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(2007) 03 MAD CK 0218

In the Madras High Court

Case No : Criminal O.P. No. 17653 of 2005 and Criminal M.P. No. 5141 of 2005

I.T. Prabhu, T. Mathiazhagan, Kisorimal Kashiram Marketing and Agencies Private Limited, No. 34, Anderson Street, Chennai-1 — APPELLANT

Vs

The State — RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Citation : (2007) 1 LW(Cri) 367

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : C.S. Dhanasekaran, for the Appellant; N. Kumanan, Government Advocate (crl.side), for the Respondent

Final Decision : Dismissed

Judgement

R. Regupathi, J.—This petition is filed to call for the records in S.T.C. No. 1403 of 2005 on the file of the learned Judicial Magistrate No. VII, Coimbatore, and to quash the same. The Petitioners are accused for an offence punishable u/s 7(ii) and 16(l)(a)(i) Read With 2(ix)(K) of the Prevention of Food Adulteration Act 1954 and Rules 32(i) of the PFA Rule 1955 in the above case.

2. The learned Counsel for the Petitioners submits that the third Petitioner is the selling agent and the first Petitioner is the vendor to the second Petitioner, who is running a provision store. It is the case of the prosecution that Basmathi rice in packing has been kept for sale and as per the allegations, the label contains the words "best before within 12 months from the date of packing". The date of packing has been mentioned as 26.05.2004. It is alleged that such language may be printed on the packing up to 01.09.2001 and subsequent to this date, it should be printed as "best before... months from packing".

3. The learned Counsel for the Petitioners submits that there is no much difference between the languages of both the labels. In view of the addition of

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the word "within", a different meaning is not conveyed. The date of packing is mentioned as 26.05.2004. In addition to "best before twelve months", "within" also has been printed in the label. This could be only a minor mistake due to oversight and the Petitioners were not aware of the change made by the Department and even so, the offence u/s 3(1) of the P.F.A. Act is not made out, since the customers purchasing the packed item may not be prejudiced by reading the language on the label. The meaning conveyed by the reading "best before... months" and "best before and within twelve months", is one and the same and under such circumstances, one cannot imagine that merely because of the addition of the word "within", a different meaning will be conveyed to the customers.

4. I have heard the learned Government Advocate and perused the materials available on record. At the time of filing the complaint, opinion of the Food Analyst has been received and it is stated as follows:

I am of the opinion that the sample is mis-branded as it is not labelled in accordance with the requirements of Rule 32(1) of the P.F.A Rules 1955.

On perusal of the complaint I do not find that an offence is made out.

5. Rule 32 of the Prevention of Food Adulteration Act reads as follows:

Rule-32: Package of food to carry a label: Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every tabel-

(i) The month and year in capital letters up to which the product is best for consumption in the following manner namely....

"BEST BEFORE... MONTHS AND YEAR"

OR

"BEST BEFORE... MONTHS FROM PACKING"

OR

"BEST BEFORE... MONTHS FROM MANUFACTURE"

OR

"BEST BEFORE UPTO MONTH AND YEAR....") [For the

OR) period upto

"BEST BEFORE WITHIN... MONTHS

AND)and inclusive

FROM THE DATE OF PACKAGING/ MANUFACTURE") of 1st September

(Note: Blank be filled up) 2001:]

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Though it is specifically instructed in the Rules that "within" must be omitted after 01.09.2001, merely by adding such word, the customers are not mislead or misdirected. I do not find any difference otherwise in the meaning conveyed. The date of packing has been specifically mentioned as 26.05.2004. By using the language "best before... months", the meaning to be conveyed is, the customers must use it before twelve months and such meaning has been conveyed by this language "best before within twelve months". Prior to 1.9.2001, it was the approved language by the Department. Under such circumstances, I do not find any merit in the prosecution for misbranding. Hence, the proceedings pending against the Petitioners in S.T.C. No. 1403 of 2005 on the file of the learned Judicial Magistrate No. VII, Coimba-tore, are liable to be quashed and it is, accordingly, quashed. The criminal original petition is allowed. Consequently, connected M.P. is closed.

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