
(2015) 09 MAD CK 0283

In the Madras High Court

Case No : Criminal O.P.(MD) No. 8031 of 2009 and M.P.(MD) No. 1 of 2009

A. Edwin Alex and Others

APPELLANT

Vs

The Food Inspector, Nagercoil Municipality

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 2, 2(ix)(k), 23(1)(d), 7(ii)

Citation : (2015) 09 MAD CK 0283

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : M. Suri, for the Appellant; K. Anbarasan, G.A., Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J—The petitioners have come forward with this application to quash the proceedings in C.C. No. 71 of 2006 on the file of the Court of Judicial Magistrate No. II, Nagercoil.

2. The learned counsel appearing for the petitioners would submit that the 5th accused is a manufacturer, 4th accused is the distributor, A2 and A3 are the partners of A4 and A1 is the seller. The respondent herein has purchased Corn Flour on 29.10.2003 and he sent the same for food analysis and after following the procedures, they received a report on 27.11.2003, in which, it is stated that the sample is misbranded, since the Batch No./Lot No./Code No. and the Best before declaration required by Rule 32 of the PFA Rules, 1955 are not present on the label of the sample and he preferred a complaint on 07.07.2006 for the offence under Sections 16(1)(a)(i) read with 7(ii) and 2(ix)(k) of PFA Act 1954 and Rule 32(e) and (i) of PFA Rules, 1955.

3. The learned counsel appearing for the petitioners would submit that the complaint has been filed for the offence under Sections 16(1)(a)(i) read with 7(ii) and 2(ix)(k) of PFA Act 1954 and Rule 32(e) and (i) of PFA Rules, 1955. In the

decision reported in Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, AIR 1971 SC 1844 : (1971) CriLJ 1290 : (1971) 2 SCC 314 : (1971) SCC(Cri) 514 : (1971) SCR 466 Supp , the Apex Court has struck down the provision of Rule 32(e) of PFA Rules, 1955 and therefore, the offence under Rule 32(e) of PFA Rules, 1955 would go.

4. The learned counsel would further submit that in respect of the offence under Rule 32(i) of PFA Rules, 1955 is concerned, there is no specific provision for misbranding of food item in the complaint without specific averment that customers are being misled on account of misbranding and also the details of manner of misbranding are unsustainable. To substantiate the same, he relied on the decisions of this Court reported in 2010(3) MWN (Cr.57) - M.N. Katharmytheen V. State and A. Eswaramoorthy and Others Vs. The Food Inspector, Tirunelveli Municipal Corporation, (2010) 1 LW(Cri) 1212 and prayed for quashing the same.

5. Resisting the same, the learned Government Advocate (criminal side) would submit that in the complaint, it is specifically stated that the food sample was misbranded and there is no reason for quashing the proceedings and hence, he prayed for dismissal of the application.

6. I have considered the submissions made on either side and perused the materials available on record.

7. The respondent herein has taken samples and sent the same for analysis on 29.10.2003 and report has been received on 27.11.2003. The complaint has been filed on 07.07.2006 for the offences under Sections 16(1)(a)(i) read with 7(ii) and 2(ix)(k) of PFA Act 1954 and Rule 32(e) and (i) of PFA Rules, 1955. It is appropriate to incorporate the provisions of law:

"Sections 16(1)(a)(i) of PFA Act 1954

16. Penalties.--

(1) Subject to the provisions of sub-section (1-A), if any person-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales, or stores, sells or distributes any article of food-

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food(Health) Authority;

Section 7(ii) of PFA Act 1954

7. Prohibitions of manufacture, sale, etc., of certain articles of food.-

(ii) any misbranded food

Section 2(ix)(k) of PFA Act 1954

2. Definitions.- In this Act unless the context otherwise requires.-

(ix) "misbranded" - an article of food shall be deemed to be misbranded -

(k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder;

Rule 32(e) and (i) of PFA Rules, 1955

32. Package of food to carry a label - Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label:--

(e) a distinctive batch number or lot number or code number, either in numerals or alphabets or in combination, the numerals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words "Batch No. ", or "Batch, or Lot No. ", or "Lot" or any distinguishing prefix:

(i) the month and year in capital letters upto which the produce is best for consumption, in the following manner, namely:--

"BEST BEFORE..... MONTH AND YEAR" OR

"BEST BEFORE..... MONTH FROM PACKAGING"

OR

"BEST BEFORE..... MONTHS FROM MANUFACTURE" OR

"BEST BEFORE UPTO MONTH AND YEAR..... OR BEST BEFORE WITHIN..... MONTHS FROM THE DATE OF PACKAGING/MANUFACTURE"

(Note: Blank be filled up):

8. Now, this Court has to consider as to whether the complaint filed under Section 32(e) of Prevention of Food Adulteration Rules, 1955 is sustainable or not?

9. The learned counsel for the petitioner has relied on the decision report in Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, AIR 1971 SC 1844 : (1971) CriLJ 1290 : (1971) 2 SCC 314 : (1971) SCC(Cri) 514 : (1971) SCR 466 Supp , wherein, it is stated that Rule 32(b) and (e) is ultra vires for the rule making power under Section 23(1)(d) of the Act. It is appropriate to incorporate para 21 of the judgment:

"There is no definition of the expression "batch number" or "Code number" either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within which the article of food has to be utilised, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the

purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances, we are of the opinion that rule 32 (e) is beyond the rule making power even under S. 23(1)(d) of the Act. The appellants could not be convicted for any violation of cl.(e) of R.32 as the said provision, as pointed out above, is invalid"

10. In the decision, it is stated that in view of all these circumstances, we are of the opinion that rule 32(e) is beyond the rule making power even under S. 23(1) (d) of the Act. The appellants could not be convicted for any violation of clause (e) of R.32 as the said provision, as pointed above, is invalid. Therefore, I am of the view that the complaint under Rule 32(e) of PFA Rules, 1955 is liable to be quashed.

11. Now, this Court has to consider as to whether the complaint has to be quashed for the offence under Rule 32(i) of P.F.A Rules, 1055.

12. The learned counsel has taken me through the decision of this Court in 2010(3) MWN (Cr.57) - M.N. Katharmytheen V. State, which was followed by this Court in Crl.O.P.(MD) Nos. 5765 and 11867 of 2009, wherein, it was held that the complaint without averments that the customers are being mislead on account of misbranding and also the details of manner of misbranding is unsustainable. The relevant portion in paragraph No. 9 is as follows:

"A perusal of the Public Analyst's report would reveal that the Public Analyst has simply stated that the sample was misbranded since it is not labelled in accordance with the requirements of Rule 32 (a)(e) and (f) of the 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 misled on account of misbranding and in the absence of any such clear averments, it cannot be said that the customers are misled or misdirected. "

13. Perusal of the complaint would show that nothing has been mentioned. In such circumstances, applying the decision of this Court as stated above, I am of the view that it is a fit case for quashing the complaint in C.C. No. 71 of 2006 on the file of the learned Judicial Magistrate No. II, Nagercoil is liable to be quashed.

14. Accordingly, the criminal original petition is allowed and the complaint in C.C. No. 71 of 2006 on the file of the learned Judicial Magistrate No. II, Nagercoil is hereby quashed. Consequently, connected M.P.(MD) No. 1 of 2009 is closed.