

(2005) 01 JH CK 0018

Jharkhand High Court

Case No: Criminal M.P. No"s. 200, 216 and 220 of 2004

Partha Sarathi Kumar
and Another

APPELLANT

Vs

State of Jharkhand
and Another

RESPONDENT

Date of Decision: Jan. 25, 2005

Acts Referred:

- Prevention of Food Adulteration (Amendment) Rules, 2002 - Rule 1, 1(2), 2, 42(1), 42(12)
- Prevention of Food Adulteration Act, 1954 - Section 16(1)
- Prevention of Food Adulteration Rules, 1955 - Rule 3, 42

Citation: (2005) CriLJ 2309 : (2005) 1 JLR 557 : (2005) 3 JCR 413 : (2005) FAJ 275 : (2005) 2 FAC 113 : (2005) 2 EastCric 69 : (2005) 4 CurCriR 244 : (2005) 2 BLJR 1343 : (2005) 32 AllIndCas 497

Hon'ble Judges: S.J. Mukhopadhaya, Acting C.J.

Bench: Single Bench

Advocate: Shankar Lal Agrawal, for the Appellant; Deepak Kr. Prasad, APP, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, A.C.J.

1. In all these cases, petitioners, who are common, have challenged orders taking cognizance all dated 12th November, 2003 passed by learned Chief Judicial Magistrate, Saraikella for the offence punishable u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act, 1954") in connection with three cases i.e. C/2 Case No. 73/2003; C/2 Case No. 72/2003 and C/2 Case No. 67/2003, now pending in the Court of Sub-divisional Judicial Magistrate, Saraikella.

2. The brief fact of the cases is that the respondent, Sri Mahesh Pandey, Food Inspector, Jamshedpur filed three complaint cases against these petitioners alleging therein that on 18th August, 2003 at 2.30 P.M., they (accused persons) exposed and sold cold drinks, which were found mis-branded. It was alleged that on the same day (18th August, 2003), the accused persons were selling cold drinks, such as Mountain Dew; 7-UP; Pepsi and Mirinda Orange, out of them three of the cold drinks, namely, 7-UP; Pepsi (sweetened carbonated water) and Mirinda Orange were found misbranded as the quantity of added sugar was not mentioned on the cap or the crown of the bottles as reported by the Public Analyst, Mineral Area Development Authority, Dhanbad (hereinafter referred to as "MADA") vide its report Nos. 192/03; 188/03 and 190/03 all dated 11th September, 2003. Three cases were instituted against the accused persons (petitioners). The first complaint case No. C/ 2 Case No. 73/2003 relates to misbranding of "7-UP"; second complaint case No. C/2 Case No. 72/2003 relates to misbranding of "Pepsi (sweetened carbonated water)" and the third complaint case No. C/2, Case No. 67/2003 relates to misbranding of "Mirinda Orange". It was alleged that the quantity of added, sugar having not mentioned in the cap/crown of the bottles, the accused persons are guilty for the offence u/s 16(1)(a)(i) of the Act.

As stated above, the Chief Judicial Magistrate, Saraikella took cognisance in all the three cases on 12th November, 2003 against the accused persons u/s 16(1)(a)(i) of the Act and transferred all the cases to the Court of Sub-divisional Judicial Magistrate, Saraikella for disposal.

In all three reports submitted by Public Analyst, MADA, Dhanbad all dated 11th September, 2003, the sole allegation against the petitioners is that they misbranded the particular product i.e. "7-UP"; "Pepsi (sweetened carbonated water)" and "Mirinda Orange", one of them reads as follows :

"SEE RULE (3) OF PFA RULES, 1955 MINERAL AREA DEVELOPMENT AUTHORITY, DHANBAD

Report No. 192/03

REPORTED BY THE PUBLIC ANALYST

XXXXXXXXXXXXX

I Further certify that I have/had caused to be analyzed the aforementioned sample, and declare the analysis to be as follows, Sugar -- present

Saccharin	--	Nil
Dulcine	--	Nil
Test for colouring matter	--	Nil
caleform orgamsan	--	Nil
Added sugar	--	10.2 gm/100

Label -- Manufacturer/Manufacturing place-S.M.V. Beverages.

Aditya Pur Kandra-Rd. Jamshedpur Mfg. date -- 6-6-2003.

Best before-3 months from the date of manufacture.

Quantity of added sugar is not mentioned on the cap/crown of bottle.

_____ and am of the opinion that sample of 7 UP [sweetened carbonated water] is misbranded due to quantity of Added sugar is not mentioned on the cap/crown of bottle as per Item A-01-01 of Appendix-B of P.P.A. Rules 1955.

Signed this day of 11-9-03."

3. According to counsel for the petitioners, on the date, the samples of 7-UP, Pepsi and Mirinda Orange were seized by the opposite parties i.e. 18th August, 2003, there was no law, such as Act or Rule laid down prescribing any condition to mention "quantity of added sugar" either on the cap or crown of the bottle. Such law having come into force from later date i.e. 1st October, 2003, it cannot be alleged that the petitioners committed offence and for that the Court cannot take cognizance against the petitioners u/s 16(1)(a)(i) of the Act.

On the other hand, according to learned A.P.P., the relevant law prescribing condition to mention "quantity of added sugar" on the cap/crown of the bottle having come into effect from 1st April, 2003, the Court below rightly took cognizance against the accused persons (petitioners), they having committed offence on 18th August, 2003 i.e. the bottles were seized.

4. The only question arises for determination is whether the condition that the quantity of added sugar to be mentioned either on the cap or crown of the bottle came into force from 1st April, 2003 or 1st October, 2003.

For determination of the issue, is necessary to discuss the relevant rule, namely, Prevention of Food Adulteration Rules, 1955 as amended from time to time. The last amendment of the said rule was made vide Prevention of Food Adulteration (Eighth Amendment) Rules, 2002 (hereinafter referred to as the Rule, 2002). The said amended Rule, 2002 came into force w.e.f. 1st April, 2003, as evident from Sub-rule (2) of Rule-1 of the amended Rules, 2002 but Sub-rules (ii)(iii) and (iv) of Rule-2 came into effect from later date i.e. w.e.f. 1st October, 2003, as evident from Rule-1 of Amended Rules, 2002, quoted hereunder :

"1. (1) These rules may be called the Prevention of Food Adulteration (8th Amendment) Rules, 2002.

(2) They shall come into force on the 1st April, 2003 except Sub-rules (ii), (iii) and (iv) of Rule 2 of these rules which shall come into force on the 1st October, 2003."

By Sub-rule (iii) of Rule-2 of the Amended Rules, 2002, original Rule-42 of 1955 was amended. The label of bottle/container, as was prescribed under Sub-rule (zzz)(1)

and (12) of Rule 42, was amended and substituted by Amended Rules, 2002 and for the first time, it was made mandatory to mention that "quantity of added sugar" or "no sugar added in product", as evident from the Amended Sub-rule (iii) of Rule-2, quoted hereunder :

"(iii) in Rule 42, --

(a) in Sub-rule (zzz)(1), for the existing label, the following label shall be substituted, namely :--

(i) This (name of food) contains(Name of artificial sweetener)

(ii) Not recommended for children.

(iii) *(a) Quantity of sugar added gm/100gm.

(b) No sugar added in the product.

(iv) *Not for phenylketoneurics (if Aspartame is added)

(*strike out whatever is not applicable).

xxxx xxxxxx

xxxxxx

(c) in Sub-rule (zzz)(12), for the existing label, the following shall be substituted, namely :--

(i) This (Name of food) contains contains as admixture of Aspartame (Methyl Ester and Acesulfame Potassium).

(ii) Not recommended for children.

(iii) *(a) Quantity of sugar added gm/100gm

(b) No sugar added in the product,

(iv) *Not for phenylketonurics (if Aspartame is added)

(*strike out whatever is not applicable).

The item No. A.01.01 for the first proviso of the Appendix-B to the rule was substituted by new proviso, wherein it was prescribed to declare "quantity of added sugar on the container/bottle. If no sugar is added that also required to be declared on the container/bottle, as laid down in Sub-clauses (1) and (12) of Sub-rule (zzz) of Rule 42. It was further provided that in case of returnable bottles, which are recycled or refilling the declaration of quantity of added sugar and no sugar is added may be given on the crown. Carbonated water (plain soda) was exempted from providing the declaration of "no sugar added", as quoted hereunder.

"3. In Appendix B to the said rules

(i) in item A.01.01. for the first proviso, the following provisos shall be substituted, namely :--

"Provided that the quantity of added sugar shall be declared on the container/bottle and if no sugar is added that also shall be declared on the container/bottle as laid down in Sub-clauses (1) and (12) of Sub-rule (zzz) of Rule 42. In case of returnable bottles, which are recycled or refilling the declaration of quantity of added sugar and no sugar added may be given on the crown.

Provided also that the declaration of "no sugar added" shall not be applicable for "carbonated water (plain soda)".

5. Thus, from the plain reading of the Amended Rules, 2002, the following facts emerges :

(a) The Amended Rules, 2002 came into effect from 1st April, 2003, except Sub-rules (ii)(iii) and (iv) of Rule-2 of the Amended Rules, 2002.

(b) Sub-rules (ii)(iii) and (iv) of Rule-2 of Amended Rules, 2002 whereby Rule-42 was amended and label prescribed under Sub-rule (zzz)(1) and (12) came into effect from later date w.e.f. 1st October, 2003.

(c) Appendix-B to the said rule cannot be given effect independently till Sub-rule (zzz) of Rule-42 is given effect. Thus, the Appendix-B to the amended Rule also came into effect from 1st October, 2003.

I have noticed the original Sub-rule (zzz) of Rule-42 of 1955. Therein, no condition laid down to mention "quantity of added sugar" or "no sugar added". It was only required to mention the name of "artificial sweetener".

6. In these cases, the day i.e. 18th August, 2003, the bottles of 7-UP; "Pepsi (sweetened carbonated water)" and "Mirinda Orange" were seized and the day, the Public Analyst of MADA, Dhanbad submitted its report i.e. 11th September, 2003, the provisions of Sub-rules (ii)(iii) and (iv) of Rule-2 and the Appendix-B of Amended Rules, 2002 having not come into effect and such amendment having come into effect from later date i.e. 1st October, 2003, the accused persons (petitioners) cannot be held to have violated the amended Sub-rule (zzz)(1) and (12) of Rule-42 or the Appendix-B to the Amended Rule, as quoted above. There being no provision, the accused persons (petitioners) were not required to declare "quantity of added sugar" or "no sugar added" on the cap/ crown of the bottles and thereby, the question of misbranding of any one or other product aforesaid cannot be alleged.

In the circumstances, as no case is being made out against the accused persons (petitioners) to prosecute for the offence u/s 16(1)(a)(i) of the Act, 1954, it is desirable to set aside all the criminal proceedings in question.

7. In the result, all the Criminal Miscellaneous Petitions succeed. The entire criminal Proceedings including orders taking cognizance all dated 12th November, 2003

passed by the learned Chief Judicial Magistrate, Saraikella in connection with C/2 Case No. 73/2003, C/2 Case No. 72/2003 and C/2 Case No. 67/2003 for the offence punishable u/s 16(1)(a)(i) of the Act are quashed.