
(2004) 06 KL CK 0059

High Court Of Kerala

Case No: O.P. No. 29147 etc. of 2002

Achamma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: June 22, 2004

Acts Referred:

- Essential Commodities Act, 1955 - Section 3, 6
- Prevention of Food Adulteration Act, 1954 - Section 2

Citation: (2004) 3 KLT 81 : (2004) 4 RCR(Criminal) 468

Hon'ble Judges: G. Sasidharan, J

Bench: Single Bench

Advocate: Bechu Kurian Thomas, Prakash Puthiadam, Roshin Ipe Joseph and Paul Jacob P, for the Appellant; Jayapradeep V., A.C.G.S.C., for the Respondent

Judgement

G. Sasidharan, J.

Petitioners are persons against whom prosecution was initiated alleging that the word "non-fruit" on the label of sample of the food product taken from them is misleading and hence the samples were misbranded as per Section 2(ix)(g) of the Prevention of Food Adulteration Act. Cases were taken on the basis of the complaints filed by the Food Inspector on the basis of report of the public analyst. Report of the public analyst is that the word "non-fruit" on the label of the sample is misleading and hence the sample is misbranded as per Section 2(ix)(g) of the Act.

2. Petitions are filed mainly for quashing the proceedings in the case against the petitioners. There is also prayer that Item A.20.01 of Appendix-B of the Prevention of Food Adulteration Rules insofar as it directs that the label has to mention the word "synthetic" is ultra vires Article 14 and 21 of the Constitution of India. Declaration sought by some of the petitioners is that marketing of vinegar products by labelling them as "non-fruit" instead of "synthetic" does not amount to misbranding.

3. The Fruit Products Order, 1955 was issued by the Central Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act. Clause 2(d) of the Order defines "fruit product". Clause 11(2) provides that synthetic vinegars, beverages, syrups, sharbats and other products associated with fruits and vegetables shall be clearly and conspicuously marked on the label as "SYNTHETIC". Clause 12 of the above Order says that every manufacturer to whom any directions or order is issued in pursuance of any provision of the Order shall be bound to comply with such direction or order and any failure on the part of the manufacturer to comply with such direction or order shall be deemed to be a contravention of the provision of the Order.

4. In 1997 Fruit Products Order was amended by Fruit Products Amendment Order of 1997 which was also issued by the Central Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act. Clause 2 of the above amendment Order says that in the Fruit Products Order, 1955 for the word "synthetic" wherever it occurs the word "non-fruit" shall respectively be substituted. By virtue of the amendment in Clause 11(2) of the Fruit Products Order the word "SYNTHETIC" will be substituted as "NON-FRUIT". As per the provisions of the Fruit Products Order, the word "non-fruit" has to be there in the label and it was in compliance with the provisions in the Fruit Products Order that the petitioners mentioned the word "non-fruit" in the label.

5. According to the petitioners, in the light of the amendment of the Fruit Products Order, the use of the word "non-fruit" on the label of the sample cannot be said to be misleading and hence the sample cannot be said to be misbranded as per Section 2(ix)(g) of the Act.

6. Item A.20.01 of Appendix-B of the Prevention of Food Adulteration Rules says that "SYNTHETIC VINEGAR" means the product prepared from acetic acid and it shall not contain less than 3.75 grams of acetic acid per 100 ml. It is also stated there that Synthetic Vinegar shall be distinctly labelled as SYNTHETIC- PREPARED FROM ACETIC ACID. It is by virtue of the above provisions it is said that the label has to contain the word SYNTHETIC. In so far as the consequential amendment is not made in the Prevention of Food Adulteration Rules, using the word "non-fruit" is against what is said in Item A.20.01 of Appendix-B of Prevention of Food Adulteration Rules.

7. Section 6 of the Essential Commodities Act reads as follows:--

"6. Effect of orders inconsistent with other enactment:- Any order under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act".

The above section makes it clear that if there is anything inconsistent in any Act or any provision in any order made u/s 3 then that provision in the order will prevail. The above question came up for consideration of a Full Bench of the High Court of

Punjab and Haryana in [Chint Ram and Another Vs. State of Punjab](#). In that decision when it was found that there was inconsistency with the provisions of the Fruit Products Order and the Food Adulteration Act it was held that the Fruit Products Order must displace the provisions of the Prevention of Food Adulteration Act wherever they are in conflict. In that decision it was held that no person can manufacture a fruit product unless he obtains a licence under the Fruit Products Order and there can be no violation of that order if its provisions are fully complied with and that if a citizen complies with the provisions of a law, he cannot be held guilty of violating the provisions of another law. Referring to Section 6 of the Essential Commodities Act, the Full Bench of the Punjab and Haryana High Court said that any order u/s 3 of the Essential Commodities Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act.

8. The use of the word SYNTHETIC VINEGAR in Item A.20.01 of Appendix-B of the Prevention of Food Adulteration Rules and the provision which says that synthetic vinegar shall be distinctly labelled as SYNTHETIC is inconsistent with the provisions of the Fruit Products Order, Since Fruit Products Order is issued in exercise of the powers u/s 3 of the Essential Commodities Act by virtue of Section 6 of that Act, the provisions of the Fruit Products Order will prevail and a person, who uses the word "non-fruit" in the label of the sample, cannot be said to have committed any offence under the Prevention of Food Adulteration Act. Hence proceedings for prosecution against the petitioners are liable to be quashed.

9. In some of the petitions, there is prayer that Item A.20.01 of Appendix-B of Prevention of Food Adulteration Rules insofar as it directs that the label must mention the word SYNTHETIC may be struck down. Even though the word "Synthetic" is there in the Prevention of Food Adulteration Rules, the word "non-fruit" used in the Fruit Products Order has to be used by virtue of Section 6 of the Essential Commodities Act. It is not necessary to strike down the provision in Item A.20.01 of Appendix-B of the Rules because that provision is inconsistent with the provision in an order issued in exercise of the powers u/s 3 of the Essential Commodities Act.

10. There is prayer that a writ in the nature of declaration that marking of vinegar products of the petitioners by labelling them as "non-fruit" instead of "synthetic" does not amount to misbranding. In the light of the amendment of the Fruit Products Order as a result of which the word "synthetic" is substituted by the word "non-fruit", marking of vinegar products by labelling them as "non-fruit" instead of "synthetic" will not amount to misbranding. Prosecution cannot be initiated by saying that there was misbranding merely because in the label the word "non-fruit" is shown in compliance with the Fruit Products Order.

The proceedings for prosecuting the petitioners on the basis of the complaints appended to the petitions are hereby quashed.