
(2011) 12 PAT CK 0016

In the Patna High Court

Case No : Criminal Miscellaneous No. 16309 of 2008

Dulichand Bansal

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2012) 2 PLJR 669

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Advocate : Ramesh Kumar Agrawal, for the Appellant; D. Mehta for the State, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Kumar Mishra, J.—This application, filed u/s 482 of the Code of Criminal Procedure, is for quashing the order dated 18.4.2007 passed by the Sub-Divisional Judicial Magistrate, Saharsa; in Misc. Case No. 2 of 2007, taking cognizance of the offence under Rule 32 of the Prevention of Food Adulteration Act, 1954, against the petitioner, proprietor of Durga Traders, Dr. Kalinath Road, M.R. Compound, Silliguri-734405 and Sri Nandlal Sah, the owner of M/s Manish Kirana Store, Main Road, Saurbazar (Saharsa), District-Saharsa. It appears that the opposite party No. 2, Sri Arjun Prasad, Food Inspector, Saharsa, inspected the shop of Sri Nandlal Sah, running in the name of M/s Manish Kirana Store, Main Road, Saurbazar (Saharsa), District-Saharsa and seized three packets of Dandi Tea, each containing 100 grams and also sugar in three packets, each containing 200 grams. The seized materials were sent to the Public Analyst, Bihar, Patna, who in his report dated 19th of February, 2007, expressed his opinion that on the Dandi Tea Packet, the words "BEST BEFORE" are printed in small letters and as the sample of Dandi Tea does not conform to the labeling provision, so it is misbranded.

On the basis of the opinion of the Public Analyst dated 19th of February, 2007,

the opposite party No. 2, Sri Arjun Prasad, Food Inspector, Saharsa, filed the prosecution report alleging therein that the sample of Dandi Tea Packet being misbranded, violates the Rule 32 of the Prevention of Food Adulteration Act, 1954, in the Court of the Sub-Divisional Judicial Magistrate, Saharsa. The Sub-Divisional Judicial Magistrate, Saharsa, on perusal of the prosecution report and its annexures, arrived at the conclusion that prima facie the case under Rule 32 of the Prevention of Food Adulteration Act, 1954, is made out against the petitioner, proprietor of Durga Traders, Dr. Kalinath Road, M.R. Compound, Siliguri-734405 and Sri Nandlal Sah, the owner of M/s Manish Kirana Store, Main Road, Saurbazar (Saharsa), District-Saharsa and, accordingly, took the cognizance under the aforesaid Rule against them vide order dated 18.4.2007, which is impugned in this application.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner, who is the proprietor of Durga Traders, Dr. Kalinath Road, M.R. Compound, Siliguri-734405, is innocent as there is nothing on the record to show that the said Dandi Tea packets were purchased by Sri Nandlal Sah, the owner of M/s Manish Kirana Store, Main Road, Saurbazar (Saharsa), District-Saharsa from the firm of the petitioner, namely, Durga Traders, Dr. Kalinath Road, M.R. Compound, Siliguri-734405. It has also been submitted that it is alleged in the prosecution report that on the Dandi Tea Packets the words "BEST BEFORE" were printed in the small letters, which is violation of Rule 32 of the Prevention of Food Adulteration Act, 1954, but from Annexure-"2" to this application, which is the empty packet of Dandi Tea, it would appear that the words "BEST BEFORE" are printed in brackets in small letters and the same are very visible and legible. As such the requirement of Rule 32 of the Prevention of Food Adulteration Act, 1954, has been substantially completed and, thus, there is no violation of Rule 32 of the Prevention of Food Adulteration Act, 1954. In support of his submission, learned counsel for the petitioner also placed reliance on a decision of a Bench of this Court rendered in M.D., Anand Aqua, M/s S.B. Industries vs. The State of Bihar and Another [2010(3) PLJR 31].

3. In the case of M.D., Anand Aqua, M/s S.B. Industries (supra), as relied upon by the learned counsel for the petitioner, a Bench of this Court while quashing the cognizance order and allowing the application held in paragraph nos. 4 and 5 as under:-

4. Rule 32 of the Act envisages that month and year in capital letters upto which the product is based for consumption should be provided in the following manner. The manner indicates "BEST BEFORE.....MONTH AND YEAR.

5. From the perusal of Rule 32 of the said Rules, it appears that the manufacturer ought to give these aspects such as date of packaging or manufacture in capital letters. It is not a case where the information has not been given to the consumers with respect to the period when the produce would be best utilized, rather the information has been given by printing it in small letters. I find that there is substantial compliance of the rule and as such it

cannot be said that the petitioner can be held guilty of misbranding his product.

4. As per the prosecution report, which is Annexure-"1" to this application, the allegation is that the words "BEST BEFORE" on the packet of Dandi Tea were printed in small letters violating the Rule 32 of the Prevention of Food Adulteration Act, 1954, as the same does not conform to the labeling provision of the Rule 32 of the Prevention of Food Adulteration Act, 1954. Annexure-"2". to this application is the empty packet of Dandi Tea, which shows that in bracket the words "BEST BEFORE" are printed in small letters, which are visible and legible. Under the aforesaid facts and the circumstances of the case, any prosecution of the petitioner on the ground of breach of the Rule 32 of the Prevention of Food Adulteration Act, 1954, would be nothing but would be an abuse of the process of the court. Accordingly, the impugned order dated 18.4.2007 passed by the Sub-Divisional Judicial Magistrate, Saharsa, in Misc. Case No. 2 of 2007, with respect to the petitioner, is hereby quashed and the application is allowed.