltd. through its Authorized Representative vs. State of U.P., through the Secretary, Ministry of Health and Family Welfare, Secretariat, Lucknow and others', 2017 SCC OnLine All 3771.

4. Per contra, State Counsel submits that as per Rule 32 read with Rule 37 prepackaged food should not carry any label which is misleading or deceptive or is likely to create erroneous impression regarding its character. 'Misbranded' for the purposes of the Act has been defined under Clause 2(ix) of the 1954 Act. An article of food as per the definition enumerated thereunder shall be deemed to be misbranded if the label on the package is deceptive. It is being contended that the packaged food in question is a ready to serve fruit beverage and not a fruit juice, thus by making a statement on the label, “World's No.1 Juice Brand” an effort has been made by the petitioner to deceive the consumers and pass on ready to serve fruit beverage as a fruit juice which would fall within the definition of misbranded *ibid*.

5. I have heard rival contentions raised by counsel for the parties and have gone through records of the case.

6. The issue that arises for consideration of this Court is :
'whether while exercising jurisdiction under Section 482 Cr.P.C.,

this Court at this stage can quash the proceedings holding that the statement made by the manufacturer on the label of the food item does not constitute an offence punishable under the Prevention of Food Adulteration Act, 1954 as the same does not amount to 'misbranding'?

7. Relevant provisions of 1954 Act that need to be perused for adjudication of the present case read as under :

“2(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 is not plainly and conspicuously labelled so as to indicate its true character;
- (b) if it is falsely stated to be the product of any place or country;
- (c) if it is sold by a name which belongs to another article of food;
- (d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the articles is made to appear better or of greater value than it really is;
- (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is

false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;

- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;
- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder;

7. Prohibition of manufacture, sale, etc., of certain articles of food.—No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority ¹ [in the interest of public health;] ²***]
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; ³[or]
- ³[(vi) any adulterant.]

⁴[*Explanation*—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded

food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture there from of any article of food for sale.]

20. Cognizance and trial of offences.—(1) [No prosecution for an offence under this Act not being an offence under section 14 or section 14A] shall be instituted except by, or with the written consent of, [the Central Government or the State Government 5[***] or a person authorised in this behalf, by general or special order, by the Central Government or the State Government 5[***]:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser 6[or recognised consumer association] referred to in section 12, 7[if he or it produces] in court a copy of the report of the public analyst along with the complaint.

8[(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1AA) of section 16 shall be cognizable and non-bailable).]

[20A. Power of court to implead manufacturer, etc.—

Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in 2[sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974)] or in section 20 proceed against him as though a prosecution had been instituted against him under section 20.]

Relevant provisions of 1955 Rules read as under :

“37. Labels not to contain false or misleading statements :- A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food : 1[Provided that this rule shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets such as Barley Sugar, Bulls Eye, Cream Cracker, or in respect of aerated waters such as Ginger Beer or Gold Spot or any other name in existence in international trade practice.]

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32. Every prepackaged food to carry a label. - (a)
General -

- (1) Prepackaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect.
- (2) Label in prepackaged foods shall be applied in such a manner that they will not become separated from the container.
- (3) Contents on the label shall be clear, prominent, indelible and readily legible by the consumer under normal condition of purchase and use.
- (4) Where the container is covered by a wrapper, the wrapper shall carry the necessary information or the label on the container shall be readily legible through the outer wrapper or not obscured by it.

(b) Labelling of prepackaged foods-

Every package of food shall carry the following information on the label.

- (1) The name of the food .-The name of the food shall include trade name or description of food contained in the

package.

(2) List of ingredients .-Except for single ingredient foods, a list of ingredients shall be declared on the label in the following manner:- -

- (i) the list of ingredients shall contain an appropriate title, such as the term "ingredients";
- (ii) the name of ingredients used in the product shall be listed in descending order of their composition by weight or volume, as the case may be, at the time of its manufacture;
- (iii) where an ingredient itself is the product of two or more ingredients, such a compound ingredient shall be declared in the list of ingredients, and shall be accompanied by a list, in brackets, of its ingredients in descending order of weight or volume, as case may be:

xxxx”

8. 1954 Act contemplates prohibition of manufacture, storing, sale or distribution of any adulterated and misbranded food. It provides measure to prevent adulteration and also provides for laying down food standards and prohibiting import of certain objectionable articles of food items. The primary object of the Act is to prevent supply of adulterated and misbranded food-stuff in the interests of the health of the community. Misbranded food is prohibited under Section 7 of the Act. By misbranding the legislature meant an act of deception and falsehood w.r.t. the contents of the food item. 1955 Rules framed under 1954 Act extensively deals with packaging and labelling of foods. Rules 32 provides that the label of prepackaged

food should not be deceptive regarding its character in any respect. Likewise Rule 37 provides that the label should not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in particular regarding the food contained in the package or concerning the quantity or the nutritive value or in relation to the place of origin of the said food. The provision has fallen for consideration before the various Courts.

9. Apex Court in the case of **Parakh Food Limited vs. State of Andhra Pradesh and another** (supra) held as under :

'10. Keeping the above principle in mind, the words "such other" as used in Rule 37 D is to be read along with the subject matter in which they have been used. The residuary clause of the rule has to be read in light of the ten prohibited expressions, and it becomes clear that what is prohibited are only the expressions which are an exaggeration of the quality of the product.

11. In the present case, it is true that the appellant has used pictures of vegetables on the label of the product which is refined soyabean oil, which according to the appellant is to depict the purpose for which the oil can be used, viz., preparation of the vegetables depicted thereon. Unless the picture depicted on a label of edible oils and fats exaggerates the quality of the product, it would not fall within the mischief of Rule 37 D. In the present case, the vegetables shown on the label of soyabean oil does not in any way indicate that the quality of soyabean oil is 'super-refined', 'extra-refined', 'micro-refined', 'double-refined', 'ultra-refined', 'anti-cholesterol', 'cholesterol fighter', 'soothing to heart', 'cholesterol friendly', 'saturated fat free' etc., nor it indicates the exaggeration towards the quality of the product to come within the mischief of Rule 37D of the PFA Rules. In our opinion the High Court has committed a serious

error in arriving at a finding that the article of food (soyabean oil) was misbranded since the picture contained on the label has nothing to do with the article of food in question, completely ignoring the fact that the article of food can be used for cooking the vegetables shown in the picture which cannot be said to be exaggerating the quality of the food in question.'

10. Delhi High Court in the case of **Municipal Corporation of Delhi vs. Bal Krishan Thaper (Criminal Revision No. 58 of 1973)** (supra) held as under :

“9. I have earlier found that what the respondent purported to sell was Saccharin-which in fact was not Saccharin but an admixture of Glucose and Saccharin. The quantity of Saccharin in the two samples was negligible. The labels on the packages are suggestive that the article of food is Saccharin or that the contents possess the qualities, including that of sweetness, of Saccharin. There can be little doubt that the labels on the samples did not indicate the true nature of their contents. The statements on the labels could deceive or mislead a purchaser that the article of food is Saccharin or in any case a substitute for Saccharin. Rule 37 of the rules framed under the Act provides that a label shall not contain any statement, claims design, device fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food. In *Municipal Corporation of Delhi v. Thou Ram*, I.L.R. (1974) 1 Delhi 648. Jagjit Singh J. and myself held that "an article of food shall be presumed to be misbranded if it 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. No general rule can be/laid down as to what is and what is not a colourable variation. All that can be said is to

ascertain in every case whether there is such a resemblance as to deceive a purchaser using ordinary caution." It was further held that "the declaration by the respondent that 'barfi' was prepared from 'basin', sugar and 'Khoa' was clearly false, and that the addition of small quantity of milk fat, if at all, was only a colourable variation to deceive a purchaser."

11. Further High Court of Madhya Pradesh in the case of **'Pepsico India Holdings Pvt. Ltd. & Another vs. State of Madhya Pradesh Through Food Inspector' M.Cr.C. No.6848/2011**, decided on 18th of June, 2019 held as under :

“23. That as regarding violation of Section 5, the said Section relates to import of any adulterated or misbranded food or violation of terms of licence. Section 5 of the Act reads as under :-

5. Prohibition of import of certain articles of food - No person shall import into India -
 - (i) any adulterated food;
 - (ii) any misbranded food;
 - (iii) any articles of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence; and
 - (iv) any article of food in contravention of any other provision of this Act or of any rule made there under.

23. That even as per the report of the Public Analyst, the sample of the food was found confirming to the standards. Admittedly, the product Quaker Oats is imported and repacked in India. Thus, the Label Declaration was only made after the stage of re-packing, admittedly, when the package was brought in India for re-packaging there was no violation of any label Declaration. Even otherwise, as the sample does not in any way violate Rule 37 or Rule 39 and as the sample confirmed to the standards even as per report of the Public Analyst, there is no

question of violation of Section 5 of the Food Adulteration Act, 2012.

24. The Apex Court in Para - 9 of the case of **Selva Kumar v. State** reported in **2010 SCC Online Mad 4280** has held as under :-

9. A perusal of the public analyst's report would reveal the Public Analyst has simply stated that the sample was misbranded since it is not labelled in accordance with the requirements of Rule 37 of P.F.A. Rules 1955, but he has not mentioned as to how and what manner the sample was misbranded. There must be a specific averment that the customers being mislead on account of misbranding and in the absence of any such clear averments, it cannot be said that the customers are mislead or misdirected.

25. In Para - 17 and 18 of the case of **Nestle India Limited v. State of Maharashtra [(2012) SCC Born 863]** the Apex Court has held as under :-

17. The plain reading of the said provision, on the backdrop of the words mentioned on the label of the food products, namely, the "Maggi Noodles" and "Maggi Teekha Masala Sauce", I find considerable merit in the submissions of Shri Sunil Manohar, the learned Senior Counsel for the petitioner. The requirement as suggested by the provisions of rule 39 is the words recommended by the medical profession or any such words implying or suggesting that the food is recommended, prescribed or approved by the medical practitioner is certainly with a view to prohibit or sale of such a food product which would create an impression in the mind of purchaser that as the product is recommended by the medical profession or medical practitioner, it is beneficial for his health. The object is certainly laudable i.e to prevent the general public from misleading claims of the manufacture or the seller of food product. On this touchstone if the labels are scanned and assessed with the objectivity, one would find that the words used on the label are the statement of facts. In the case of the product, namely "Maggi Noodles", the words reflected about the protein and calcium and the product "Maggi Teekha Masala Sauce" is packed with protein and calcium is merely a statement of facts. The label nowhere suggests that the said product is recommended by the medical profession or medical practitioner so as to meet the requirement under Rule 39. Insofar as the nutrient values contained in the product, the data is

separately reflected on the label. In view of these facts, the conclusion arrived at by the authority passing the order dated 10.12.2009 i.e the Food Inspector and Licensing Authority is certainly erroneous. The order also suffers from a mechanical approach by the authority as the petitioner/company in its reply submitted that the statements about the protein and calcium are the statements of facts and the submission in the reply that there is nothing on the label either in clear words or any such words to imply with the product is recommended, prescribed or approved by any medical practitioner or is approved for medical purpose. The appellate authority substituted its own reasons namely about the words on label were in the nature that the appellant's distributor has introduced advertisement of contents of protein and calcium. Now this was not the charge levelled against the petitioner/company. As there was nothing in that respect either in the notice or in the order passed by the Food Inspector and Licensing Authority, the petitioner had no opportunity to meet these substituted charges by the appellate authority. The same is the case about further observation of the appellate authority in respect of one GSR 664(E). The appellate authority observed that as per the said new GSR 664(E), the petitioner has suppressed the facts. The appellate authority further observed that in the product "Maggi Noodles", the main ingredient is the wheat fine flour and the petitioner/company has made the statements on the label about the value of protein and calcium. Suppressing the fact that the main ingredient of the product "Noodles" is wheat fine flour which contains proportion of Carbohydrates in excess. This is also not a charge levelled against the petitioner/company. The notice issued to the petitioner along with the report of Public Analyst of State Public Health Laboratory refers to the contents on the label and particularly about the protein and calcium. In view of these facts, the appellate authority's observations about the petitioner misguiding the consumers by suppressing the fact that the noodle's main ingredient is wheat fine flour is erroneous. The appellate authority's order in respect of the product "Maggi Teekha Masala Sauce" is also erroneous. While considering the report of the Public Analyst and the objection of the Food Inspector, Wardha in respect of the contravention of Rule 39, reference is made to the words, "Tomatoes are a good source of lycopene - an antioxidant which would strengthen your body's natural defenses". Here also reference is made to GSR 664 and further it is observed by the appellate authority that the main ingredient in the product is only four per cent of tomato base and the

general consumer is likely to mislead by the words appearing on the label as to, "Tomatoes are a good source of lycopene - an antioxidant which would strengthen your body's natural defenses" and as such it contravenes Rule 39. Reading the words appearing on the label as it is, it only reflects a general statement that the "Tomatoes are a good source of lycopene - an antioxidant which would strengthen your body's natural defenses". The label nowhere suggests that the product "Maggi Teekha Masala Sauce" is either recommended by medical practitioner or recommended for medical purpose by medical practitioner. In that effect, the observation of the appellate authority that the petitioner/company through the label making an advertisement of its product showing that the product contains large scale of lycopene; whereas lycopene proportion is very minimal in the product and as such the consumer is being misguided. These observations of the appellate authority are far-fetched.

18. Taking overall view of the matter, I am of the considered opinion that there is considerable merit in the submission of Shri Sunil Manohar, the learned Counsel for the petitioner that the charge levelled against the petitioner/company in respect of contravention of Rule 39 of PFA Rules is unsustainable.

26. Para - 14 of the case of **P. Robert Immanuel & Ors. v. The State** reported in **2009 (2) MWN (Cr) 4546** are relevant which reads as under :-

14. The said private complainant has only relied on the Public Analyst report for misbranding of the label. As stated earlier misbranding of label does not require Public Analyst opinion and the Food Inspector, who had drawn samples had not mentioned anything about the label of beverage bottles. It is pertinent to note that the beverage is not adulterated. In my considered view, the petitioner is not liable to be prosecuted as the respondent Food Inspector who had the occasion to see the beverage bottles did not mention anything about the misbranding and it does not require the opinion of the Public Analyst.

27. In the light of the aforesaid judgments, the present miscellaneous criminal case is allowed. The impugned order dated 14/12/2010 is hereby set aside as well as the proceedings

and Complaint under section 7 and 16 of the Prevention of Food Adulteration Act, 1954 is, hereby quashed.”

12. Thus, the legal position that emerges from the aforesaid precedents interpreting Rule 37 and other provisions of the 1954 Act is :

- (i) If the package containing article of food or label on the package bears any statement, design or device regarding the ingredients or the substances contained therein which is false or misleading in any material particular or if the package is otherwise deceptive w.r.t. its contents, the same would mean 'misbranding';
- (ii) 'Misbranded' food is prohibited;
- (iii) Rule 37 of the Rules framed under 1954 Act prohibits label from containing any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning :
 - (a) the food contained in the package; or
 - (b) the quantity; or
 - (c) the nutritive value; or
 - (d) in relation to place or origin of the said food.

13. In the present case the State claims deception. The petitioner claims that the statement alleged to be deceptive does not

concern the food article contained in the package, thus it can't be alleged to be 'misbranded'.

14. While weighing the aforesaid rival stands this Court has to keep in mind the consumer of the food item. The statement made is in English language which is not native. Many of the customers in India know the meaning of 'juice' but are not conversant with word 'brand'. To answer *'whether the statement made on the label is deceptive or not'*, the standard to be applied is not of vigilant consumer but of an unwary normal consumer of the products offered by the petitioner. A normal consumer is a man of imperfect recollection and statement on the label affects him. The Court has to put itself in the position of an average customer and ask a question whether the food article is being passed off creating deception. The likelihood of confusion or deception is to be seen in relation to average unwary customer. Food article is not juice. Allegation is that the consumer is being misled to believe food article as juice. The fact of the food article being passed off deceptively as juice is to be determined or ruled out. It is definitely matter of evidence. Thus at this stage to hold that the statement i.e. 'The World's No.1 Juice Brand' does not amount to deception and would thus not constitute 'misbranding' would be beyond the scope of Section 482 Cr.P.C.

15. In view of above, this Court finds that at this stage a

finding that the statement contained on the label does not amount to misbranding of the product cannot be recorded.

16. Resultantly, the present petitions are ordered to be dismissed.

17. A copy of this order be kept on the file of other connected case.

November 14, 2023
Dpr (PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes