
(2007) 07 MP CK 0062
In the Madhya Pradesh High Court

K. Bhattacharya and Others	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 397, 401, 482, 483
Prevention of Food Adulteration Act, 1954 — Section 16, 17, 3, 7

Citation : (2007) 3 MPHT 490 : (2007) 4 MPLJ 263

Hon'ble Judges : Brij Mohan Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Brij Mohan Gupta, J.

The instant petition is for invoking the inherent powers of this Court u/s 482 of Cr.PC for the purpose of quashing and setting aside the complaint bearing Case No. 1/03 filed by respondent No. 2 against the petitioners in the Court of JMFC, Gohad, Distt. Bhind for the offence punishable u/s 7(ii) and (iii) read with Section 16(1)(a)(i) and (ii) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") alleging the breach of Rule 32(c)(i) and the Rule 50 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules").

The facts in brief as admitted by both the parties during the course of arguments, are that one private complaint dated 3rd January, 2003 has been filed against the petitioners, Cadbury India Limited the petitioner No. 8 and its Directors, Managers the petitioner Nos. 1 to 7 for aforementioned offences, putting allegations against them that one A.K. Bhadoria, duly authorized Food inspector inspected the establishment of petitioner No. 8 situated at Malanpur, Distt. Bhind. He collected samples of its two products namely : (1) "milk treat" and (2) "eclairs". Both of these samples were sent for Analysis and vide report of Public Analyst, dated 24th April, 2001, the sample of "eclairs" was found as per standards prescribed, but the sample of "milk treat" was opined as misbranded

as per Rule 32-C(1) of the Rules. It was also found that no valid licence was available with the petitioners at the time of inspection. When the petitioners were summoned by the Trial Court, two applications were moved by them one u/s 245(2) of Cr.PC and second u/s 17(1) of the Act praying therein to discharge the petitioners. Vide order dated 29th June, 2004 both the applications were rejected by the Trial Court. Feeling aggrieved, Criminal Revision No. 144/04 was preferred but the same has also been dismissed by First Additional Sessions Judge, Gohad, District Bhind vide order dated 8th September, 2005. Thereafter, the instant petition has been preferred by the petitioners.

Shri A.K. Chitale, learned Sr. Advocate has assailed the prosecution on the following grounds:

(i) that, the Rule 32(c)(1) of the Rules, has been added on 20th November, 2000 vide GSR No. 877(3), which came into force on 20th November, 2001 and onwards. In view of this, at the time of inspection or date of incident that is on 11th April, 2001, this rule was not in force. Hence, the prosecution for the alleged breach of this rule is erroneous. In support Shri Chitale has drawn attention on a judgment of the Apex Court rendered in Dinesh Kumar Vs. State of M.P., (Para 9). It is further submitted by Shri Chitale in this regard, that prior to this amendment, Rule 32-C of the Rules was in existence and according to this rule the name and complete address of the manufacturer, importer, vendor or packer on the product along with manufacturing unit was not required. Vide aforementioned amendment, it has been made obligatory on the manufacturer to mention the name and complete address of the manufacturer and the manufacturing unit, if it is located at different place and also that in case the manufacturer is not the packer or bottler mentioning the name and complete address of the packing or bottling unit as the case may be.

(ii) While highlighting Annexure I (Colly) and Annexure J. Shri Chitale has submitted that the licence was already renewed upto 31st March, 2001, which was subsequently renewed on 15th March, 2001 for a period upto 31-3-2002. In view of this, the allegation about having no valid licence is also erroneous. It is further submitted by him, that the allegations mentioned in Clauses B to F of Para 5 of the complaint are with regard to some irregularities in the licensing procedure. He has submitted that once the licence was renewed, the petitioners cannot be held responsible for such irregularities. In view of all, it is submitted by him that the allegation with regard to the charge under Rule 32-C(1) and Rule 50 are groundless and as observed by the Apex Court in (1) Khalil Khan Vs. State of Madhya Pradesh, Paras 19 and 20 and (2) Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, Paragraphs 11 to 13, this Court can quash the complaint under its inherent powers.

(iii) That, in alternative he has submitted that vide Annexure K, as per the provisions of Rule 12-B read with Section 17, Mr. A.J. Philip, General Manager of the petitioner No. 8, was nominated to be in-charge and responsible to the company for its conduct of business about its factory situated at Malanpur and

g)*** ***(h)*** ***(Emphasis supplied)

This provision remained in force till the new provision Rule 32 (c)(i) came into force. Vide notification dated 20th November, 2000, G.S.R. 877-E published in the Gazette of India "Extra-ordinary Para 2 Section 3(i), the amended provision Rule 32(c)(i) has been added, which goes as under:

Para 2. In the Prevention of Food Adulteration Rules, 1955, in Rule 32,-

(c)(i) The name and complete address of the manufacturer and the manufacturing unit, if these are located at difference places and in case the manufacturer is not the packer or bottler, the name and complete address of packing or bottling unit as the case may be;

(ii) Where an article of food is manufactured or packed or bottled by a person or a company under the written authority of some other manufacture or company, his or its brand name, the label shall carry the name and complete address of manufacturing or packing or bottling unit as the case may be, and also the name and complete address of the manufacturer or the company, for and on whose behalf it is manufactured or packed or bottled;

(iii) Where an article of food is imported into India, the package of food at all also carry the name and complete address of the importer in India:

Provided that where any food article manufactured outside India is packed or bottled in India, the package containing the such food article shall also bear on the label, the name of the country of origin of the food article and the name and complete address of the importer and the premises of the packing or bottling in India.

Explanation II shall be omitted.

(Emphasis supplied)

On perusal of this new provision, it appears that it was published in the Gazette on 20th November, 2000 and was to come into force after one year of such publication. Meaning thereby, this amended provision came into force after 19th November, 2001 and onwards. Admittedly, the establishment was inspected by the Officer on 11th April, 2000. At the time of inspection, Rule 32(c)(1) was not applicable. In view of this, filing of the complaint for breach of this Rule is erroneous.

Although it is not necessary, as the complaint has not been filed for any breach of the existing provision of Rule 32(c) yet as argued by Shri Sihare and observed by the learned Magistrate, it requires consideration. The learned Magistrate in the last para of Page 4 of his order dated 29th June, 2004, as observed that the place of manufacture of the product has not been mentioned which was required under GSR No. 422-E, dated 29-4-1987, enforced from 29-4-1988. This order has been confirmed by learned Additional Sessions Judge vide impugned order. On perusal of this provision, the contention of Shri Sihare as well as the

observation of the Courts below appears erroneous. Vide G.S.R. No. 422-E, dated 29-4-1987, the Prevention of Food Adulteration (3rd Amendment) Rules, 1987 were published. Vide Rule 3 of these Rules, the then existed Rule 32 of the Rule was substituted. As per this amendment, the relevant Rule 32(c) was published as under:

the name and complete address of the manufacturer or importer or vendor or packer.

Vide Explanations 1 and 2, the term "label" and the term "complete address" were defined which are same as these have been quoted hereinabove under the caption Rule 32(c) of the Rules.

On perusal of this highlighted G.S.R. No. 422 (E) and the provision of Rule 32 (c) as it was existed prior to the amended Rule 32(c)(1) became applicable, both appear same. During the course of arguments, when these provisions were shown to Shri Sihare, he could only mention that the words complete address of manufacturer require the complete address of the local manufacturing unit also. But, this contention cannot be sustained. Reason being, if the intention of Rule 32(c), was to include the complete address of the local manufacturing unit also, there was no need to amend and incorporate this new provision in the newly amended Rule 32(c)(1). While comparing the provisions of Rule 32 (c) with amended provisions of Rule 32(c)(1), this difference becomes clear. Vide amended Rule 32(c)(1), now it has been made obligatory for a manufacturer to mention the complete address of the manufacturer and the manufacturing unit, if these are located at different places. Such requirement as per the highlighted words was not in existence prior to 20-11-2001. Vide affidavit of the authorised nominee of the petitioner/ company J. Boy Philips, dated 10th July, 2007 and the label of Milk Treat attached therewith, it appears that complete address of the company has been printed. As per Para 4 of the affidavit in compliance of Rule 32(c), this rapper was being used by the company at the time of the incident. It is pertinent to mention here that during the course of arguments on 19th July, 2007 when specific question was put to Shri D.R. Sihare, learned P.P. for State, as to whether he puts any objection about the correctness of the documents filed on behalf of the petitioners, he fairly conceded that he puts no objection about the correctness of their face value. Thus, neither the complaint has been filed for breach of the provision of Rule 32(c) of the Rules nor any breach of the same appears. To conclude, the Rule 32(c)(1) was not applicable at the time of the incident hence filing of complaint under this provision appears abuse of the process of the Court.

The second allegation is of breach of Rule 50 of the Rules, that no valid licence was possessed by the petitioners at the time of incident. On perusal of the copy of the licence, it appears that the petitioners were having valid licence at the time of the incident. For this purpose, Annexure I (Colly) which runs from Pages 61 to 66 on the record, it is apparently clear that the earlier licence was valid from 1st April, 2000 to 30th March, 2001. This licence was renewed for this term

on 29th February, 2000. Thereafter, before expiry of the period, i.e., 31st March, 2001, on 15th March, 2001 this licence was got renewed from the Legal Health Authority for a period from 1st April, 2001 to 31st March, 2002. The face value of these documents has also not been disputed by the State during the course of arguments. It clearly shows that at the time of the inspection or happening of the incident, the petitioners were having valid licence.

In Para 5, some irregularities have been mentioned by the complainant with regard to ambiguity in dates of filing of challan, signatures on the receipt of the application for renewal of the licence, name printed in the licence and the procedure of renewal etc. It is rightly argued by learned Senior Counsel Shri Chitley, that once the licence has been issued or renewed by the Competent Authority, the petitioners cannot be held responsible on these procedural irregularities if any. Rule 50 of the Rules deals with breach of the conditions of licence, and not the procedural irregularities. As discussed hereinabove, possession of valid licence by the petitioners at the time of the incident has been established. Breach of any of the conditions of the licence neither has been highlighted in the complaint nor has been mentioned during the course of the arguments. In view of this, the allegation with regard to breach of Rule 50 also appears baseless.

Last argument of Shri Sihare is that this petition u/s 482 of Cr.PC is nothing but a second revision which is not permissible u/s 397(3) of Cr.PC. It is true that u/s 397 of Cr.PC only one revision is permissible. But this petition has not been filed u/s 397 of Cr.PC that is for revising u/s 397 of Cr.PC. This petition has been filed u/s 482 of Cr.PC which is an independent provision available to the party as observed by the Apex Court in the case of Krishnan and Anr. v. Krishnaveni and anr. reported in 1997 SCC 544. While dealing with such a situation, the Apex Court in Para 10 as observes as under:

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1) read with Section 401 of the Code.

The factual as well as the legal aspect of the case as elaborately highlighted in the order it appears that prosecution of the petitioners for the alleged offences appears nothing but a grave miscarriage of justice as the same appears to be baseless. Permitting the prosecution any further will tantamount to permit the prosecution of the petitioners which is nothing but an abuse of the process of the Court. As observed by the Apex Court in Para 28 in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , summoning of an accused in a criminal case, which is a serious matter. Criminal law cannot be set into motion as a matter of cause.

In view of all, as discussed hereinabove, the petition deserves to be allowed. Hence, it is allowed. Criminal proceedings in shape of Criminal Case No. 1/03 pending in the Court of JMFC. Gohad, District Bhind are quashed.