

(2009) 08 MAD CK 0456

In the Madras High Court

Case No : Criminal O.P. (MD) No. 1967 of 2009 and M.P. (MD) No's. 1 and 2 of 2008

Nehrudasan

APPELLANT

Vs

Food Inspector, Madurai Corporation

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16(1), 7
Prevention of Food Adulteration Rules, 1955 — Rule 2, 32, 32(1)

Citation : (2009) 2 LW(Cri) 1282

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : C. Ramachandran, for the Appellant; L.Murugan, Govt.Advocate (Crl. side), for the Respondent

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—This petition has been filed u/s 482 of Cr.P.C., to call for the records and to quash the entire proceedings in C.C. No. 401 of 2003, dated 05.05.2003 on the file of the Court of Judicial Magistrate No. II, Madurai.

2. The facts of the case is follows:

The petitioner is Accused No. 3 and is a manufacturer of "Anil Agmark Turmeric Powder". On 21.10.2002 at about 11.00 A.M., the Food Inspector of Madurai Corporation, visited the shop by name "Jeyachithra Stores", owned by the Accused Nos.1 and 2 and took 20 pockets (50 gms each), of "Anil Brand Agmark Turmeric Powder", as sample for analysis. According to the Analyst's report, the food article though satisfied with the standards prescribed by the Rules, found to be misbranded, since the best before declaration on the label is not found as per Rule 32 of the Prevention of Food Adulteration Rules, 1955. The respondent had filed a complaint, which was taken on file in C.C. No. 401 of 2003, on the file of the learned Judicial Magistrate No. II, Madurai. The petitioner has filed the

present petition to quash the same on the following grounds:

(i) that the label contained the date of manufacture and also the period of expiry viz., six months from the date of manufacture, as required under Rule 32(i) of the Prevention of Food Adulteration Rules.

(ii) that inspection was done on 21.10.2002, the charge sheet was filed on 05.05.2003, first witness was examined on 23.01.2004 and the proceedings are still pending without any progress and the defacto complainant is not interested in prosecuting the same.

3. The learned Counsel for the petitioner would submit that the case of the prosecution is that the label did not contain the best before use declaration and according to the prosecution, it is in contravention of the Rule 32 of the Prevention of Food Adulteration Rules, 1955. The learned Counsel pointed out that there is a declaration in the label stating "use within six months from the date of manufacture" but, the Analyst has found that the said declaration is not as per the said Rules. The learned Counsel relied on the judgment of this Court in T. Prabhu and Anr. v. The State reported in 2007 1 LW (CrL.) 367, wherein this Court has held in similar case that

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Prevention of Food Adulteration Act (1954), Sections 7(ii) and 16(1)(a)(i) r/w. 2(ix)(K), and Rules 32(i) of the PFA Rule, 1955, Criminal P.C., Section 482 - Prosecution of petitioners 1,2 and 3 (namely, the Vendor, the selling agent and the shop) on the ground that the sample is misbranded as it is not labelled in accordance with the requirements of Rule 32(1) of the P.F.A Rules 1955" - Held: 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.

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.

4. The learned Counsel has also relied on an yet another judgment of this Court in A. Rajasingh and Ors. v. The Food Inspector reported in 2008 1 MWN (Cr.) 4, wherein this Court has held that

Prevention of Food Adulteration Rules, 1955, Rule 32(i) - Packet of food product/ Wheat Atta - Misbranding by use of term "best within four months" instead of "best before .." - Effect - Even though terminology found in both terms differ in appearance, actually no consumer would be misguided if he happens to see term "best within four months" - Absence of words " best before four months .." and use of words "best within four months" would not in any way mislead consumer, and by no stretch of imagination could be termed as misbranding of product - It is to be seen that product is not adulterated and only allegation of misbranding is

there.

5. Even according to the prosecution, there is a declaration which states "use within six months from the date of manufacture".

Rule 32 reads as under:

32. Every Prepackaged Food to Carry a Label:

(e) Lot/Code/Batch Identification: - A batch number or code number of lot number which is a mark of identification by which the food can be traced in the manufacture and identified in the distribution, shall be given on the label.

(f) Date of manufacture or packing:- The date, month and year in which the commodity is manufactured, packed or pre-packed, shall be given on the label:

Provided that the month and the year of manufacture, packing or re-packing shall be given if the "Best before date" of the product is more than three months:

Provided that in case any package contains commodity which has a short shelf life of less than three months, the date, month and year in which the commodity is manufactured or prepared or pre-packed shall be mentioned on the label.

6. As rightly pointed out in the said Rule, use within six months from the date of manufacture would not in any way misleading the consumer. In similar circumstances, this Court in CrI.O.P. (MD) No. 447 of 2008 dated 07.08.2009, has held as follows:

A label, which did not contain the mandatory particulars as contemplated under Rule 32(e)(f) of the Prevention of Food Adulteration Rules, 1955, does not require an opinion of the chemical Analyst as it is visible for a naked eye. There is no explanation from the prosecution in this.

7. Under these circumstances, this Court is of the considered view that allowing the proceedings to continue against the petitioner would amount to a clear case of abuse of process of Court and as such, the proceedings pending against the petitioner is liable to be quashed. Accordingly, the Criminal Original petition is allowed and the proceedings in C.C. No. 401 of 2003, dated 05.05.2003, on the file of the learned Judicial Magistrate No. II, Madurai, pending against the petitioner is hereby quashed. Consequently, connected miscellaneous petitions are closed.