

(2012) 05 DEL CK 0573

Delhi High Court

Case No: Criminal M.C. 1458 of 2012 and Criminal M.A. 5167 of 2012

Mukesh Kumar

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

Date of Decision: May 7, 2012

Acts Referred:

- Prevention of Food Adulteration Rules, 1955 - Rule 29

Citation: (2012) 5 AD 728 : (2013) 2 JCC 1075

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: Danish Aftab Chowdhury with Mr. Madhav Khurana in Criminal M.C. 1458/2012 and Criminal M.A. 5167/2012, Criminal M.C. 1487/2012 and Criminal M. As., Criminal M.C. 1596/2012, Criminal M.C. 1470/2012, Criminal M. As. 5222-5221/2012, Criminal M.C. 1472/2012 and Criminal M. As. 5226-27/2012, Criminal M.C. 1486/2012, Criminal M. As. 5263-64/2012 and Criminal M.C. 1595/2012, for the Appellant; M.N. Dudeja, APP. In Crl. M.C. 1458/2012 and Crl. M.A. 5167/2012, Crl. M.C. 1487/2012 and Crl. M. As., Crl. M.C. 1596/2012, Crl. M.C. 1470/2012, Crl. M. As. 5222-5221/2012, Crl. M.C. 1472/2012 and Crl. M. As. 5226-27/2012, Crl. M.C. 1486/2012, Crl. M. As. 5263-64/2012 and Crl. M.C. 1595/2012, for the Respondent

Judgement

M.L. Mehta, J.

These two sets of petitions are filed seeking quashing of criminal complaints filed against the petitioners by the Food Adulteration Department of Govt. of N.C.T. of Delhi as also the summoning orders dated 22.12.2005. In one set of complaints, the samples which were taken relate to food article "Mango Crush" and another set of four cases, the food article was "Pineapple Crush". The samples of both these commodities on testing by Public Analyst were found to be adulterated. The opinion of the Public Analyst in all the cases relating to "Mango Crush" and "Pineapple Crush" reads thus:

Opinion: - Although there are no standards of Mango Crush under Appendix B of PFA Act, But it contains added synthetic colour which is not permitted under Rule- 29 of PFA Rules.

Opinion: - Although there are no standards of pineapple Crush under Appendix B., But it contains added synthetic colour which is not permitted under rule 29 of PFA Rules.

2. The Public Analyst identified the added synthetic colour as "Sunset Yellow" in the samples of "Mango Crush", whereas in samples of "Pineapple Crush" the added synthetic colour was identified as "Tartrazine".

3. The complaints are sought to be quashed on the grounds that the petitioners had licence under food preservation order (FPO) and so, they could not be prosecuted under the P.F.A. Act. In this regard, it was submitted that as per the FPO Order, 1955, the use of Tartrazine and Sunset Yellow colours was permissible. It was also the case of the petitioners that the use of the aforesaid colours in the sample commodities was not prohibited under Rule 29 and so, the prosecution for alleged violation of Rule 29 was not legal. In this regard, the reliance was also placed on the judgments of this Court in Crl.M.Cs. 3405/2009 and 3407/2009 decided on 21.4.2011.

4. Having heard the learned counsel for the petitioners and the learned APP, I find myself in full agreement with the decisions rendered by this Court in aforesaid Crl.M.Cs. 3405/2009 and 3407/2009 dated 21.4.2011 and similar other cases. There is no dispute that there was no quality standard specifically prescribed for "Pineapple Crush" as also for "Mango Crush".

5. This Court in the aforesaid cases held thus:

11. On reading of the aforesaid provision, it is clear that user of yellow tartrazine is permissible in fruits syrup, fruit squash and fruit cordial etc. Undisputedly fruits squash and fruits syrups are the product prepared from fruit juice/puree or concentrate clear or cloudy obtained from any fruit or several fruits by blending it with nutritive sweeteners, water and with or without salt. Fruit crush is also a product made from the fruit or fruit juice/puree or concentrate of fruit juice only difference is that it contains mere pulp. Thus, there can be no distinction between the fruit squash, fruit syrup or fruit crush so far as applicability of the PFA Act and the Rules prescribed thereunder is concerned. My aforesaid view finds support from the definition of squashes, crush, fruit syrups/fruit sambats and barley water given in A.16.21 of Appendix B incorporated in the Appendix B subsequently by an amendment in the year 2005, which reads thus:

A.16.21- SQUASHES, CRUSHES, FRUIT SYRUPS/FRUIT SHARBATS

AND BARELY WATER means the product prepared from unfermented but fermentable fruit juice/puree or concentrate clear or cloudy, obtained from any suitable fruit or several fruits

by blending it with nutritive sweeteners, water and with or without salt, aromatic herbs, peel oil and any other ingredients suitable to the products.

12. Taking into account that fruits squash/fruit syrup as also the fruit crush are derived from the ripe fruit, the standard applicable to all these products ought to be similar. Admittedly, at the relevant time, when the sample was taken, there was no standard prescribed for fruit crush. Therefore, under the circumstances it has to be treated at par with fruit products detailed in Rule 29(c) of PFA Rules and the standards applicable fruit squash/syrup/cordially ought to have been applied in the instant case. Otherwise also, it falls within the category of non-alcoholic fruit drink and is covered under Rule 29 of PFA Rules. Indisputably, as per Rule 29 (c) and (d) of PFA Rules, use of tartrazine, sunset yellow in manufacture of fruit squash, fruit syrup etc. and nonalcoholic fruit drink etc. is permissible. Therefore, by no stretch of imagination, it can be said that the petitioner or his company has violated the provisions of PFA Act or the PFA Rules framed thereunder.

6. Following the aforesaid decisions rendered by this Court and admittedly, which have not been assailed by the PFA Department till date, I am of the view that the summoning order dated 22.12.2005 of the learned M.M. passed in all the criminal complaints are not sustainable under the law. Consequently, all the complaints and the impugned summoning order as also the proceedings emanating therefrom are hereby quashed. Petitions stand disposed of.