
(2014) 02 UK CK 0028

In the Uttarakhand High Court

Case No : Criminal Misc. Application No. 902 of 2009

Sterling Agro Industrial Ltd. and Another	APPELLANT
Vs	
State of Uttarakhand	RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16, 2, 2(ix), 7

Citation : (2014) 85 ALLCC 149 : (2014) 4 Crimes 187 : (2014) FAJ 495 :
(2014) FAJ 326

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Piyush Garg, Advocate for the Appellant; P.S. Soan, A.G.A, Advocate for the Respondent

Final Decision : Allowed

Judgement

Umesh Chandra Dhyani, J.—The applicants, by means of present Application u/s 482 Cr.P.C., seek to quash the summoning order dated 3.9.2009 passed by the Chief Judicial Magistrate, Champawat in Criminal Case No. 475 of 2009 titled as Food Inspector v. Kamlesh Rai, u/s 7/16 of the Prevention of Food Adulteration Act, 1954. The applicants also seek to quash the proceedings of the aforementioned criminal case pending before the said Court. A criminal complaint was filed by the State of Uttarakhand through the Food Inspector, Champawat against 5 accused persons, including the applicants, in the Court of Chief Judicial Magistrate, Champawat. A request was made by the complainant to convict and sentence the accused persons u/s 7/16 Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the PFA Act) alongwith Rule 37 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the PFA Rules). Thereafter, the Chief Judicial Magistrate, Champawat, vide order dated 3.9.2009 summoned the accused-applicants to face the trial. Aggrieved against the same, present application u/s 482 Cr.P.C. was filed by the accused-applicants.

2. The allegation against the applicants, in a nutshell, is that the applicants have used the words, i.e., "dream of healthy India" on the packets of NOVA Dairy Mix (proprietary food) skimmed milk powder with additives, which is the violation of Rule 37 of the PFA Rules.

3. Before proceeding further, it will be worthwhile to go through the provisions of Rule 37 of PFA Rules. The same is reproduced herein below for ready reference:--

37. Labels not to contain false or misleading statements.---A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food:

Provided that this rule shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets such as Barley, Sugar, Bulls ice-cream Cracker, or in respect of aerated waters such as Ginger Beer or Gold Spot or any other name in existence in international trade practice.

4. The contention of learned Counsel for the applicants is that the said label did not contain false or misleading statement. According to him, it is the allegation against the applicants that they wrote "dream of healthy India" on the packets of NOVA Dairy Mix skimmed milk powder. The Food Inspector nowhere alleged that the words i.e. "dream of healthy India" on the packets of NOVA Dairy Mix (proprietary food) skimmed milk powder were false or misleading. Rule 37 of PFA Rules nowhere provides that the label should not contain anything. What the same prescribes is that the label should not contain any statement, claim, etc., which is false or misleading. According to learned Counsel for the applicant, the words used "dream of healthy India" is not a false or misleading statement on the part of the applicants.

5. Apparently, the argument advanced by learned Counsel for the applicants seems to be correct.

6. The aforesaid view was also taken by Hon'ble Madras High Court in *Selvakumar Vs. State*, wherein it was observed:--

8.....It is also appropriate to consider the decision of this Court made in Crl. O.P. (MD) No. 11867 of 2009, wherein this Court has held as follows:--

A perusal of the complaint would reveal that it has been merely stated that "sample" is misbranded as it is not labeled in accordance with Rules 32(f)(i) and 42(zzz) 147 of P.F.A. Rules, 1955. It is not quite clear as to how the sample is misbranded and the averments made in the complaint are also bereft of any particulars. There must be a specific averment that the customers are being mislead on account of misbranding and in the absence of any such clear averments, it cannot be said that the customers are mislead or misdirected.

9. A perusal of the Public Analyst's report would reveal the Public Analyst has

simply stated that the sample was misbranded since it is not labeled in accordance with the requirements of Rule 37 of P.F.A. Rules, 1955, but he has not mentioned as to how and what manner the sample was misbranded. There must be a specific averment that the customers being misled on account of misbranding and in the absence of any such clear averments, it cannot be said that the customers are misled or misdirected.

7. Similar view was also taken by Hon''ble Gauhati High Court in Glaxo India Ltd. Vs. State of Assam and Others, , wherein it was held as follows:--

18. Much reliance has been placed on a decision reported in Corn Products Company, Bombay Vs. Food Inspector, Tirunelveli Municipality, Tirunelveli, . In that case, the Madras High Court, in dealing with similar matter pertaining to report of the Public Analyst in relation to GLUCOVITA GLUCOSE-"D" wherein it was opined by the Public Analyst that the said product was adulterated, was of the clear view that the GLUCOVITA GLUCOSE-"D" was a "proprietary food" and it cannot at all be stated that any of sub-clauses (a) to (c) and (h) of Clause (ia) of section 2 of the Act was getting attracted on the face of the very averments adumbrated in the complaint in the sense of the product GLUCOVITA GLUCOSE-"D" a proprietary food, shall be deemed to be adulterated falling under any one of these sub-clauses (para. 29). Relying on the ratio of the said case, Mr. Bhattacharyya has submitted that it is clear and obvious that a proprietary food cannot be a subject-matter of standardization laid down in the Appendix B to the Act. Therefore, simply because the ingredients of the proprietary food do not tally with the said standards, it cannot be said as "misbranded".

20. Basically both the criminal proceedings are founded on the reports of the Public Analyst. But amazingly those reports did not reveal how the ingredients of the sample of Glucon-"C and Glucon-"D", were misbranded. It is seen that even no endeavor was made at all by the Public Analyst in the reports in question to display as to under which of the clause of section 2(ix) of the Act, the present articles of food would fall to be called as "misbranded" if the reports themselves failed to indicate how the products were misbranded, then where is the scope for prosecution to proceed with the present criminal proceedings? Therefore, it can be unhesitatingly held that those reports are nebulous and bereft of details and there is no material on records to justify the launching of the instant criminal proceedings against the petitioner on account of misbranding the products in controversy. Moreso, in view of total silence maintained in the reports as regards the comprehensive material facts and particulars, the petitioner is appeared to have been deprived of either any opportunity to defend its case or the right to know under what provision of Law, it has been prosecuted. Accordingly this Court finds sufficient force in the submission of the learned Sr. Counsel of the petitioner and is of the view that the ratio of Food Specialities Ltd., M-54 Connaught Circle, New Delhi and another v. The State of Assam in Criminal Revision No. 422/89 is squarely applicable in this case.

8. Hon''ble High Court of Judicature at Bombay, Nagpur Bench in Writ Petition

No. 2514 of 2010, Nestle India Limited v. State of Maharashtra, decided on 29.06.2012, held as under:--

10. The allegation against the company is about the contravention as referred to in Rule 39. In case of the food product "Maggi Noodles", the 9 WP2514.10 label contains the words, "Maggi Noodles are packed with the power of Protein and Calcium. Protein helps improve muscle growth. Calcium helps build strong bones". The label further contains, "Good to know - Protein and Calcium help improve growth". It further reads, "TASTE BHI, HEALTH BHI for your child". The label of product "Maggi Teekha Masala Sauce" reads, "Good to remember- Tomatoes are a good source of lyco-pene - an anti-oxidant which helps strengthen your body's natural defences.

17. The plain reading of the said provision, on the backdrop of the words mentioned on the label of the food products, namely, the "Maggi Noodles" and "Maggi Teekha Masala Sauce", I find considerable merit in the submissions of Shri Sunil Manohar, the learned Senior Counsel for the petitioner. The requirement as suggested by the provisions of Rule 39 is the words recommended by the medical profession or any such words implying or suggesting that the food is recommended, prescribed or approved by the medical practitioner is certainly with a view to prohibit or sale of such a food product which would create an impression in the mind of purchaser that as the product is recommended by the medical profession or medical practitioner, it is beneficial for his health. The object is certainly laudable i.e. to prevent the general public from misleading claims of the manufacture or the seller of food product. On this touchstone if the labels are scanned and assessed with the objectivity, one would find that the words used on the label are the statement of facts. In the case of the product, namely "Maggi Noodles", the words reflected about the protein and calcium and the product "Maggi Teekha Masala Sauce" is packed with protein and calcium is merely a statement of facts. The label nowhere suggests that the said product is recommended by the medical profession or medical practitioner so as to meet the requirement under Rule 39. Insofar as the nutrient values contained in the product, the data is separately reflected on the label. In view of these facts, the conclusion arrived at by the authority passing the order dated 10.12.2009 18 WP2514.10 i.e. the Food Inspector and Licensing Authority is certainly erroneous. The order also suffers from a mechanical approach by the authority as the petitioner/company in its reply submitted that the statements about the protein and calcium are the statements of facts and the submission in the reply that there is nothing on the label either in clear words or any such words to imply with the product is recommended, prescribed or approved by any medical practitioner or is approved for medical purpose. The appellate authority substituted its own reasons namely about the words on label were in the nature that the appellant's distributor has introduced advertisement of contents of protein and calcium. Now this was not the charge leveled against the petitioner/company. As there was nothing in that respect either in the notice or in the order passed by the Food Inspector and Licensing Authority, the petitioner had no

opportunity to meet these substituted charges by the appellate authority. The same is the case about further observation of the appellate authority in respect of one GSR 664(E). The appellate authority observed that as per the said new GSR 664(E), the petitioner has suppressed the facts. The appellate authority further observed that in the product "Maggi Noodles", the main ingredient is the wheat fine flour and the petitioner/company has made the statements on the label about the value of protein and calcium. Suppressing the fact that the main ingredient of the product "Noodles" is wheat fine flour which contains proportion of Carbohydrates in excess. This is also not a charge levelled against the petitioner/company. The 19 WP2514.10 notice issued to the petitioner along with the report of Public Analyst of State Public Health Laboratory refers to the contents on the label and particularly about the protein and calcium. In view of these facts, the appellate authority's observations about the petitioner misguiding the consumers by suppressing the fact that the noodle's main ingredient is wheat fine flour is erroneous. The appellate authority's order in respect of the product "Maggi Teekha Masala Sauce" is also erroneous. While considering the report of the Public Analyst and the objection of the Food Inspector, Wardha in respect of the contravention of Rule 39, reference is made to the words, "Tomatoes are a good source of lycopene-an anti-oxidant which would strengthen your body's natural defences". Here also reference is made to GSR 664 and further it is observed by the appellate authority that the main ingredient in the product is only four per cent of tomato base and the general consumer is likely to mislead by the words appearing on the label as to, "Tomatoes are a good source of lycopene - an anti-oxidant which would strengthen your body's natural defences" and as such it contravenes Rule 39. Reading the words appearing on the label as it is, it only reflects a general statement that the "Tomatoes are a good source of lycopene - an anti-oxidant which would strengthen your body's natural defences". The label nowhere suggests that the product "Maggi Teekha Masala Sauce" is either recommended by medical practitioner or recommended for medical purpose by medical practitioner. In that effect, the observation of the appellate authority that the petitioner/company through, the label making an advertisement of its product showing that the product contains large scale of lycopene; whereas lycopene proportion is very minimal in the product and as such the consumer is being misguided. These observations of the appellate authority are farfetched.

9. Taking overall view of the matter, this Court is of the opinion that the aforesaid rulings are applicable to the facts of the present case.

10. To sum up, the allegation against the applicant is that the words "dream of healthy India" were scribed on the packets of NOVA Dairy Mix skimmed milk powder manufactured by the applicants, but neither in the complaint nor in the Public Analyst's report there was allegation that the said label contained false or misleading statement. Neither the Food Inspector nor the Public Analyst said anywhere that the words, i.e., "dream of healthy India" on the packets of NOVA Dairy Mix skimmed milk powder carry false or misleading statement.

11. Writing of a statement, per se, is not barred by any Rule. Rule 32 of the PFA Rules rather permits every prepackaged food to carry a label. To make it simpler, every prepackaged food may carry a label, but such label should not contain false or misleading statement. Rule 32(b)(2)(vi)(C) of the PFA Rules permits the label to contain the amount of nutrient for which a nutrition or health claim is made and the explanation appended thereto says what is "nutrition claim" or "health claim". In other words, "nutrition claim" and "health claim" are permitted, so long as they are not deceptive or false. Nowhere it is the case of Food Inspector that the label carrying the words "dream of healthy India" is deceptive or false. In view of above, the order impugned is not sustainable in the eyes of law and the application u/s 482 Cr.P.C. deserves to be allowed. Consequently, application u/s 482 Cr.P.C. is allowed. The summoning order dated 3.9.2009 and the proceedings of Criminal Case No. 475/2009 pending in the Court of Chief Judicial Magistrate, Champawat are accordingly quashed.