
(2010) 01 JH CK 0087
In the Jharkhand High Court

Hindustan Coca-Cola Beverages Pvt. Ltd. APPELLANT
Vs
State of Jharkhand and Another RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 16, 204
Prevention of Food Adulteration Act, 1954 — Section 16

Citation : (2010) CriLJ 3510

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed on behalf of the petitioner for quashing the entire criminal proceeding of Complaint case bearing No. PFA 36 of 2004 including the order dated 13.8.2004 whereby learned court, having found prima facie case against the petitioner, took cognizance of the offence u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") and summoned the petitioner u/s 204 of the Code of Criminal Procedure.

2. The facts leading to filing of the instant application are that on 12.8.2003, Food Inspector, Nirsa, Dhanbad collected sample of Fanta from the shop of M/s. Sublime Drinks, owner of which is Bikash Chandra Majee, for the purpose of its analysis. On analyzing the same, the Public Analyst, vide its report No. 173/03 dated 11.9.2003 did opine that the sample of Fanta (sweetened carbonated water) is misbranded as because the quantity of added sugar is less than the quantity declared. Thereafter, the Food Inspector filed a prosecution report against the petitioner, namely, M/s. Hindustan Coca-Cola Beverages Pvt. Ltd. as well as against the owner of the shop and also the vendors before the Sub-divisional Judicial Magistrate, Dhanbad, who having found, prima facie, case being made out u/s 16(1)(a)(i) of the Act issued summons u/s 204 of the Code of Criminal Procedure against them, vide order dated 13.8.2004.

3. Being aggrieved with the said order, the petitioner has filed this writ

application for quashing not only the aforesaid order but also the entire criminal proceeding of the complaint case.

4. Mr. N.K. Agarwak, learned Senior Counsel appearing for the petitioner submits that the relevant rule mandating the manufacturer to declare the quantity of added sugar over the food packs/container came into effect from October 1, 2003, vide notification bearing GSR No. 853 (E) whereas the cold drink in question had been manufactured and packed on 18.6.2003 well before the issuance of the aforesaid notification warranting the manufacturer to declare the added sugar on the bottle or on the cap/crown of the bottle and. as such, the petitioner is never liable to be prosecuted under the Prevention of Food Adulteration Act.

5. Learned Counsel in support of his submission has referred to a decision rendered in a case of Partha Sarathi Kumar and Anr. v. State of Jharkhand and Anr. Cr.M.P. Nos. 200, 216 and 220 of 2004 where, according to learned Counsel appearing for the petitioner, similar question fell for consideration as to whether the provision relating to misbranding came into force with effect from 1.4.2003 or 1.10.2003.

6. Learned Counsel in this regard further submits that the Court having examined the old provision and the amended provision came to the conclusion categorically that the relevant rule prescribing about the declaration of the quantity of added sugar on the cap/crown of the bottle came into effect from 1.10.2003 and in that view of the matter, the petitioner cannot be prosecuted under the Act as sample which had been collected for analysis had been manufactured on 18.6.2003 on which date no such requirement of mentioning of quantity of added sugar on the cap/crown of the bottle was there in the existing rule and as such, entire prosecution suffers from illegality and is fit to be quashed.

7. Having heard learned Counsel appearing for the parties and on perusal of the records, I do find that exactly the similar issue which has been raised in this application was there. To be more specific, the following was the issue before this Court in the case referred to above.

The only question arises for determination is whether the condition that the quantity of added sugar to be mentioned either on the cap or crown of the bottle came into force from 1.4.2003 or 1.10.2003.

8. It be stated that by Sub-rule (iii) of Rule 2 of Amended Rules, 2002, original Rule 42 of 1955 was amended. As a result of which, it was made mandatory for the first time to mention about the "quantity of added sugar" or "no sugar added" in the product, as is evident from the Amended Sub-rule (iii) of Rule 2, read with Rule 1 of the amended rules quoted hereunder:

(iii) in Rule 42-

(a) in Sub-rule (zzz)(1), for the existing label, the following label shall be

substituted, namely:

(i) This ...(name of food) contains.... (Name of artificial sweetener).

(ii) Not recommended for children.

(a) Quantity of sugar added...gm/100 gm.

(b) No sugar added in the product.

(iv) Not for phenylketoneurics (if Aspartame is added) (strike out whatever is not applicable)

xxx xxx xxx (c) in Sub-rule (zzz)(12), for the existing label, the following shall be substituted, namely:

(i) This ...(Name of food) contains...contains as admixture of Aspartame (Methyl Ester and Acesultame Potassium

(ii) Not recommended for children

(iii) (a) Quantity of sugar added...gm/100 gm

(b) No sugar added in the product.

(iv) Not for Phenylketoneurics (if Aspartame is added) (strike out whatever is not applicable).

9. Rule 1 of Amended Rules, 2002 reads as follows:

1(1) These rules may be called the prevention of Food Adulteration (8th Amendment) Rules, 2002.

2. They shall come into force on the 1st April, 2003 except Sub-rules (ii), (iii) and (iv) of Rule 2 of these rules which shall come into force on the 1st October, 2003,

10. His Lordship while taking into account the amended provision of Sub-rule (iii) of Rule 2 and also Rule 1 as well as Appendix B to the said Rule came to the conclusion which are as follows:

(a) The Amended Rules, 2002 came Into effect from 1st April, 2003, except Sub-rules (ii), (iii) & (iv) of Rule 2 of the Amended Rules, 2002.

(b) Sub-rules (ii), (iii) & (iv) of Rule 2 of Amended Rules, 2002, whereby Rule 42 was amended and label prescribed under Sub-rule (zzz)(1) & (12) came into effect from later date with effect from 1st October, 2003.

(c) Appendix-B to the said rule cannot be given effect independently till Sub-rule (zzz) of Rule 42 is given effect. Thus, the Appendix-B to the amended Rule also came into effect from 1st October, 2003.

11. Thus, it can easily be said that the relevant Rule requiring declaration of quantity of added sugar came into force on 1.10.2003 whereas sample which had

been seized for launching prosecution was manufactured on 18.6.2003 much prior to 1.10.2003 and, therefore, the petitioner would not be liable to be prosecuted for the offence u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act.

12. Hence, the entire prosecution of complaint case bearing No. PFA 36 of 2004, pending in the court of Sub-divisional Judicial Magistrate, Dhanbad including the order dated 13.8.2004 under which the petitioner was summoned u/s 204 of the Code of Criminal Procedure is hereby quashed.

In the result, this application is allowed.