

(2010) 07 AP CK 0031

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 591 of 2008

Amway India Enterprises and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 14(A), 16(1), 20(1)
Prevention of Food Adulteration Rules, 1955 — Rule 28, 29, 39

Citation : (2010) 2 ALD(Cri) 843

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This Criminal Petition has been filed by A-1 to A-3 in C.C. No. 8 of 2007 on the file of the XI Metropolitan Magistrate, Cyberabad, at L.B. Nagar, Ranga Reddy District to quash the proceedings therein.

2(a). T. Vijaya Kumar, Food Inspector, Division-II, Ranga Reddy District inspected the premises of M/s. Amway India Enterprises, Susheela Hall, 8-166, Doctors Colony, L.B. Nagar on 16.11.2006 and found Sandeep Prakash at the business premises. During the course of inspection, the Food Inspector found 72 numbers of Tetra Pack Health Drinks in the business premises. T. Sandeep Prakash disclosed to the Food Inspector that the said packets are "Amway Madrid Safed Musli (Apple) drinks" manufactured by M/s. Mamta Agro Foods, Plot A/57, Sector-A, Manchamshwar Industrial Estate, Bhubaneswar-751 010, Orissa, and they are for sale to public for human consumption. The packets contain an identical label declaration as "Ingredients: Water, Sugar, Safed Muli, Apple Juice concentrate and citric acid; contains permitted synthetic food colour and added flavor, Mfg., Aug 06C; `The worlds best Health Drink" ".

(b). The Food Inspector purchased 6 sealed packets of 200 ml quantity from the

business premises of M/s. Amway India Enterprises for being sent for analysis, by paying Rs. 120/- towards its cost to the Area Manager-Sandeep Prakash and obtained cash receipt from him. He served Form No. VI Notice on Accused No. 1-Sandeep Prakash informing him the purpose of purchase of sample packets of Amway Madrid Safed Musli (Apple), i.e., for being sent to Public Analyst for analysis. The Food Inspector divided the said sample into three equal parts, (each part consisting of two packets (2X200ml)) and sealed the same in accordance with the procedure prescribed under the Prevention of Food Adulteration Rules, 1955 (for brevity, "the 1955 Rules"). On the next day, i.e., on 17.11.2006, he submitted one part of the sample along with memorandum in Form VII for analysis to the Public Analyst, Hyderabad under intimation to Local (Health) Authority and obtained acknowledgment. On the same day, he deposited the remaining two parts of the sample in sealed package along with two copies of memorandum in Form VII with the Assistant Food Controller and Local (Health) Authority, Zone-VI, Hyderabad for safe custody and obtained acknowledgment. Thereafter, he addressed a letter along with Form-VI Notice u/s 14(A) of Prevention of Food Adulteration Act, 1954 (for brevity, "the Act"), as per the label declaration found on the sealed packets of Amway Madrid Safed Musli (Apple), to M/s. Mamta Agro Foods, Plot A/57, Sector-A, Mancheshwar Industrial Estate, Bhubaneswar-751 010, Orissa.

(c). The Public Analyst tested the sample and opined that "the sample contains Class II Preservative which is not declared on the label and is therefore adulterated. The Food Inspector received a Corrigendum to the Public Analyst Report substituting the opinion as "I am of the opinion that the sample contains Class II Preservative which is not declared on the label and is therefore Misbranded". After obtaining necessary written consent u/s 20(1) of the Act from Director and State Food (Health) Authority, the Food Inspector filed a complaint before the XI Metropolitan Magistrate, Cyberabad at L.B. Nagar, Ranga Reddy District.

(d) The learned Magistrate took the complaint on file as C.C. No. 8 of 2007. The petitioners appeared before the Court below and filed an application u/s 13 of the Act for referring the 2nd sample to the Central Food Laboratory. The said application was allowed and the 2nd sample was referred to Central Food Laboratory. The sample was subjected to examination by the Central Food Laboratory and as per the report of the Central Food Laboratory, the product contains synthetic food colour viz., Ponceau 4R contravening Rule 29 of the Prevention of Food Adulteration Rules, 1955, and the label "Safed Musli reinvigorates your mind and body" suggests that the food is approved for medical purpose and hence it contravenes Rule 39 of the 1955 Rules. Hence, this petition by A-1 to A-3 to quash the proceedings in C.C. No. 8 of 2007.

3. Heard learned Counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

4. Learned Counsel appearing for the petitioners submits that Safed Musli

(Apple) is a fruit drink, and therefore, Ponceau 4R (red colour) is a permissible colour under Rule 28 of the 1955 Rules. A further submission has been made that both the Public Analyst and the Central Food Laboratory tested the sample treating it as the one falling under item No. A16.10, which has been omitted with effect from 4.6.1971 by G.S.R.992(E), and therefore, no credence can be given to the report submitted by the Public Analyst as also the Central Food Laboratory.

5. Learned Additional Public Prosecutor contends that sample of food article, which has been seized by the Food Inspector, has been found to be misbranded since its preservative is not declared on the label, and therefore, the petition is liable to be dismissed.

6. Firstly; learned Counsel appearing for the petitioners submitted arguments basing on the unamended item No. 16 of Appendix B. Item No. 16 came to be amended with effect from 21.9.2005, vide Notification F. No. P-15025/44/2002-PH(Food), dt. 21.3.2005. Item No. 16 of Appendix B deals with Food Products. A.16.10 reads as hereunder:

A.16.10. Thermally Processed Fruit Beverages/Fruit Drink/Ready to Serve Fruit Beverages (Canned, Bottled, Flexible Pack And/Or Aseptically Packed) means an unfermented but fermentable product which is prepared from juice or Pulp/Puree or concentrated juice or pulp of sound mature fruit, by blending with nutritive sweeteners and water or milk and processed by heat, in an appropriate manner, before or after being sealed in a container, so as to prevent spoilage.

7. The Public Analyst and Central Food Laboratory tested the samples in accordance with A.16.10 of Appendix B of 1955 Rules. Therefore, the contention of the petitioners that item 16.10 has been omitted and therefore, no credence can be given to the report submitted by the Public Analyst and the Central Food Laboratory does not hold water and accordingly, the same is hereby rejected.

8. The next submission of the learned Counsel is that Ponceau 4R is a permissible colour under Rule 28 of the 1955 Rules and the sample can not be categorized as misbranded. Rule 28 of the Prevention of Food Adulteration Rules, 1955 need to be noted and it is thus:

28. [Synthetic food colours] which may be used

No [Synthetic food colours] or a mixture thereof except the following shall be used in food:

9. The report of the Public Analyst is that the sample is misbranded. The reason for classifying the item as misbranded is that though it contains Ponceau 4R, which is a permissible color under Rule 28 of the 1955 Rules, the same is not indicated on the label. The label affixed to the soft drink seized from the premises of M/s. Amway India Enterprises reads as hereunder:

For Amway India Enterprises, New Delhi-110016. The world's best health drinking: water, Sugar, Safed musli, apple juice concentrate, Synthetic food

colours and added flavours. Aug. 06

10. No doubt, Ponceau 4R is a permissible colour under the 1955 Rules. But the label should contain the name of food colour. That why the Public Analyst treated the sample as a misbranded one. u/s 16(1)(a)(i) of the Act, any person who sells a misbranded article of food is liable for punishment with imprisonment for a term which shall not be less than 6 months but which may extend to three years, and with fine which shall not be less than one thousand rupees.

11. In view of the above discussion, I find that the petitioners failed to make any valid ground for quashing the proceedings in C.C. No. 8 of 2007 on the file of XI Metropolitan Magistrate, Cyberabad, Ranga Reddy District.

12. Accordingly, the Criminal Petition fails and the same is hereby dismissed.