

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30698-2010
2024:PHHC: 058302

M/S PEPSICO INDIA HOLDINGS PVT. LTD.
AND ANOTHER

. . . . Petitioners

Vs.

STATE OF PUNJAB 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. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioners pray for setting aside impugned order dated 13.12.2007 (*Annexure P1*), passed by the Court of Id. Additional Chief Judicial Magistrate, Jalandhar, whereby process against the petitioners have been issued in criminal complaint No.263 of 2007 tilted ‘*State Vs. Shri Vipin Singh and others*’, (*Annexure P2*), under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 [*for short ‘the PFA Act, 1954’*] read with Rules 32 and 50 of the Prevention of Food Adulteration Rules, 1955 [*for short ‘the PFA Rules, 1955’*] and further pray to quash the complaint in question.

2.1 As it emerges on perusal of the paper-book, Government Food Inspector (GFI), Jalandhar inspected the premises of M/s Doon Bakers, Jalandhar on 09.08.2007 and found in its possession 20 bottles of *Gatorade (orange flavour sports drink)* of 500 ml each. He purchased 3 bottles for the purpose of sampling on payment of ₹90/- against the receipt, after serving notice on Form VI (*Annexure P3*) to Vipin Singh, the representative of M/s Doon Bakers. The GFI also noted the description mentioned on the label of the bottle and reproduced the same on Form VI. One of the sample bottles in sealed parcel was sent to Public Analyst, Punjab, Chandigarh along with a copy of Form VII in a sealed pack; whereas two other bottles in sealed pack were deposited with Local Health Authority, Jalandhar. The report of Public Analyst (*Annexure P4*) was received, as per which the sample was found to be misbranded, since it was not in conformity with the provisions of Rule 32 of the PFA Rules, 1955, as month and year of manufacture; and batch/ code/ lot no. had not been mentioned on the label.

2.2 Complaint was then filed before the Id. Area magistrate to prosecute the retailer M/s Doon Bakers, the manufacturer M/s Pepsico India Holdings Pvt. Ltd. and Marketer M/s Tropicana Beverages along with their respective representatives.

2.3 Ld. ACJM vide order dated 13.12.2007 (*Annexure P1*) found *prima facie* case for commission of the offence punishable under Section 7 read with Section 16 of the PFA Act, 1954 and Rules 32 & 50 of the PFA Rules, 1955 and directed issuance of the process against all the accused accordingly.

3.1 Assailing the summoning order and also seeking the quashing of the complaint, it is contended by the petitioners that opinion of the Public Analyst is based on incomplete examination of the sample resulting in the incorrect finding. Drawing attention towards Explanation to Rule 32 of the PFA Rules, 1955, it is contended by Ld. Senior counsel for the petitioners that the term '*label*' means a display of written, marked, graphic, printed, perforated, stenciled, embossed or stamped matter upon the container, cover, lid or crown of any food package. Ld. counsel contends that though the Public Analyst rightly observed that main label did not contain the batch number and date of packing but he omitted to observe the cap of the bottle, where it is recorded.

3.2 It is contended that labels are printed in bulk for a large number of bottles and are used on different dates and for different batches and so, it is not feasible to print the date of manufacture and batch number on the pre-printed label. The common declarations to all bottles of sampled products i.e. Gatorade, such as ingredients, quantity of added sugar etc., manufactured by, marketed by are given upon the label of Gatorade in the printed label, which is wrapped around the product; whereas batch number, date of packing and MRP are not printed on the label of the bottle and rather, it is stated that 'For Batch Number, Date Of Manufacture and Maximum Retail Price (inclusive of all taxes) see cap/neck'. Ld. Senior counsel contends that bottle specific details like batch number, date of manufacture and MRP being variable are printed by the inkjet printing on the neck or the cap of the product.

3.3 Ld. counsel further contends that the opinion of the Public Analyst in this case is misconstrued on the very face of it, as the words are

clearly written on the label of the Gatorade as ‘for batch number, date of manufacture and maximum retail price (inclusive of all taxes) see cap/neck’, to which Public Analyst did not pay any attention. Attention is further drawn towards the fact that Form VI was prepared by the Government Food Inspector, while sampling the product and he reproduced the contents of the declarations made on the cork/screw cork of the sampled bottle, on which ‘MRP Rs.30/- Date of Packing 01.07’ are clearly mentioned. Thus, opinion of the Public Analyst is by merely relying upon the label, without looking at the cap of the bottle. It is thus contended that since the sampled bottle was not examined in entirety by the Public Analyst, so complaint is based upon the erroneous opinion, as the Public Analyst omitted to observe the cap of the bottle.

3.4 It is also the contention of Ld. Senior counsel that as three declarations being MRP, date of manufacture and Batch no. are injected by common spray stamp, so batch number must also be there on the cap of the bottle, which was omitted to be noted even by the Government Food Inspector while preparing Form VI.

3.5 It is further the contention of ld. 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, the date of manufacturing is clearly depicted on the label, as has been noted by the Government Food Inspector on Form VI, so there is no violation. 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.

3.6 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. Id. 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 and another 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.

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

4.1. Opposing the petition, Ld. State submits that complaint is based on the report of the Public Analyst; that in case petitioner is so confident that batch number/lot number/code number and the date of packing was mentioned on the cap/neck of the bottle, then he can prove the same before the trial Court by moving appropriate application by summoning or producing the remaining two sample bottles lying deposited with LHA, which can be opened in the Court.

4.2 Ld. State counsel submits that as per the report of the Public Analyst, there is a clear breach of Rule 32(e) and 32(f) of the PFA Rules, 1955 punishable under Section 16 read with Section 7 of the PFA Act, 1954 and so, there is no justification for quashing of the complaint. Ld. State counsel has referred to *M/s Aradhana Drinks and Beverages Private Limited Vs. State (Union Territory, Chandigarh) and another* [CRM-M-14110-2011 decided on 11.08.2016] and 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) provide 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.

7. Sub Rule (e) and Sub Rule (f) of Rule 32 (*as they stood at the time of sampling in this case vide G.S.R 491 € dated 21st August,2006*) are relevant in this case. These provide for the requirement of lot/code/batch identification and date of manufacture or packing, to be mentioned on the label. These read as under: -

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

(a) to (d) xxxxxxxxxxxx

(e) Lot/Code/Batch identification –

A batch number or code number or lot number, which is a mark of identification by which the food can be traced in the manufacture and identified in the distribution, shall be given on the lable.

(f) Date of manufacture or packing –

The date, month and year in which the commodity is manufactured packed or prepacked, shall be given on the label.

Provided that the month and the year of manufacture, packing or pre-packing shall be given if the "Best Before Date" of the products is more than three months:

Provided further that in case any package contains commodity which has a short shelf life of less than three months, the date, month and year in which the commodity is manufactured or prepared or prepacked shall be mentioned on the label.”

(g) to (m) xxxxxxxxxxxx

Explanation- I: The term 'label' means a display of written, marked, graphic, printed, perforated, stenciled, embossed or stamped matter upon the container, cover, lid or crown of any food package.

Explanation- II: (omitted)

Explanation-III: For the purpose of declaration of month and year of manufacture, the provision under the rule 6(B) of Weights and Measures (Packaged Commodities) Rules, 1977 shall apply.

Explanation-IV: A Batch Number or Code Number or Lot Number is a mark of identification by which the food can be traced in manufacture and identified in distribution.

Explanation-V to X: xxxxxxxxxxxx”

8. In the present case, the Public Analyst, Punjab Chandigarh in its report Annexure P4 noticed the details as mentioned on the label of the sampled product, as under: -

“Label:

*Label printed as Gatorade Orange flavour Thirst quencher, Non Carbonated, 500 mle, Orange flavour Sports Drink, Ingredients: Water, Sucrose, Dextrose, Contain permitted Synthetic Colour (INS 110) and added Flavour, Quantity of sugar 6 gm/100 gm, Manufactured by: Pepsico Holdings Pvt. Ltd., Plot No. D-7, MIDC, Paithan, Tal Paithan, Distt- Aurangabad- 431148, Marketed By:- TROPICANA BEVERAGE COMPANY, Batch No..... Date of manufacture....., Best Before twelve months from manufacture, **FPO- 12765**, Crush the Bottle after use etc.”*

The opinion of the Public Analyst is recorded as:

“the product has not been labeled in accordance with the provisions of Rule 32 of the PFA Rules, 1955, as month and year of manufacture and Batch number/Code number/Lot number has not been given on the label. The product is therefore misbranded.”

9. The opinion of the Public Analyst to the effect that month and year of manufacture was not mentioned on the label of the product appears to be apparently wrong, considering the fact that Government Food Inspector, Jalandhar, while serving notice upon the accused on Form VI

(Annexure P3) gave the description mentioned on the cork/screw cork of the sampled product as under: -

“As per Cork/Screw Cork:- Plain Orange colored cork/Screw Cork

Ingredients :- Water, Sucrose, dextrose, Acidity Regulator (INS 330, INS 331, INS 340 (1), Stabilizer (INS 414), Emulsifiers (INS 444), Mineral Salts, Contains Permitted Synthetic Color (INS 110) & added Flavour, Quantity of Added Sugar 6 gm/100 gm. MRP Rs. 30/-, Date of packing 01.07, Best before 12 months from manufacture.”

Mfd by:- Pepsico India Holdings Pvt. Ltd., Plot No. D-7, MIDC Paithan, Tal Paithan, Distt. Aurangabad 431148.

Mktd by:- Tropicana Beverages Company, 3-B DLF Corporate Park, S Block, Phase III, Qutab Enclave, Gurgaon 122002”

10. As is rightly urged by ld. Senior counsel for the petitioners, as per the Explanation I to Rule 32 of the Rules, ‘Label’ means a display of written, marked, graphic, printed, perforated, stencilled, embossed or stamped matter upon the container, cover, lid or crown of any food package. Thus, any description mentioned on the cover, lid or crown of any food package is also to be considered as part of the label.

11. Although the Public Analyst in his report gave the description mentioned on the label of the sampled product but failed to notice the description as mentioned on the screw cork of the product, which was noticed by the Government Food Inspector.

12. It is the contention of ld. senior counsel that in case of misbranding, it is only the information of Government Food Inspector which will matter as nothing is to be analysed by the Public Analyst. Ld. counsel has referred to a judgment of this Court rendered in *Aradhana Soft Drinks Company and another Vs State of Haryana and others*, 2014 SCC OnLine P&H 20540, wherein the complainant had only relied upon the report of the

public analyst for misbranding. The Food Inspector, who had drawn the samples, had not mentioned anything about the label on the bottle. It was held by this Court that a complaint could not have been filed only on the report of the public analyst. The petitioner was not liable to be prosecuted, as the food inspector, who had the occasion to see the bottle, did not mention anything about the misbranding and that it did not require the opinion of Public Analyst. He also refers to *P. Robert Immanuel Vs. State*, 2009(2) MWN (Cr.) 446, *A. Edwin Alex Vs. Food Inspection*, 2015(2) FAC 389, *State of Gujarat Vs. Bhagvandas Gopaldas*, 2010 SCC OnLine Guj 2888 and *PepsiCo India Holding Pvt. Ltd. Vs. State of M.P.*, M.Cr.C. No.6848/11, MP High Court (d.o.d.18.6.19).

13. This court does not find merit in the above contention. In case sampled product was sent to the Public Analyst, who has given his opinion regarding misbranding of the product on account of breach of any of the conditions of label as per the requirement of Rule 32 and complaint is based on that opinion, that in itself can't be a ground to quash the complaint or the summoning order. The authority [2014 SCC OnLine P&H 20540] cited by Ld. Sr. Counsel for the petitioner, is distinguishable on facts, because in that case, the GFI had not mentioned anything at all about the label on the bottle and complaint was filed only on base of report of Public Analyst. It is not so in the present case, as the Govt. Food Inspector has duly given the description on the label of the sampled product, which alongwith report of the Public Analyst have been referred in the complaint.

14. In *Aradhana Soft Drinks and Beverages Private Limited Vs. State (Union Territory, Chandigarh) and another* [CRM-M-14110-2011 decided on 11.08.2016] also, the public analyst had expressed his opinion

that product had not been labelled in accordance with the provisions of Rule 32 of PFA Rules, 1955 as batch number/lot number/code number and month and year of its manufacturer had not been given and so, the sample was misbranded, as are the facts in this case. In that case also, contention had been raised that if there was deficiency of label on the product, then Government Food Inspector can see the label himself and need not sent it to Analyst and that in the complaint or in his statement, GFI had not stated that there was any deficiency in the label. It was held by this Court that the mere fact that the GFI himself can see that there is no date, month and year of manufacturing and it does not have the batch number and lot number, is no ground to quash the impugned order of summoning. If the sample was sent to public analyst and it was found misbranded on the ground that batch number/lot number/manufacturing month and year etc. have not been mentioned, then it is no ground for quashing the proceedings or the summoning order

15. Moreover, even if contention of Id. Sr. counsel for the petitioner is accepted to the effect that in case of misbranding, no report of the public analyst is required, as necessary observations can be recorded by the Govt. Food Inspector, in that situation, it is to be noted that in present case, on Form VI (Annexure P3), Govt. Food Inspector has noticed the description mentioned on the screw cork of the sampled product in respect of 'Date of packing as '01.07''. Month and year of the manufacture or packing of the product, not found to be mentioned on the label. The words '01.07', as found to be mentioned on the screw cork, is quite vague, as it does not clarify, as to whether it is date and month; or month and year. It can be read as '1st January' or as 'January 2007'. Since the words '01.07' are prefixed by

‘Date of packing’, it is quite obvious that any consumer purchasing the product is likely to infer it as ‘1st January’. The objective is to inform the consumer about the date of manufacturing so that he is aware about the duration, in which the product is to be consumed. As such, it is found that month and year of manufacturing/packing is not clearly mentioned even on the cork, as per the observations made by the Government Food Inspector on Form VI and so, prima facie there is breach of Rule 32 (f) of PFA Rules, 1955.

16. Apart from above, the batch number/lot number/code number is neither mentioned on screw cork of the sampled product, as per Form VI (Annexure P3), nor the same finds mention in the report of the Public Analyst (Annexure P4), which is the necessary requirement of the label, as per Rule 32(e) of the PFA Rules, 1955. In this regard, the contention of Id. Senior counsel for the petitioner is that since date of manufacturing, MRP and batch number are injected by common spray stamp, and in this case, date of packing and MRP are duly mentioned on screw cork, so batch number must also be there, but the same is not specifically noted by the Government Food Inspector while making Form VI. Said contention is just based on assumptions. In case petitioner is so sure that batch number/code number/lot number was mentioned on the label or the screw cork, petitioner is at liberty to summon the remaining two sampled product, lying in the office of LHA and to open the same in the Court as to note as to whether the label affixed thereon or the screw cork thereon mentions the lot number/batch number/code number. It cannot be assumed that as MRP and date of packing as ‘01.07’ is mentioned on screw cork, so batch/code/lot number must be there.

17. Another contention raised by Id. 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 [FPA, 1955] provide about the requirement of printing date of manufacture/packing. As per Id. 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. Id. 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 in this case, as the date of packing was printed on the label as noted on Form VI, 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. Id. counsel refers to decisions of this Court rendered in the cases of *Gopi Chand (Supra)* and *Chint Ram and another (Supra)*.

18. 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.”

19. 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.”

20. 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 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.

21. 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.

22. 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 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.

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

24. However, at the same time, it is worth noticing that during pendency of the complaint *Annexure P2* 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.

25. 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)”

26. 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.

27. 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.

28. 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 sub-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.

29. 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. and another vs. State of Himachal Pradesh & Others, CMP (Main) No.225 of 2019 decided on 30.09.2021***.

30. On account of entire discussion as above, though this court does not find any legal ground so as to quash the complaint *Annexure P2* or the

impugned summoning order, 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 case, 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 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 petitioner will have to face prosecution before the court in accordance with law.

31. Disposed of accordingly.

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

29.04.2024

Vivek

(DEEPAK GUPTA)
JUDGE