

(2022) 02 KL CK 0039

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No.6479 Of 2017

Pepsico India Holdings Private Limited

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 03-02-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Legal Metrology Act, 2009 — Section 18(1), 36(1)
Legal Metrology (Packaged Commodities) Rules, 2011 — Rule 9(1)(a), 32(2)
Food Safety and Standards Act, 2006 — Section 3(j)
Food Safety and Standards Rule, 2006 — Rule 6(1)(a), 6(1)(d), 6(1)(e), 6(1)(g)
Food Safety and Standards (Packaging and Labelling) Regulations, 2011 — Regulation 2.2(9)

Citation : (2022) 02 KL CK 0039

Hon'ble Judges : Ziyad Rahman A.A., J

Bench : Single Bench

Advocate : M.Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Aravind V. Mathew

Final Decision : Dismissed

Judgement

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(9), it can be seen that in respect of certain classes of products, in addition to the declaration of month and year, date of manufacturing is also to be" ,////////

provided. This would indicate that, as far as the month and year of manufacturing is concerned, it is a mandatory requirement in both the said" ,////////

enactments. Therefore, the only conclusion possible is that, the application of the provisions of Food Safety and Standards Act, 2006 as contemplated" ,////////

under proviso to Rule (1) (d) of Rules, 2011 is only to ensure that, in addition to the declaration of month and year as stipulated in the aforesaid" ,////////

provisions of Rules, 2011, the manufacturer also has to comply with the stipulations made in Food Safety Regulations, 2011 in respect of food items, by" ,,,,,,,,,

making a declaration of date of manufacturing as well. In other words, the proviso, to Rule 6(1) (d) is not intended to exclude the operation of the" ,,,,,,,,,

provisions of Rule, 2011." ,,,,,,,,,

11. It is to be noted in this regard that, the first proviso to Rule 6 (1) (d) does not contain specific expression indicating exclusion of the said provision" ,,,,,,,,,

in respect of food articles and this would become more evident, from the examination of certain other provisions contained in Rule 2011. In the second" ,,,,,,,,,

proviso to Rule 6(1) (d) itself, it is provided that, in respect of packages contained seeds which are labelled under the provisions of Seeds Act 1966," ,,,,,,,,,

the obligation of stipulation contained in Rule 6(1) (d) was specifically not made applicable. Similarly, in explanation III of Rule 6(1) (a) of Rules, 2011" ,,,,,,,,,

reads as follows: ,,,,,,,,,

â??In respect of packages containing food articles, the provisions of this sub-rule shall not apply, and instead, the requirement of the Foods Safety and Standards" ,,,,,,,,,

Act, 2006 and the Rules made thereunder shall apply.â??" ,,,,,,,,,

12. It is to be noted that, expression used is that â??provisions of these sub rule shall not be apply and instead, requirement of Food Safety and" ,,,,,,,,,

Standards Act (34 of 2006) of Rules thereunder shall apply.â?. Rule 6(1) (a) deals with the name and address of the manufacturer. Therefore, it is" ,,,,,,,,,

evident that, wherever the legislature wanted application of Rules, 2011 to be excluded, specific provisions were incorporated for the said purpose." ,,,,,,,,,

However, as far as the stipulations in proviso to Rule 6(1) (d) is concerned, no such exclusion of application of provisions of Rule, 2011 is specifically" ,,,,,,,,,

made. Therefore, the only conclusion possible is that, in respect of the declarations concerning month and year of the manufacturing, the stipulation" ,,,,,,,,,

contained in Rules, 2011 would continue to apply even in respect of the articles coming with the definition of â??foodâ?? as defined under Section" ,,,,,,,,,

3(j) of Food Safety and Standards Act. Therefore, the contention put forward by the learned counsel for the petitioner in this regard is not legally" ,,,,,,,,,

sustainable, as they are bound to make declarations which are required to be made with regard to the retail price and month & year of manufacturing." ,,,,,,,,,

13. Another contention of the learned counsel for the petitioner is that, they have specifically provided the Maximum Retail Price and year and month" ,,,,,,,,,

of manufacturing on the neck of the bottle and therefore, there cannot be any violation. In support of their contention, a clarification issued by" ,,,,,,,,,

Government of India on 26.07.2012, which is produced as Annexure-F was also relied on. On going through the contents of Annexure-F, it can be" ,,,,,,,,,

seen that, in respect of declaration of MRP on crown/neck of the bottle contained packaged drinking water, the same shall be treated as proper" ,,,,,,,,,

compliance of Rules, 2011. It is true that, the aforesaid provisions enables the manufacturer of packaged drinking water to make the declaration of" ,,,,,,,,,

MRP on crown/neck of the bottle. However, in this case, the allegation in the complaint is that, the declaration on the bottle with regard to the" ,,,,,,,,,

aforesaid aspect were not legible and prominent. In Annexure-B mahazar, it is specifically stated that the statutory declarations were not complied as" ,,,,,,,,,

well. Therefore, it is evident that the dispute which form the basis of allegation against the petitioner is not in the place where the declaration was" ,,,,,,,,,

made. On the other hand, dispute is regarding the manner in which such declarations were made and according to the complainant, the same was not" ,,,,,,,,,

legible. Rule 9(1)(a) of Rules, 2011 provides that the declaration shall be legible and prominent. The question whether such declaration made was" ,,,,,,,,,

legible and prominent is a matter of evidence. The same cannot be considered in a proceeding under Section 482 Cr.P.C. This being a pure question,,,,,,,,,

of fact, it can only be examined during the course of trial." ,,,,,,,,,

14. It is well settled position of law that, the powers under section 482 Cr.P.C. has to be invoked sparingly and under exceptional circumstances, when" ,,,,,,,,,

the allegations raised against the accused, even if accepted to be true, do not make out an offence. From the discussion which I have made, it is clear" ,,,,,,,,,

that, this cannot be treated as a case coming within that category. In such circumstances, I am of the view that, this is not a fit case in which inherent" ,,,,,,,,,

powers of this Court under Section 482 Cr.P.C. can be invoked.,,,,,,,,,

In such circumstances, I do not find any merit in this Crl.M.C and accordingly, it is dismissed." ,,,,,,,,,