
(2018) 03 MP CK 0046
In the Madhya Pradesh High Court
Case No : MCRC-391-2017

Hindustan Cocacola Beverages	Vs	APPELLANT
State Of Madhya Pradesh		RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Prevention of Food Adulteration Act, 1954 — Section 2(m)(ix), 2(ix)(k), 7(ii), 13(2), 14A
Prevention of Food Adulteration Rules, 1955 — Rule 32

Citation : (2018) 03 MP CK 0046

Hon'ble Judges : SUSHIL KUMAR PALO, J

Bench : Single Bench

Advocate : S.C.Bagadia, R.K.Saboo, C.K.Mishra

Final Decision : Dismissed

Judgement

This petition under section 482 of the Code of Criminal Procedure has been filed by the petitioner to invoke the extraordinary jurisdiction of this Court

and to quash the criminal proceeding of Criminal Case No.1907/2010, pending before the Judicial Magistrate First Class, Hoshangabad and to quash

order dated 10.12.2010, whereby cognizance under sections 7 & 16 of the Prevention of Food Adulteration Act has been taken against the petitioner.

The petitioner is a Company, namely, Hindustan Coca-Cola Beverages Pvt.Ltd. through its authorized person-Shri Ratnesh Pandey.

2. The prosecution case, in brief, is that the Food Inspector, Jagdish Prasad Lawanshi taken a sample on 10.9.2010 from Shiv General Stores after

introducing himself and observing the necessary formalities. The ""Thums Up"" cold drink of 1.25 Ltrs. was found with the label and the date of

manufacturing was not legible, therefore, it was mis-branded and the quality was

suspicious. The Batch Number was also not clear and the packaging date was not mentioned. He took 3 samples. One sample was sent to the Laboratory for analysis.

3. After having found that the sample is mis-branded and it was sub-standard, the prosecution was launched. Letter was sent to the seller, distributor, manufacturer seeking the details under section 14-A of the Prevention of Food Adulteration Act (hereinafter referred to as the "PFA Act"). The Thums-Up was being manufactured by Hindustan Coca-Cola Beverages Pvt. Ltd. situated at Industrial Area, Pillukhedi, Tahsil Narsingharh, Rajgarh (MP). After following the procedure, complaint was filed for violation of sections 2(ix)(k) and 7(ii) of the PFA Act and Rule 32 of the Prevention of Food Adulteration Rules (hereinafter referred to as the "PFA Rules").

4. On behalf of the petitioner the present petition has been filed on the ground that packaging was properly made. The date of packaging was not clear, therefore, it is claimed to be mis-branded. But, it could be because of so many reasons viz. obliterate or become faint or not clear, which cannot be termed as "mis-branding". It is also claimed that sample was taken on 10.9.2010. The life of the food article was three months. The complaint was filed on 10.12.2010. Notice was received by the petitioner on 20.12.2010, therefore, the petitioner could not send the sample within time. The date of packaging was not required to be engraved in the bottle. On the paper label, it was printed. However, after sometime the packaging date might have been obliterated. It is further claimed that remedy under section 13(2) of the PFA Act was not available to the petitioner because of the delay in filing the complaint and the fact that allegation was made with regard to mis-branding is not correct. It is claimed that complaint was filed after the self life of the food article was over. Therefore, the petitioner could not avail the valuable right under section 13(2) of the PFA Act.

5. Learned counsel for the respondent submitted that printing was not clear and, therefore, the information/entry made in the label was the subject matter of prosecution. As per requirement of the PFA Rules the date of packaging was necessary and important, for without the date of packaging it is not possible to make out the expiry date of the product. Therefore, it is misbranding. So far as the right of the petitioner for sending second sample

for analysis to the Laboratory is concerned, that right is only available when adulteration is found. Section 13(2) of the PFA Act, if read in its proper perspective, shows that second sample can be sent for analysis only when food article is adulterated or of sub-standard. Hence, it is not a case, in which, the provision of section 13(2) of PFA Act is attracted and there is no violation of the rights of the accused.

6. Heard the parties and perused the record. Report of Public Analyst dated 04.11.2010 shows that ""Packed is not clear"", ""Batch No.408"", ""Best before 3 months"". When there is no mention of date of packaging, therefore, sample is misbranded under section 2(ix)(k) of PFA Act read with Rule 32 of PFA Rules. Thus, this Analyst Report dated 04.11.2010 does not disclose that it is sub-standard or adulterated. The charge has not been adulterated. Charge has not been framed for sub-standard or adulteration of food article. Secondly, the provision of section 13(2) of PFA Act for sending the second sample for analysis is not required as it is not a case of adulteration.

7. In this regard, the case of Indrajeet Walia s/o S.Valia vs. Food Inspector Shri Subhash Khedkar [M.Cr.C. No.993/2012 decided on 18.12.2014 High Court of Madhya Pradesh Bench at Indore] which was later on affirmed by the Supreme Court in Special Leave Petition No.802/2015 decided on 24.9.2015.

8. As regarding printing of package, there was no clarity. On behalf of the petitioner reliance has been placed in the case of Nestle India Limited vs. State of Bihar and others, reported as 2015 Cr.L.J. 803, wherein the High Court of Patna has held that such printing was not clear. Clarity of such information/entry being core of the subject matter of prosecution, the Court did not have any material whatsoever before it, except a bald prosecution report to take cognizance of the case. It is also observed by the High Court of Patna that holistic consideration of the rival contentions and on going through the record of the case, this Court finds that the learned Magistrate did not have sufficient information before him to take cognizance for the offence under the Prevention of Food Adulteration Act, 1954. If the batch number and the manufacturing date were stated on the wrapper of the food articles, it was sufficient compliance of the Rules framed under the Act.

9. In the present case, if the circumstances are appreciated in its correct

perspective it would be clear that food article is best before 3 months, but this can only be known from the date of packaging or manufacturing. When this date of packaging or manufacturing is not made clear, it would be very difficult for the consumer to find out when the bottle was packed or manufactured. Hence, not disclosing the date of package, definitely falls in the category of ""misbranding"". Misbranding has been defined under sub-section (m) (ix) of section 2 of the PFA Act, in which, if it is not labelled in accordance with the Act or the Rules, it can be termed as ""misbranded"".

10. On the basis of above analysis, the points raised by learned counsel for the petitioner do not hold good, therefore, order taking cognizance and subsequent criminal proceedings are not liable to be interference with.

11. Accordingly, the petition is dismissed.