

**(2011) 04 DEL CK 0213**

**In the Delhi High Court**

**Case No :** Criminal M.C. 3455 of 2009 and Criminal M.A. 11735 of 2009

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|---------------------------------------------------------|------------|
| Amalgamated Bean Coffee Trading Co. Limited and Another | APPELLANT  |
| Vs                                                      |            |
| Delhi Administration                                    | RESPONDENT |

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**Date of Decision :** 21-04-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Prevention of Food Adulteration Act, 1954 — Section 16, 2, 7  
Prevention of Food Adulteration Rules, 1955 — Rule 28, 29

**Citation :** (2011) 04 DEL CK 0213

**Hon'ble Judges :** Ajit Bharihoke, J

**Bench :** Single Bench

**Advocate :** Shivam Sharma and Trideep Pais, for the Appellant; Fizani Husain, APP, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Ajit Bharihoke, J.

1 M/s Amalgamated Bean Coffee Trading Co Limited and its employee Sh. Sumit Girdhar vide this petition u/s 482 Code of Criminal Procedure have prayed for the quashing of the complaint case titled Food Inspector v. Sumit Girdhar and Ors. pending in the court of Metropolitan Magistrate and for discharge of the Petitioners.

2 Briefly stated, the facts relevant for the disposal of this petition are that M/s. Amalgamated Bean Coffee Trading Co Limited is engaged in operating and running Cafes in the name and style of "Cafe Coffee Day" all over India. Second Petitioner Sumit Girdhar is an employee of Petitioner No. 1 company and was responsible for management of "Cafe Coffee Day", N-11, Connaught Place, New Delhi.

3. It is alleged in the complaint that on 15.10.2004, Food Inspector purchased a sample of "Mango Crush", a food article stored at "Cafe Coffee Day", N-11,

Connaught Place for sale. The sample comprised of three original bottles of "Mango Crush" which were packed and sealed separately. On 18.10.2004, one counterpart of the sample, code 32/LHA/10062, was sent to public analyst, Delhi for analysis. The public analyst vide its report dated 09.11.2004 opined as under:

Although there are no standards of Mango Crush under Appendix B, it contains added synthetic colour which is not permitted under Rule 29 of PFA Rules 1955.

4. In view of the aforesaid report opining violation of Rule 29 of PFA Rules 1955, the Food Inspector filed a complaint u/s 16 of PFA Act 1954 against six accused persons including the Petitioners. It is alleged by the Petitioners that the complaint filed by the Food Inspector is misconceived as it does not disclose violation of the provisions of PFA Act 1954 and the Rules framed there under in particular Rule 29. Thus, the Petitioners have pressed for quashing of the FIR and discharge in the complaint case.

5. Learned Shri Shivam Sharma, Advocate appearing for the Petitioner submitted that from the report of public analyst as also Appendix B to the PFA Rules, no quality standard for "Mango Crush" was provided and that being the case there could be no violation of provision of PFA Act and the rules framed there under. Learned Counsel further submitted that there is no allegations of violation of quality standard in terms of "Fruit Products Order 1955", as such no offence can be said to have committed by the Petitioner. It is argued that initiation of prosecution of the Petitioner is under misconception of law as there is no violation of Section 2(j) of the PFA Act as the sample that allegedly used in the food sample as per the public analyst is tartrazine which is a permissible colour under Rule 28 of PFA Rules. Further, learned Counsel for the Petitioner relying upon the judgment of Supreme Court in Hindustan Lever Ltd. Vs. Food Inspector and Another, submitted that since no standards were prescribed under the PFA Act and PFA Rules for the fruit crush, prosecution of the Petitioner with regard to the impugned food article applying the standards for other food articles would not be sustainable. Thus, the learned Counsel for the Petitioner have strongly urged for quashing of the complaint as well as the summoning order qua the Petitioner.

6. Learned APP, on the contrary, submits that there can be no dispute that mango crush squarely falls within the definition of food article as defined u/s 2(v) of PFA Act 1954. Learned APP has referred to Rule 28 and 29 of PFA Rules 1955 and submitted that user of tartrazine sunset yellow in food articles other than detailed in Rule 29 is prohibited and fruit crush does not fall within any of the food articles enumerated in Rule 29, as such by using the prohibited colour in the "mango crush" the manufacturing company of which the Petitioner is the director has violated the provisions of Food Adulteration Act and the rules framed there under. Therefore, the Petitioner is rightly being prohibited u/s 7 and 16 of PFA Act. Thus, learned APP has urged for dismissal of the petition.

7. I have considered the rival contentions and perused the record. Copy of the

report of public analyst is annexed to the petition. Its correctness is not disputed by the Respondent. As per this report, the public analyst has opined that there is no standards prescribed for mango crush under Appendix B but the food sample contains added synthetic colour which is not permitted under Rule 29 of PFA Rules. The public analyst has not found any other defect or flaw in the sample. Perusal of this report indicates that the colour used in the sample is tartrazine.

8. Rule 29 of PFA Rules 1955 reads thus:

(a) -----

(b) -----

(c) Peas, strawberries and cherries in hermetically sealed container, preserved or processed papaya, canned tomato juice, fruit syrup, fruit squash, fruit cordial, jellies, jam, marmalade, candied crystallised or glazed fruits;

(d) Non-alcoholic carbonated and non-carbonated ready-to-serve synthetic beverages including synthetic syrups, sherbets, fruit bar, fruit beverages, fruit drinks, synthetic soft drink concentrates;

(e) -----

(f) -----

9. On reading of the aforesaid provision, it is clear that user of yellow tartrazine is permissible in fruits syrup, fruit squash and fruit cordial etc. Indisputably fruits squash and fruits syrups are the product prepared from fruit juice/puree or concentrate clear or cloudy obtained from any fruit or several fruits by blending it with nutritive sweeteners, water and with or without salt. Fruit crush is also a product made from the fruit or fruit juice/puree or concentrate of fruit juice only difference is that it contains mere pulp. Thus, there can be no distinction between the fruit squash, fruit syrup or fruit crush so far as applicability of the PFA Act and the Rules prescribed there under is concerned. My aforesaid view finds support from the definition of squashes, crush, fruit syrups/fruit sarbats and barley water given in A.16.21 of Appendix B incorporated in the Appendix B subsequently by an amendment in the year 2005, which reads thus:

A.16.21-Squashes, Crushes, Fruit Syrups/Fruit Sharbats And Barely Water means the product prepared from unfermented but fermentable fruit juice/puree or concentrate clear or cloudy, obtained from any suitable fruit or several fruits by blending it with nutritive sweeteners, water and with or without salt, aromatic herbs, peel oil and any other ingredients suitable to the products.

10. Taking into account that fruits squash/fruit syrup as also the fruit crush are derived from the ripe fruit, the standard applicable to all these products ought to be similar. Admittedly, at the relevant time, when the sample was taken, there was no standard prescribed for fruit crush. Therefore, under the circumstances it has to be treated at par with fruit products detailed in Rule 29(c) of PFA Rules and the standards applicable fruit squash/syrup/cordially ought to have been

applied in the instant case. Otherwise also, it falls within the category of non-alcoholic fruit drink and is covered under Rule 29 of PFA Rules. Indisputably, as per Rule 29 (c) and (d) of PFA Rules, user of tartrazine, sunset yellow in manufacture of fruit squash, fruit syrup etc. and non-alcoholic fruit drink etc. is permissible. Therefore, by no stretch of imagination, it can be said that the Petitioner or his company has violated the provisions of PFA Act or the PFA Rules framed there under.

11. In view of the discussion above, I am of the opinion that summoning order dated 22.12.2005 of learned Metropolitan Magistrate is not sustainable under law. Accordingly, the summoning order and the proceedings emanating there from qua the Petitioners are quashed.

12. Accordingly, the petition is allowed.