
(1991) 11 KL CK 0027
In the High Court Of Kerala
Case No : Criminal M.C. 565 of 1991

Hindustan Cocoa Products Limited

APPELLANT

Vs

The Consumer Action Group and Another

RESPONDENT

Date of Decision : 13-11-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 11, 11(1), 11(3), 12, 14
Prevention of Food Adulteration Rules, 1955 — Rule 32

Citation : (1992) CriLJ 1673 : (1992) 1 ILR (Ker) 441 : (1991) 2 KLJ 807

Hon'ble Judges : B.M. Thulasidas, J

Bench : Single Bench

Advocate : C.K.S. Panicker, for the Appellant; P. Balachandran Nair and Lalitha Nair, Public Prosecutor, for the Respondent

Judgement

B.M. Thulasidas, J.—These petitions u/s 482 of the Code of Criminal Procedure arise from the proceedings in S.T. No. 55 of 1990 on the file of the Additional Chief Judicial Magistrate, Trivandrum, where the petitioner in CrI. M.C. No. 565 of 1991 is the first accused, on a complaint filed by the petitioner in CrI. M.C. No. 618 of 1991. In CrI. M. C. No. 565 of 1991, the prayer is to quash the proceedings in the above case. The order dated 11-4-1991 on C.M.P. No. 3176 of 1991 in the above case is sought to be quashed in the other CrI. M.C. These were heard together.

2. In the complaint in S.T. No. 55 1990, which is Annexure-I in CrI. M.C. No. 565 of 1991, it is alleged that the complainant (1st respondent) purchased two packets of Cadbury's butter glucose biscuits from the third accused M/s. S. Pottively & Sons, S.P. Central Stores, Trivandrum, on 20-12-1989 and that they were found not labelled in accordance with the requirements of Rule 32(b) of the Prevention of Food Adulteration Rules, in that the names of the ingredients used in the product had not been specified in the descending order of their composition by weight or volume. There was, therefore, mis-branding within the meaning of Section 2(ix)(k) and in consequence, contravention of Section 7(2)

which is punishable u/s 16(1)(a)(i) of the P.F.A. Act. The biscuits were manufactured by the Hindustan Cocoa Products Ltd., Bombay, the petitioner, which had not nominated any person/persons in terms of Section 17(2) of the Act. Along with the complaint, the respondent produced the sanction for prosecution obtained from the Director of Health Services u/s 20(1) of the Act and the cash memo from the vendor besides one packet of biscuits.

3. Before the complaint was laid, there was correspondence between the respondent and the petitioner details of which do not fall for consideration in these petitions.

4. The trial Court examined the respondent took cognizance of the case under Sections 7, 16 and 17 of the Act. By a separate order, which is impugned in Crl. M.C. No. 618 of 1991, it was held that the company had nominated one S.J. Kekobad, Chief Chemist and J. G. Kamat, Legal Advisor of the company, u/s 17(2) of the Act and that the case could be proceeded against those persons on behalf of the company.

5. Heard counsel for the petitioners and the respondents.

6. As already observed, it was alleged in the complaint that there was misbranding within the meaning of Section 2(ix)(k) of the Act in view of the breach of Rule 32(b) as substituted. The relevant notification was published on 29-4-1987 in which it had been specified that the new rule will come into force only after two years from the date of its publication. It was submitted that the biscuits were manufactured and sold before the substituted rule came into force and in support, reliance was placed on the labels which showed that the packing was done in February, 1989. It was further pointed out that there was no allegation in the complaint that the offence was committed under the rule as it existed before its substitution. These aspects, indeed, are relevant and may deserve careful scrutiny, provided sufficient evidence and materials have been made available. These are, however, wanting now. Possibly, petitioner may be able to prove his case during the trial. But, I am not now able to agree that the contentions advanced deserve to be countenanced in this petition filed u/s 482, Cr.P.C.

7. It is necessary to advert to Sections 12 and 20 of the Act which are relevant in this case. It is alleged in the complaint, Annexure-I in Crl. M.C. No. 565 of 1991, that the complainant is a recognised consumer association which is registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. It would indeed be a recognised consumer association as per the explanation to Section 12 which was inserted by Act 70 of 1986 that came into force with effect from 1-5-1987. This is not in serious dispute. A recognised consumer association is placed on a par with a private purchaser and is entitled to file a complaint under the Act on compliance of certain statutory provisions. Under the first proviso to Section 12, it has to inform the vendor at the time of purchase, of its intention to have the article analysed by the Public

Analyst. Under the second proviso, it must follow, as far as may be, the procedure that has to be followed by the Food Inspector as required under Sub-sections (1) to (3) of Section 11 of the Act. The complainant had no case that the purchase of biscuits from the third accused was in terms of the above provisions. No explanation was given for their non-compliance.

8. Section 20 of the Act deals with "taking cognizance and trial of offence". Every prosecution under the Act, except under Sections 14 or 14A, must be proceeded by a written consent of the Central Government or State Government or a person authorised in this behalf, by a general or special order, by the Central Government or the State Government. Under the proviso to the section, the prosecution for an offence under the Act may be instituted by a private purchaser or recognised consumer association, referred to in Section 12, if he or it produces in Court a copy of the report of the Public Analyst along with the complaint. The production of the report of the Analyst is a pre-requisite for entertaining the complaint. Failure to do so will not be just an irregularity but may go to the root of the complaint and would vitiate it. In the absence of the report of the Public Analyst, the Court would not get jurisdiction to take cognizance of the complaint at all. The written consent for the prosecution which is unnecessary for the purpose of a private purchaser or a recognised consumer association, will not substitute or compensate the failure to produce the report of the Public Analyst along with the complaint.

9. It is not for the complainant to decide whether the report of the Analyst is necessary or not. It is not a matter to rest upon its opinion or of the Court. The Analyst's report will invariably be necessary to decide whether the food article is adulterated or mis-branded. In my view, the observation of the Court below that in a case of mis-branding "the procedure prescribed for taking sample and sending the same to the Public Analyst under the said Act need not be complied with" is untenable.

10. It is admitted that the complainant had not complied with the requirements of Sections 12 and 20 of the Act. These are not provisions, compliance whereof could be left to its discretion. They are meant to prevent vexatious and frivolous prosecutions and then compliance must be held to be mandatory. They ensure the bona fides of the private purchaser/recognised consumer association and give the required safeguards to the vendor.

11. In my view, Annexure I complaint is unsustainable in law and the proceedings in S.T. No. 55 of 1990 based on the same, are quashed as prayed for.

12. It is not necessary to consider the contentions raised in Crl. M.C. No. 618 of 1991 in the view I have taken regarding the maintainability of the prosecution itself. I must, however, observe that the Court below was justified to hold that the 1st-respondent company had validly nominated the Chief Chemist and Legal Advisor, as required u/s 17(2) of the Act and that, therefore, they alone need be proceeded against on behalf of the company. The order does not suffer from any

infirmity. CrI. M.C. No. 618 of 1991 is without merit and is hence dismissed.