

Pepsico India Holdings Private ... vs Sh. B.S. Rangnathan Inspector Legal ... on 12 September, 2022

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 3597/2014 & CRL. M.A. 12395/14 (Stay)
PEPSICO INDIA HOLDINGS PRIVATE LIMITED,
PREVIOUSLY KNOWN AS ARADHANA SOFT DRINKS
COMPANY
HAVING ITS REGISTERED OFFICE AT-
3B, DLF, CORPORATE PARK, S BLOCK, QUTAB ENCLAVE,
PHASE III, GURGAON, HARYANA
THROUGH ITS AUTHORIZED REPRESENTATIVE
SHRI AMIT MATHUR PETITIONER

Through: Mr. Rajesh Batra and Mr. Dhruba
Dhar, Advocate.

versus

SH. B.S. RANGNATHAN
INSPECTOR LEGAL METROLOGY,
WEIGHTS AND MEASURES DEPARTMENT,
SOUTH ZONE, OKHLA,
NEW DELHI RESPONDENT NO.1

THE CONTROLLER / ADDITIONAL CONTROLLER,
LEGAL METROLOGY,
GOVT. OF N.C.T. DELHI,
C-BLOCK, VIKAS BHAWAN, I.T.O.
NEW DELHI - 110002 RESPONDENT NO.2

THE STATE OF DELHI
THROUGH STANDING COUNSEL (CRIMINAL)
DELHI ADMINISTRATION, CH.NO.437
HIGH COURT OF DELHI, NEW DELHI
..... RESPONDENT NO.3

Through: Mr. Amit Ahlawat, APP for R-3/State
with Mr. Gagan Kumar, Advocate.

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CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
ORDER

% 12.09.2022

1. This petition under Section 482 of the Cr.P.C. is directed against the order dated 26.02.2010 passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi, directing for issuance of summons against the petitioner for alleged violation of Section 39 read with Section 63 of the Standards of Weights and Measures Act, 1976 (hereinafter referred to as 'Act of 1976').

2. The facts of the case would show that the petitioner is a transferee company of M/s Aradhana Soft Drinks Company. The accused company i.e. M/s Aradhana Soft Drinks Company has been amalgamated with the petitioner company vide order dated 14.10.2011 passed by Hon'ble High Court of Punjab & Haryana in Company Petition bearing No. 55/2011 and other connected petition No. 9/2011.

3. As per the facts of the case on 26.02.2010, a complaint has been filed against the petitioner and others by respondent No.1 for the alleged violation of the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as 'Rules, 1977'). The learned Magistrate on an application submitted by the other respondent proceeded to compound the offence. However, in the absence of any application for compounding, the learned Magistrate had only directed for issuance of summons by the impugned order against the petitioner.

4. The learned counsel appearing on behalf of petitioner submits that the complaint itself is vague as no specific allegations have been made therein.

No offence under Section 39 read with Section 63 of the Act of 1976 is made out. Even the provisions of the Act of 1976 or the Rules made thereunder, would not have any application in the present case. He has placed reliance on the decision of the Hon'ble Supreme Court in the matters of Pepsi Foods Ltd. v. Special Judicial Magistrate¹, PepsiCo India Holdings Pvt. Ltd. v. Food Inspector & Anr.² and State of Haryana & Ors. v. Bhajanlal & Ors.³

5. Learned counsel appearing on behalf of the respondent opposed the prayer and submitted that, firstly, the petition before this court under Section 482 of the Cr.P.C. is not maintainable unless the petitioner files an application before the concerned court under Section 258 of the Cr.P.C. for his discharge. He further submits that sufficient opportunities were given to the petitioner for compounding of offence and other accused have also compounded their offences, therefore, at this stage, this court should not enter into the allegations made in the complaint and should not scrutinise the merits of the case. He further submits that the complaint is still pending adjudication and the petitioner would be given sufficient opportunities to cross-examine the complainant and hence no interference is called for.

6. I have heard the learned counsel for the parties and perused the record.

7. A perusal of the complaint (Annexure-P2) would indicate that Inspector Legal Metrology, Weights and Measures Department, South Zone, Okhla, New Delhi filed the complaint against the present petitioner. The date of offence has been mentioned to be 14.10.2009. There are four (1998) 5 SCC 749 (2011) 1 SCC 176 paragraphs, which have been contributed for proving the offence against the petitioner. Paragraphs (i), (iii) & (iv) have been left blank. No facts or averments have been

mentioned therein. Except the averments made in paragraph (ii), the entire complaint appears to be vague and has been filed as a cyclostyle copy of other complaints. All paragraphs (i) to (iv) are being reproduced for proper understanding of the allegations against the petitioner.

(i) The accused delivered sold less quantity of commodity as stated in the statement/inspection memo..... dated.....

(ii) The accused was/were in possession (Annex. Attached) of pre-packed commodity in packaged form for sale, distribution delivery, display or store for sale, which were not complying with in all respect the provisions of the Standards of Weights and Measure (Packed Commodities) Rule 1997 and Act under which these Rules were framed. Memo No. 1169/18447 dated 14.10.09.

(iii) The accused was/were in possession of unverified and unstamped Weight or Measure using non-periodically verified and stamped weight or measure selling unstamped Weight or Measure in possession or nonstandard Weight or measure for use as per the statement inspection memo.....date

(iv) The accused was/were found conducting business without having a valid licence from the Weights and Measures Department as per the statement inspection Memo no.....dated.....

8. A perusal of the allegations made in the complaint would indicate that as per the complainant/respondent, the petitioner was in possession of (Annexure attached) of pre-packed commodity. It is stated that the commodity in packaged form for sale, distribution delivery, display or store 1992 SCC (CrL.) 426 for sale, was to comply with the provisions of Rule, 1977 and the relevant Acts and Rules made thereunder. Paragraph No. (ii) would further indicate that according to respondent/complainant, there is violation of Memo No. 1169/18447 dated 14.10.2009. The contemporaneous documents i.e. Inspection Report annexed with the complaint is perused. Column no.8 thereof would indicate that the respondent inspected one packet of Festive Pack of 6 x 500 ml. slice manufactured by M/s Aradhana Soft Drinks Company (petitioner) which were packed by Jai Drinks Pvt. Ltd. According to the Inspection Report, the date of manufacturing/packaging was not mentioned on the packet. It is under the aforesaid circumstances, violation of Memo No. 1169/18447 dated 14.10.2009 has been alleged therein.

9. In sum and substance, if the complaint and the Inspection Report attached thereto are perused, the same would indicate that the entire allegation against the petitioner was that the festive packet, as stated above, did not contain the date of manufacturing/packaging. If the order of summons dated 26.02.2010 is perused, the same would also indicate that the learned Magistrate exempted the complainant for his examination in view of the provisions under Section 200 of the Cr.P.C. as the complainant was discharging his official duty and proceeded to issue summons under Section 33/51 of the Standards of Weights and Measurements (Enforcement) Act, 1985 (hereinafter referred to as 'Act of 1985').

10. A perusal of the complaint and the order impugned would indicate reference to different provisions. The complaint refers to Section 39 read with Section 63 of the Act of 1976, whereas, cognizance has been taken under Section 33/51 of the Act of 1985.

11. A careful perusal of Section 39 of the Act of 1976 would indicate that requirement of mentioning the date of manufacturing/packing is not specifically mentioned therein. Rule 6 of the Rules, 1977 relates to declaration to be made on every package. Rule 6 (1)(d) of the Rules, 1977 would further indicate that every package shall bear thereon or on a label securely affixed thereto a definite, plain and conspicuous declaration, made in accordance with the provisions of that Chapter as to the name and address of the manufacturer or where the manufacturer is not the packer, the name and address of the manufacturer and packer, and for any imported package the name and address of the importer. There are three explanations to Rule 6(1)(a) of the Rules, 1977. If Rule 6(1)(d) of the Rules, 1977 is perused, the same would indicate that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act, 1954 and the rules made thereunder would have application. It is thus seen that neither the scheme of the Act nor the scheme of the Rules would suggest that mentioning of the date of manufacturing/packaging is covered by the Act of 1976, which relates to food articles.

12. So far as the impugned order, which mentions Section 33/51 of the Act of 1985 is concerned, firstly, the learned Magistrate could not have taken cognizance with respect to those offences in absence of any complaint and, secondly, even the provisions of the Act of 1985 are not applicable in view of Section (2) of the said Act, which says that the Act would not apply to inter-state trade or commerce in any weights or any other goods which are sold, delivered or distributed by weight, measure or number.

13. The Hon'ble Supreme Court in the matter of Pepsi Foods Ltd. (supra) has clearly held that order of summons has a drastic consequence. The court concerned is required to apply its mind on the facts and circumstances of the case and then only to pass order of taking cognizance. In the instant case, bare perusal of the complaint, the annexures related to Inspection Report and the order of summoning would clearly reveal that there is no application of mind. The complaint was vague. It was cyclostyle copy of the other complaints as no clear provision has been mentioned. The provisions which were mentioned in the complaint are different from the offence in which the cognizance has been taken by the learned Magistrate. The provisions under which cognizance has been taken do not have any application under the facts of the present case. It is thus seen that the order of taking cognizance is bereft of merits and the same is without application of mind and no offence at all is made out against the petitioner. The Hon'ble Supreme Court in case of Bhajanlal (supra) has clearly held that the prosecution should not be allowed to be continued if the court finds that same would be an abuse of the process of law. In the instance case, this court is fully satisfied that the continuance of the prosecution in the present case would be an abuse of the process of law.

14. So far as the submissions of the Learned APP for the State with respect to the filing of application for discharge of the petitioner under Section 258 of the Cr.P.C. is concerned, the same also does not have substance as the Hon'ble Supreme Court in the matter of Expeditious Trial of Cases Under Section 138 of N.I. Act 18814, has reiterated the legal position which was explained in the case of

Subramaniam Sethuraman v State of Maharashtra & Ors.⁵ and in Adalat Prasad v Rooplal Jindal and (2021) SCC OnLine SC 325 (2004) 13 SCC 324 Others⁶ that there is no power of review conferred on the trial court under the Code of Criminal Procedure.

15. In view of the aforesaid, the petition is allowed and the impugned order dated 26.02.2010 is hereby set aside and the complaint against the petitioner is quashed.

PURUSHAINDRA KUMAR KAURAV, J SEPTEMBER 12, 2022/hk Click here to check corrigendum, if any (2004) 7 SCC 338