

(2014) 08 PAT CK 0072

In the Patna High Court

Case No : Criminal Miscellaneous No. 13737 of 2011

Nestle India Limited

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2(ix)(k)

Citation : (2015) CriLJ 803

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : N.K. Agrawal, Sr. Advocate and Jayanta Ray Chaudhary, Advocates for the Appellant; Jharkhandi Upadhyay, A.P.P, Advocates for the Respondent

Judgement

Ashutosh Kumar, J.—Heard Mr. N.K. Agrawal, learned Senior Advocate for the petitioner, and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State. Despite service of notice on the opposite party No. 2, nobody appears on his behalf to contest this petition. Let it be noted that the notice on the opposite party No. 2 was validly served.

2. The petitioner is a Private Limited Company, which is being represented here through its authorized representative. The petitioner Company challenges the order dated 10-8-2006, passed by the learned Sub-Divisional Judicial Magistrate, Darbhanga, whereby cognizance has been taken under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") for violation of the requirement of providing with the batch number and the date of manufacturing of an edible product. A sample of MAGGI Hot & Sweet Tomato Sauce was collected by the Food Inspector (Opposite Party No. 2) on 30-1-2006 and was sent for analysis for finding out whether there has been any infraction of the Rules and the Act. The prosecution report, which is Annexure-1 to this petition, states that the letters and digits of the batch number and the manufacturing date on the sample were not clear. The court below, considering this violation as a breach of the requirement under Rule 32(e)(f) of the Prevention of Food

Adulteration Rules, 1955 (hereinafter referred to as "the Rules"), as the sample is misbranded under Section 2(ix)(k) of the Act, took cognizance of the offence.

3. The petitioner, which is the manufacturer of the said brand, has challenged the above order of cognizance on the ground that assuming that the batch number, the digit number and the manufacturing date were not very clear to the public analyst, no offence would be made out under any one of the Sections of the Act or the Rules framed thereunder. All that the Rules and the Act require is that the batch number, the digits whereof and the manufacturing date be printed on the wrapper, so that information with respect to such facts is readily available to the customer. The purpose behind enacting the Act and the Rules is that the customer should not be kept in dark regarding the food product being consumable or not.

4. Times without number, this Court as well as the Apex Court have held that if the manufacturing date as also the batch number is stated on the wrapper over the food product, this amounts to substantial compliance of the Act and the Rules. The prosecution report does not state at all as to in what manner the batch number and the manufacturing date were not clear. A bare reading of the prosecution report further reveals that the vendor of the food product, namely, Ram Lal read out the batch number and the manufacturing date.

5. The counsel for the petitioner further contends that from the perusal of the entire record of the case, it would appear that the report of the public analyst has not been brought on the record. Without the report of the public analyst, with respect to the sample so seized, the court could not possibly have come to the conclusion that there was any violation of any one of the provisions of the Act or the Rules with regard to the information about the shelf-life, the manufacturing date or, for that matter, the batch number. The expression "Not very clear" is much too vague to launch any prosecution against the manufacturer of a consumable article. The report clearly states that such requirement of mentioning the batch number and the manufacturing dates has been fulfilled. The only infraction suggested is that such printing was not clear. Clarity of such information/entries, being the 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.

6. It is further submitted on behalf of the petitioner that such laconic/cryptic allegation does not make out any case. The absence of public analyst's report from the record divests that petitioner from making any issue with respect to its defence. It also provides absolutely no information to the court to exercise its powers for taking cognizance of the offence. Thus, seen in totality, it appears that the complaint has been made only as a formality and nothing more.

7. Learned counsel appearing on behalf of the State submits that the very fact that such information was not clearly printed on the wrapper, makes out a case as against the petitioner, as the requirement of law is that such necessary

information should be printed in such a manner as to catch the attention of the consumer.

8. On a holistic consideration of the rival contentions and on going through the record of this 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. The present prosecution is nothing, but an abuse of the process of the court. Allowing such proceedings to continue would only amount to harassment of the accused person.

9. The order taking cognizance, therefore, having been considered to be bad in the first instance, is quashed. The application stands allowed.