

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

I. CRM-M-11797-2010
2024:PHHC: 058466

M/S ARADHANA DRINKS & BEVERAGES
PRIVATE LTD. AND ANOTHER Petitioners

Vs.

Union Territory of Chandigarh and another Respondents

II. CRM-M-11798-2010
2024:PHHC: 058467

M/S ARADHANA DRINKS & BEVERAGES
PRIVATE LTD. AND ANOTHER Petitioners

Vs.

The Union Territory of Chandigarh and another
Respondents

Reserved on: 29.02.2024
Pronounced on : 29.04.2024

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. R.S. Cheema, Sr. Advocate, with
Mr. Rajesh Batra, Ms. Sonia Kukreja and
Mr. S.S. Kang, Advocates, for the petitioners.

Mr. Rajeev Anand, AAP for UT, Chandigarh

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, both filed under Section 482 CrPC, wherein petitioners pray for quashing separate complaints and the summoning orders passed by the Courts concerned so as to prosecute the petitioners under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 [*for short ‘the PFA Act, 1954’*]

read with Rule 32 of the Prevention of Food Adulteration Rules, 1955 [*for short 'the PFA Rules, 1955'*].

2.1 In **CRM-M-11797-2010**, the Government Food Inspector appointed by the Chandigarh Administration, inspected the premises of petitioner M/s Aradhana Drinks & Beverages Private Ltd., Plot No.181, Phase I, Industrial Area, Chandigarh on 26.05.2004 and found in its possession 500 sealed bottles of 300 ML each of '*Mirinda Sweetened Carbonated Water*' for public sale. He purchased three bottles for the purpose of sampling on the payment of ₹66/- against a receipt, after serving notice on Form VI to Deepak Mittal, the representative of M/s Aradhana Drinks & Beverages Private Ltd.. One of the sample bottles in sealed parcel was sent to Public Analyst, Punjab, Chandigarh alongwith a copy of Form VII in a sealed pack, whereas, two other bottles in a sealed pack were deposited with the Local Health Authority, UT Chandigarh. The report of the Public Analyst (*Annexure P3*) was received, as per which month and year of its manufacture and complete address, as required under Clause (c) and (f) of Rule 32 of the PFA Rules, 1955 was not given, and so sample was misbranded.

2.2 In **CRM-M-11798-2010**, in the inspection carried out on 26.05.2004, 500 sealed bottles of 300 ML each of '*Pepsi Sweetened Carbonated water*' for public sale were found. Three sample bottles were drawn. One sample was sent to the Public Analyst and two were deposited with the Local Health Authority. Similar report, as in the previous case, was received from the Public Analyst to the effect that month and year of manufacture of the sampled product and complete address was not

mentioned as required under Clause (c) and (f) of Rule 32 of the PFA Rules, 1955 and so the sample was misbranded.

2.3 Separate complaints were filed before Chief Judicial Magistrate, Chandigarh, who issued process against the accused to face prosecution under Section 16(1)(a)(i) of the PFA Act, 1954.

3.1 Assailing the summoning order and also seeking quashing of the complaints, it is contended by Ld. Senior counsel that there is violation of Rule 32 of the PFA Rules, 1955, as per the opinion of the Public Analyst, only by the manufacturer, who in the present case is M/s Dhillon Kool Drinks and Beverages Limited, whereas in the present case, instead of taking any action against said manufacturer, complaint has been filed against the petitioner and its manager without specifying their role in the present case.

3.2 It is submitted further that Public Analyst has opined the address mentioned on the label of the product to be incomplete. Whereas, all bottles, manufactured by the manufacturer, bear common label and identical declarations on its crown cork mentioning the address. The term ‘complete address’ in Rule 32(c) of the PFA Rules, 1955 conveys complete postal address and the test of completeness is whether by giving the address on a postal correspondence will reach the addressee or not? If the answer is ‘Yes’ then the address is complete. Ld. Senior counsel for the petitioners has also referred to the Explanation II, provided under Rule 32 of the PFA Rules, 1955, as to what “Complete Address” means and contends that when name of the City and State are mentioned, or pin code is mentioned, then given address is complete or not. Ld. Senior counsel also contends that Rule 32(c) of the PFA Rules, 1955 was substituted by way of GSR 877(E) dated

20.11.2000 w.e.f. 20.11.2001, as per which the term ‘complete address’ as defined in Explanation II to Rule 32 was omitted w.e.f. 20.11.2001 and that address shall be considered to be complete, where the consumer can identify and locate the manufacturer and that no straight jacket formula can be applied as the test of completeness. Ld. Senior counsel also referred to the term ‘complete address’ as has been explained in *Standards of Weights and Measures (Packaged Commodities) Rules, 1977* in this regard.

3.3 Still further, it is contended that opinion of the Public Analyst regarding violation of Rule 32(c) of the PFA Rules, 1955, for not disclosing the ‘complete address’ of manufacturer is also wrong because the address of the manufacturer is clearly mentioned as M/s Dhillon Kool Drinks and Beverages Limited, Phillaur.

3.4 Still further, it is argued that Public Analyst only checked and reproduced the declarations made on the crown cork for statutory declaration with respect to compliance of Rule 32(f) of the PFA Rules, 1955, whereas the same is required to be given on the body of the bottle and that as per 5th proviso to Rule 32(i) of the PFA Rules, 1955, in cases of carbonated water, the date of manufacture shall invariably appear on the body of the bottle, and so, in the present case, there cannot be any violation of Rule 32(f) of the PFA Rules, 1955.

3.5 In additional grounds raised by the petitioners by moving CRM-13470-2011 in CRM-M-11798-2010; and CRM-13492-2011 in CRM-M-11797-2010, it is contended that the sample product in both the cases is carbonated water and as per the proviso to Rule 32 of the PFA Rules, 1955 at the relevant time, the provisions of these Rules were not applicable to the

carbonated water and so, there cannot be any violation of Rule 32 of the PFA Rules, 1955.

3.6 It is also contended that process of stamping, date of manufacturing, batch number and MRP is online and is done by inject printer on the neck/cap of the bottle and that in this case, Public Analyst did not inspect the glass bottle. It is further the contention of Id. counsel that Fruit Product Order, 1955 provide for mentioning either the batch number/code number/ lot number on the lable; or the date of manufacture and since in the present case, there is no violation pertaining to Batch/Lot/Code N:, so it can be presumed that the same was declared upon the label, so there is no violation of Rule 32 (f). Reliance has been placed on a Full Bench decision of this Court rendered in *“Chint Ram and another Vs. State of Punjab”* 1970 SCC OnLine P&H 382; and *“Gopi Chand Vs. State of Punjab”* 2011 SCC OnLine P&H 13592.

3.7 Still further. it is contended by Id. Senior counsel that the PFA Act, 1954 has since been repealed by the Food Safety and Standards Act, 2006 [*for short ‘the Food Safety Act, 2006’*]; that offences, as alleged in the complaint, are technical in nature pertaining to misbranding only, without there being any allegation of adulteration; that said offences regarding violation of Rule 32 of the PFA Rules, 1955 are summarily triable as per Section 16A of the PFA Act, 1954 and that after the enactment of the Food Safety Act, 2006, Food Safety and Standard Authority of India vide its letter dated 02.08.2016 had directed all the Commissioners of Food Safety of all the States/UT’s Government to examine all the pending cases against food business operators under the provisions of various enactment and orders

repealed on enactment of Food Safety Act, 2006 and take a view on withdrawal of the same, if considered appropriate. Ld. Senior counsel has referred to the decision of Rajasthan High Court rendered in *M/s Bhole Baba Industries (Dholpur) Private Limited and another Vs. State of Rajasthan and another* [SB Criminal Misc. (petition) No.6730/2017 decided on 15.01.2018] and another decision of Himachal Pradesh High Court rendered in *M/s Pepsico India Holdings Private Limited Vs. State of Himachal Pradesh and another* [Criminal Misc. Petition (Main) U/s 482 CrPC No.225 of 2019 decided on 30.09.2021], wherein by taking cognizance of the letter dated 02.08.2016 of the Food Safety and Standards Authority of India, the proceedings initiated for breach of Rule 32 of the PFA Act, 1954 qua misbranding were ordered to be quashed.

3.8 With all these submissions, prayer is made for quashing of the complaint.

4.1 Opposing the petitions, ld. state counsel contends that on the labels of the sampled products, only the name - 'M/s Dhillon Kool Drinks and Beverages Limited, Phillaur', was printed, without making it clear as to whether it is the manufacturer, packer or bottler. The names and complete address of the manufacturer or the packer or bottler are not mentioned. Even the Manager of the petitioner-company did not produce any bill or invoice regarding the purchase of bottles from any other manufacturer under Section 19(2) of the PFA Act, 1954 nor claimed any warranty under Section 20A of the PFA Act, 1954 and so, petitioner-company is clearly liable to be prosecuted for misbranding, as it was found to be in possession of misbranded food articles.

4.2 It is contended that the very fact that provisions of Rule 32 of the PFA Rules, 1955 was amended and Explanation II, which was inserted by way of a notification dated 29.04.1987, was omitted by way of notification dated 20.11.2000, would show that intention of the legislature was to give the word ‘complete address’ a broader meaning than the restricted meaning given in the explanation as well as under the *Standards of Weights and Measures (Packaged Commodities) Rules, 1977* and if considered this way, the complete address would mean, the address as can be understood by a common man of ordinary prudence i.e. Plot No., Street or Sector or Area, City and the State, wherein the said plot is situated, which ought to be specifically mentioned, but in the present case these details were not given.

4.3 Ld. State counsel also contends that even the month and year of manufacture was not mentioned on the labels of the sampled product, which is in violation of Rule 32(f) of the PFA Rules, 1955.

4.4 Ld. State counsel further contends that submission of the petitioners to the effect that carbonated water was exempted from the requirement of labeling under the Rules, is mis-founded. By referring to the complete Rule 32, Ld. State counsel submits that proviso referred by Ld. Senior counsel for the petitioners refers to Clauses (a) & (b) pertaining to declaration of food product being vegetarian or non-vegetarian by making a symbol and that the proviso is an exception to this provision only and not applicable to the entire Rule 32 or other Rules of the PFA Rules, 1955.

4.5 Controverting all the averments, ld. State counsel prayed for dismissal of the petition.

5. I have considered submissions of both the sides and have appraised the record.
6. Section 7 of the PFA Act, 1954 prohibits manufacturing, sale or distribution, amongst others, any misbranded food. Section 16 of the PFA Act, 1954 provides for the punishment for commission of any such offence. Section 2(ix) of the PFA Act, 1954 describes as to in what circumstances, an Article of food shall be deemed to be ‘misbranded’. Amongst others, Clause (k) of Section 2(ix) of the PFA Act, 1954, provides that an article of food shall be deemed to be misbranded, if it is not labeled in accordance with the requirements of this Act or Rules made thereunder. Rule 32 of the PFA Rules, 1955 provides for carrying a label on any pre-packaged food. Sub Rule 32(a) is general in nature. Sub Rule 32(b) provides for carrying the information on the label in respect of name of the food apart from the ingredients thereof. Sub Rule (c) of Rule 32 provides the requirement for mentioning the name and complete address of the manufacturer etc. on the label. Sub Rule (d) requires net weight/volume/number, as the case may be, of the food to be mentioned on the label. Sub Rule (e) of Rule 32 provides for requirement of mentioning lot/code/batch identification, whereas Sub Rule (f) of Rule 32 provides the requirement of mentioning the date of manufacturing or packing etc. on the label.
7. Sub Rules (c) & (f) of Rule 32, as these stood at the time of sampling in the present case, i.e. prior to May 2004 are relevant in this case. These read as under: -

“32. Every package of food shall carry a label. -

(a) & (b) xxxxxxxxxxxx

- (c) (i) the name and complete address of the manufacturer and the manufacturing unit, if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be;
- (ii) where an article of food is manufactured or packed or bottled by a person or a company under the written authority of some other manufacturer or company, under this or its brand name, the label shall carry the name and complete address of the manufacturing or packing or bottling unit as the case may be, and also the name and complete address of the manufacturer or the company, for and on whose behalf it is manufactured or packed or bottled;
- (iii) where an article of food is imported into India, the package of food shall also carry the name and complete address of the importer in India.

Provided that where any food article manufactured outside India is packed or bottled in India, the package containing the such food article shall also bear on the label, the name of the country of origin of the food article and the name and complete address of the importer and the premises of the packing or bottling in India.

(d) & (e) XXXXXX

- (f) the month and year in which the commodity is manufactured or prepacked:

Provided that in case of package weighing 20 g. less and liquid products marketed in bottles which are recycled for refilling, particulars under clause (b) need not be specified:

Provided further that such declaration shall be given on the label of multipiece package either on the label of multipiece package or in a separate slip inside the multipiece package in such a manner the same is readable even without opening the package:

Provided also that in case of carbonated water containers and the packages of biscuits, confectionery and sweets, containing more than 60g but not more than 120g. and food packages weighing not more than 60g. particulars under clauses (d) and (e) need not be specified.

8. In the present case, the Public Analyst, Punjab Chandigarh in its report Annexure P3 (in CRM-M-11797-2010) noticed the description on the label of the sampled product, as under: -

“Label:

*Each sample bottle printed as Mirinda 300 ml. and having crown cork printed as Mirinda. Cov 946 F.P.O. 7910 Best before six months from manufacture. CONTAINS ADDED FLAVOURS PERMITTED CLASS II PRESERVATIVE & NATURAL Food Colours. NO FRUIT, QUANTITY OF SUGAR ADDED 11g/100gm SWEETENED CARBONATED WATER LEHAR MIRINDA, **Dhillon Kool Drinks And Beverages Ltd. Phillaur.***

9. Similarly, in CRM-M-11798-2010, the Public Analyst, Punjab Chandigarh in its report Annexure P3, noticed the description on the label of the sampled product, as under: -

“Label:

*Each sample bottle printed as LEHAR PEPSI 300 ml. and having crown cork printed as Pepsi Cov 946 F.P.O. 7910 SWEETENED CARBONATED WATER LEHAR PEPSI, **Dhillon Kool Drinks And Beverages Ltd. Phillaur.** Best before six months from manufacture. CONTAINS PERMITTED NATURAL COLOUR ADDED FLAVOURS, CAFFINE & No Fruit Food, QUANTITY OF SUGAR ADDED 10.6 g/100gm”*

10. In both the cases, the opinion of the Public Analyst is as under:

*“that product has not been labeled in accordance with the provisions of Rule 32 of the PFA Rules, 1955. **Month and year of its manufacture & complete address have not been given.** Hence the sample is misbranded.”*

11. As is evident from Sub Rule (c) of Rule 32 of the PFA Rules, 1955, the requirement is to mention the name and complete address of the manufacturer and the manufacturing unit, if these are located at different places and in case the manufacturer is not the packer or bottler, then the name and complete address of the packing and bottling unit be mentioned, as the case may be.

12. In the present case, the words ‘**M/s Dhillon Kool Drinks and Beverages Limited, Phillaur**’ as found to be mentioned on the cork of the sampled products, would not lead anybody to infer, as to whether said M/s Dhillon Kool Drinks and Beverages Limited is manufacturer or the manufacturing unit or packer or bottler. As has been pointed out by Id. State counsel that at the time of sampling, even the Manager of the petitioner did not produce any bill or invoice regarding the purchase of bottles from another manufacturer under Section 19(2) of the PFA Act, 1954 nor claimed any warranty under Section 20A of the PFA Act, 1954.

13. For the sake of arguments, even if it is assumed that the words ‘M/s Dhillon Kool Drinks and Beverages Limited, Phillaur’, referred to the manufacturer, the address is certainly incomplete. Explanation II to Rule 32 of the PFA Rules, 1955 before its omission by way of notification No.GSR 877(E) dated 20.11.2000 (w.e.f. 20.11.2001), provided as under: -

“Explanation II- "Complete Address" means in case of a company, the address at which its registered office is situated and in any other case, the name of street, number (if any), assigned to the premises of the manufacturer or packer and **either the name of the city and State** where the business is carried on by the manufacturer or packer **or the pin code**. For the purpose of this explanation, shorter address registered under Rule 36 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, shall also be treated as complete address"

14. It is clear from the aforesaid explanation that an address will be considered to be complete, when the name of street, number (if any), assigned to the premises of the manufacturer or packer; and either the name of the City and the State; or the pin code, where the business if carried on by the manufacturer or packer, is disclosed. Meaning thereby, either both the name of the City as well as the State, should be mentioned; or the pin code is

required to be mentioned. Disclosing the name of the city only will not suffice, unless the name of the State is also mentioned. Simple mentioning of name of the City only or the name of the State only will not be sufficient. Or alternatively, the PIN Code of the City is required to be disclosed on the label.

15. In the present case, as the address mentioned on the label of the sampled product would reveal that only the name of the City as Phillaur, is mentioned, without mentioning either the name of the State in which it is located; or the pin number. Thus, the requirement of mentioning complete address as per Sub Rule (c) of Rule 32 of the PFA Rules, 1955 is not fulfilled, so the contention of Id. senior counsel that there is no violation, has not merit.

16. As far as the authorities cited by Id. Senior counsel are concerned, in the case of *Nirma Limited Vs. State of Punjab 2015 (2) RCR (Criminal) 469*, the label on the appellant's packing indicated the pin code along with the names of the City and the Village and so, it was held that it satisfied the requirement of 'complete address' under Rule 32(c) of the PFA Rules, 1955. In the case of *Hindustan Lever Ltd. vs. Govt Food Inspector, Hoshiarpur, 2011 SCC OnLine P&H 8241*, the address given by the petitioner included the pin code along with the name of the city and so, it was held by Division Bench of this Court that the Food Inspector or the person authorized under the Rules of PFA Rules, 1955 had no difficulty in locating the address.

17. Similarly, in the case of *Britannia Industries Ltd. vs. Union of India, MANU/PH/1910/2012*, name of the city and pin code was mentioned and so, address was held to be complete by this Court.

18. Thus, all the authorities cited by the Sr. counsel for the petitioners are clearly distinguishable on facts, because in the present case, neither the pin code is mentioned nor the requirement of mentioning the name of the City and the State is fulfilled.

19. Ld. Senior counsel for petitioners has referred to following proviso to Rule 32 (b) pertaining to the requirement of mentioning name of the food and list of ingredients on the label:

“Provided that provisions of these rules shall not apply in respect of mineral water or packaged drinking water or carbonated water or liquid and powdered milk.”

to contend that this proviso exempts the applicability of Rule 32 in respect of mineral water, packaged drinking water or carbonated water. After going through the entire Rule 32, the contention is found to be misconceived. This court agrees with the contention of Ld. State counsel that in fact, the proviso as pointed out by ld. Senior counsel deals with Clauses (a) and (b) pertaining to declaration of food products being vegetarian or non-vegetarian by printing distinguishable a symbol. The said proviso is an exception only to the said provision dealing with making of a symbol in respect of vegetarian food product and does not deal with the entire Rule 32 or other rules of the PFA Rules, 1955. The entire provision is required to be harmoniously construed (in context the same has been mentioned. In case the provision is read in isolation, it may lead to an inference that the provisions of the PFA Rules, 1955 would not apply to carbonated water. This cannot be the purpose of incorporating the said provision, inasmuch as the intention of the

legislature could have never been to exempt packaged drinking water or carbonated water or liquid or powdered milk from the applicability of the PFA Rules, 1955.

20. Proceeding further, contention raised by ld. Sr. counsel for the petitioner is that Rule 32 (f) of PFA Rules, 1955 as well as Clause 8(d) of the Fruit Products Order, 1955 [FPO, 1955] provide the requirement of printing date of manufacture/packing. As per ld. counsel, the product in question, at the relevant time, was covered under the PFA Act, 1954 and Rules, 1955 framed thereunder, as well as Fruit Product Orders, 1955 passed under Section 3 of the Essential Commodities Act. Ld. counsel contends that though Rule 32 (f) and Rule 32(e) of PFA Rules, 1955 provide for stating of the date of manufacture/packing as well as batch number/code number/lot number, but the FPO, 1955 vide Clause 8(d) gives an option of either stating the date of manufacture or lot number and as in this case, there is no violation qua mentioning of lot number/code/batch, so there is substantial compliance of law, as FPO permitted stating of either of the two declarations i.e., either the declaration of month and year of manufacture; or lot/code/batch number. Ld. counsel refers to decisions of this Court rendered in the cases of *Gopi Chand (Supra)* and *Chint Ram and another (Supra)*.

21. In the case of *Chint Ram and another (Supra)*, it was considered by a Full Bench of this Court, as to whether Clauses 2, 7 & 10 of the Fruit Products Order, 1955 have overriding effect on the provisions of Prevention of Food Adulteration Act. In that case before Full Bench of this Court, the petitioner was carrying on the business of manufacturing fruit products under license obtained from the Government of India under the

Fruit Products Order, 1955, issued by the Central Government under Section 3 of the Essential Commodities Act, 1955. Food Inspector had taken sample of table sauce manufactured by the petitioner and as per the report of the public analyst, the table sauce was found to be coloured with coal tar dye. Contention was raised that petitioner had made compliance of the terms of the licence granted under the Fruit Products Order, 1955 and so, he had not violated any of the Rules under the PFA Rules, 1955. Full Bench of this Court held as under: -

“The position taken by the learned Magistrate is rather anomalous and the only way to satisfactorily resolve is to hold that the Fruit Products Order must displace the provisions of the Prevention of Food Adulteration Act wherever they are in conflict. No person can manufacture a fruit product unless he obtains a licence under the Fruit Products Order and there can be no violation of that order, if its provisions are fully complied with. It is difficult to see that if a citizen complies with the provisions of a law, he can be held guilty of violating the provisions of another law. Such a situation is unthinkable. Moreover, provisions of section 6 of the Essential Commodities Act, 1955, which are in the following terms, make it abundantly clear that any order under section 3 of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act-

"Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

The Fruit Products Order being under section 3, will certainly have an overriding effect so far as the Prevention of Food Adulteration Act is concerned.”

22. In the case of ***Gopi Chand (Supra)***, sample of Elpro Tomato Sauce was found to be misbranded, as the product did not have the label in accordance with the provisions of Rule 32 of the PFA Rules, 1955, as year of manufacture was not legible and also batch number/code number/lot number was not given on the label. Contention was raised by the petitioner

that he was manufacturer of Elpro Tomato Sauce and had obtained certificate/license under the Fruit Products Order, 1955 and that the requirements as mandated under the said FPO 1955 had been duly complied with and so, there being no violation of the conditions of license/certificate, so proceedings under the PFA Act, 1954 could have been initiated in the light of Full Court judgment rendered in the case of *Chint Ram and another (Supra)*. It was held by this Court as under: -

“Sample of Elpro Tomato Sauce was taken on 31.08.2009 by the Government Food Inspector, Amritsar. This is admittedly manufactured by the petitioner **wherein the date of manufacture was shown in Form VI as July, 2008.** It was further mentioned that the label indicated that it was best before the 12 months from the date of manufacturing/packing when kept in some cool, clean and dry condition. The report of the Public Analyst, Punjab, Chandigarh dated 30.09.2009 shows that it to be misbranded on the ground that the provisions of Rule 32 of the PFA Act and the Prevention of Food Adulteration Rules, 1955 have been violated as the year of manufacturing was not legible and the Batch No./Lot No./Code No. was not given on the label. It is not in dispute that the petitioner is the holder of licence/certificate under the FPO 1955. Clause 8(1) of the FPO 1955 deals with the requirements which every manufacturer holding a licence/certificate with regard to the packing, marking and labeling of containers of fruit products is to comply with. **As per sub-clause (d) thereof each container in which any fruit product is packed shall specify a code number indicating the lot or the date of manufacturer of such fruit product. As is apparent from the Form VI (Annexure P-1) the year of manufacture was very much there as July, 2008.** The report of the Public Analyst with regard to it being not legible, cannot be accepted. **As regards the Batch No./Lot No./Code No. not being on the label is concerned, the word 'or' has been used in sub-clause (d) of Clause 8 between the words 'code number indicating the lot' and 'the date of manufacture of such food product'. Meaning thereby if any one of them is mentioned, the condition of the clause stands fulfilled,** as in this case. It is not in dispute that the contents of the container were not found to be, in any manner, contaminated or adulterated, the only violation was on the label, which was according to the FPO 1955 and thus there was no violation.”

23. In view of the Full Bench judgment of this court in *Chint Ram and another (Supra)*, there can be no dispute to the legal proposition that

the Fruit Products Order being under section 3 of Essential Commodities Act, will certainly have an overriding effect on the provisions of the Prevention of Food Adulteration Act and the Rules framed thereunder.

24. Further, as per sub-clause (d) of Clause 8 of FPO 1955, each container in which any fruit product is packed, is required to specify a code number indicating the lot **or** the date of manufacturer of such fruit product. The word 'or' as has been used in sub-clause (d) of Clause 8 between the words 'code number indicating the lot' and 'the date of manufacture of such food product', would clearly indicate that if any one of them is mentioned, the condition of the clause stands fulfilled.

25. However, in the present case, as has been found above that month and year of manufacturing/packing is not clearly mentioned on the label of the sampled product; whereas, code number indicating the lot or the batch number is not at all mentioned. Thus, even the requirement of sub-clause (d) of Clause 8 of FPO 1955, are not fulfilled in the present case. As such, there is a *prima facie* violation of Rule 32 (f) of PFA Rules, 1955

26. As far as ***Gopi Chand (Supra)*** is concerned, the facts thereof are distinguishable from the facts of the present case, because in that case, as date of manufacture was clearly shown in Form VI as July, 2008 so, it was held that even if code/lot/batch number was not mentioned, the requirement of sub-clause (d) of Clause 8 of FPO 1955 was duly fulfilled.

27. In view of the aforesaid discussion, this Court does not find any ground so as to quash the complaint or the impugned summoning order.

28. However, at the same time, it is worth noticing that during pendency of the complaints pertaining to these petitions and prior to filing of

the present petition, the Legislature repealed the Prevention of Food Adulteration Act, 1954 and, in its place, enacted Food Safety and Standards Act, 2006, which came into force with effect from 28th May, 2008.

29. After enactment of this new Food Safety Act, 2006, a letter dated 2nd August 2016, was issued by the Food Safety and Standards Authority of India, constituted under 2006 Act, which is extracted as under:

“F. No. P. 15017/84/2015-FSSAI/Legal

Food Safety and Standards Authority of India

A Statutory Authority established under Food Safety and Standards Act, 2006
FDA Bhawan, Kotla Road, New Delhi – 100002-

Dated, the 2nd August 2016

To
The Commissioners of Food Safety,
All States/UTs Governments.

Subject: Cases pending under PFA Act and other orders repealed by FSS Act, 2006 (Schedule 2)-reg.

Sir,

It is understood that a large number of cases under the Prevention of Food Adulteration Act & other orders specified in Schedule 2 of the Food Safety and Standards Act, 2006, are still pending in various courts and tribunals across the country. In a sizable number of such cases, the offences alleged to have been committed may not be very serious in nature and the penalties/punishments prescribed for such offences are also not substantial. The pendency of such cases for a long time not only burdens the judicial system, but also diverts the scarce resources of the government in pursuing these matters rather than deploying them in effective implementation of the provisions of the FSS Act to ensure safe and wholesome food for the consumers.

2. In the view of the above, Commissioners of Food Safety of all States/ UTs may like to examine all pending cases against Food Business Operators under provisions of various enactments & orders repealed on enactment of Food Safety and Standards Act, 2006 and take a view on withdrawal of the

same, if considered appropriate. The results of this exercise may please be shared with FSSAI from time to time.

Yours faithfully,
Sd/-
(Raj Singh)
Head (Legal)”

30. As per the above letter, the subject of which pertains to the cases under the PFA Act, 1954 and FSS Act, 2006, i.e., the old as well as the new Act, the concerned Commissioners were required to consider all cases, in which the offences, alleged to have been committed, may not be very serious in nature and the penalties/punishments prescribed for such offences are also not substantial, so as to withdraw such cases. The letter has been issued to reduce the burden on the judicial system. No action appears to have been taken by the State of Haryana on this letter, despite the fact that the same issued by the Central Government on 2nd August 2016 (supra), specifically asked the Commissioners of Food Safety of all States/UTs to examine all pending cases against food business operators and take a view on withdrawal of the same.

31. Present case is of misbranding only and not of adulteration. As per Section 16A of the PFA Act, 1954, offence is in question is triable summarily. Section 52 of FSS Act, 2006 provides only for penalty to be imposed, if any person manufactures for sale or stores or sells or distributes or imports any article of food for human consumption, which is misbranded. Basically, misbranding has been considered as a civil wrong in the new Act.

32. Dealing with a similar matter, Hon’ble Supreme Court in *Nemi Chand Vs State of Rajasthan 2016 SCC OnLine SC 1715*, held as follows:-

“[3] It is not in dispute that the charge against the appellant was only of standardization of goods. Mr. Sushil Kumar Jain, learned senior counsel

appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below. He has, in this behalf, argued that there has been an amendment in the Act by the Central Amendment Act 34 of 1976, whereby Section 16A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in '**T. Barai v. Henry Ah Hoe and Another, 1983 1 SCC 177**' wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. In the said judgment, the Court held as under:

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense."

Allowing the appeal partly, Hon'ble Supreme Court modified the sentence imposed upon the appellant by imposing fine of Rs. 50,000/- to be deposited within two months with the trial court.

33. Same view has been taken by the High Court of Gujarat in **PepsiCo India Holdings Pvt. Ltd. Vs UOI, R/Special Criminal Application No.2281 of 2008**, by High Court of Rajasthan in **Ramkishan Agarwal Versus State of Rajasthan through PP, S.B. Criminal Miscellaneous (Petition) No.2223 of 2013 and connected matters** and by Himachal High

Court in *M/s Pepsico India Holdings Pvt Ltd. vs. State of Himachal Pradesh & Others, CMP (Main)) No.225 of 2019 decided on 30.09.2021.*

34. On account of the entire discussion as above, though this court does not find any legal ground so as to quash the complains or the impugned summoning orders in any of the case, but at the same time, in view of the enactment of FSS Act, 2006, state respondents/state would be at liberty to consider withdrawal of the cases, if approached by the petitioners within two months from today, having regard to the letter dated 02.08.2016 of the Food Safety and Standard Authority of India, after imposing penalty as per the provisions of FSS, 2006. However, it is made clear that in case the respondent-State is not inclined to consider the matter accordingly, it has to pass a reasoned order and then the petitioners will have to face prosecution before the court in accordance with law.

35. Disposed of accordingly.

Pending application(s), if any, also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

29.04.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes
Yes