

Pepsico India Holdings Private Limited vs The State Of Kerala on 3 February, 2022

CrI.M.C.No.6479/2017

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 3RD DAY OF FEBRUARY 2022 / 14TH MAGHA, 1943

CRL.MC NO. 6479 OF 2017

AGAINST THE ORDER/JUDGMENT IN ST 901/2017 OF JUDICIAL MAGISTRATE

OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY)

PETITIONER/ACCUSED NO.7:

PEPSICO INDIA HOLDINGS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT LEVEL 3-6, PIONEER
SQUARE, SECTOR 62, NEAR GOLF COURSE EXTENSION ROAD,
GURUGRAM 122 101, REPRESENTED BY ITS MANAGER-LEGAL,
MR.LUV S.KAPIL.

BY ADVS.

SRI.M.GOPIKRISHNAN NAMBIAR

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURYAN THOMAS

SRI.PAULOSE C. ABRAHAM

RESPONDENTS/STATE/COMPLAINANT:

- 1 THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, AT ERNAKULAM.
- 2 P.K.MOHANAN,
SENIOR INSPECTOR, LEGAL METROLOGY,
LEGAL METROLOGY BHAVAN, KAKKANAD, ERNAKULAM-682
030.
R1 BY SRI.ARAVIND V. MATHEW, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
30.11.2021, THE COURT ON 03.02.2022 PASSED THE FOLLOWING:

CrI.M.C.No.6479/2017

2

ORDER

The petitioner is the 7th accused in S.T.No.901 of 2017 on the file of the Judicial First Class Magistrate Court-IX, Ernakulam. The aforesaid case is registered on the basis of Annexure-A complaint submitted by the 2 nd respondent herein against the petitioner and six others alleging

that they have violated Section 9 (1) (a) of The Legal Metrology (Packaged Commodities) Rules, 2011 hereinafter referred to as Rules 2011 and Section 18 (1) of the Legal Metrology Act, 2009, and thereby committed the offence punishable under Rule 32(2) of the Rules 2011 and Section 36(1) of The Legal Metrology Act, 2009 (hereinafter referred to as the Act, 2009).

2. The facts of the case are as follows: the petitioner herein is the manufacturer of packaged drinking water and soft drinks. 'AQUAFINA' is a packaged drinking water manufactured and marketed by the petitioner. On 19.08.2016, the 2nd respondent visited the trade premises of M/s.PVR Cinemas, 4th floor, Oberon Mall, N.H.Bypass, Edapally and found certain violations of provisions of the Legal Meteorology Act and the Rules framed thereunder. Annexure-B is the Mahazar prepared at the time of such inspection. One of the allegations contained in Annexure-B is as follows :

"Aquafina packaged drinking water

legible & prominent

.

." The

English Translation of the same reads thus: "The statutory declarations contained on the Aquafina packaged drinking water are not legible and prominent. The declarations to be made as per law were incomplete". In addition to that, there were certain other allegations against accused Nos.1 to 6, wherein it was stated that they have sold various articles such as Popcorn, Pepsi, airated soft drinks etc. in non standard units of weight/measures.

3. Annexure-C is the receipt evidencing the seizure of certain articles including three bottles of Aquafina, manufactured by the petitioner herein. Later, a notice was issued to the accused persons by the 2nd respondent, to which the 6th accused therein i.e. M/s.PVR Cinemas, responded. As regard to the allegations raised against the petitioner herein, the reply provided by the 6th accused is that Maximum Retail Price has been mentioned on the cap/neck of the drinking water bottle. Annexure-D is the aforesaid reply.

4. Later, being dissatisfied with the aforesaid reply Annexure-A complaint was submitted by the 2nd respondent before the learned Magistrate and cognizance thereon was taken for the offences mentioned above. This CrI.M.C is filed by the petitioner/7th accused challenging Annexure-A complaint and all further proceedings in ST.No.901 of 2017.

5. Heard, Sri.Rajesh Bathra, learned counsel for the petitioner and Sri.Aravind V. Mathew, learned Public Prosecutor for the State.

6. One of the main contentions put forward by the learned counsel for the petitioner is that the offence under Rule 9(1) (a) of Rules, 2011, are not attracted in the facts and circumstances of the case. It is pointed out that the violation of Rule 9(1) (a) arises when there is failure on the part of the manufacturer in making declarations which are required to be made on the package under Rules, 2011. The learned counsel contends that the declarations which are to be made under the Rules, 2011 have been specifically provided in Rule 6 thereof. Proviso to Rule 6(1) (d) contemplates that,

for packages containing food articles, the provisions of the Food Safety and Standards Act, 2006 and the Rules made thereunder shall apply. According to the learned counsel for the petitioners, packaged drinking water is a food as defined under Section 3(j) of the Food Safety and Standards Act, 2006 and hence, the failure in making the declarations as contained in Rule (6) would not attract the Rule 9(1) of Rules, 2011.

7. As pointed out by the learned counsel for the petitioners, the expression 'food' is defined under Section 3(j) of the same Rules, which reads as follows:

(j) "food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;"

8. On going through the aforesaid definition, it can be seen that packaged drinking water is specifically included therein and in this case, there is no dispute that the 'Aquafina', which is the subject matter of the dispute, is packaged drinking water. Therefore, the article is a 'food' as defined in the aforesaid provisions. However, the crucial question that arises herein is whether the manufacturer of a food item is excluded from making of declarations contained under Rule 6 of Rules, 2011. In this case, the specific allegation against the petitioner herein is that they have not made the declaration related to sale price and month and year of packing, legibly and prominently. Contention of the learned counsel for the petitioner is that the Rule 9(1) cannot be made applicable to the petitioner, as the article in question being 'food' for which the provisions of Food Safety and Standards Act, 2006 are applicable. However, the crucial aspect to be noticed in this regard is that, the proviso which is relied upon by the learned counsel for the petitioner is under Rule 6(1) (d) of Rules 2011. The aforesaid provision reads as follows"

"Provided that for packages containing food articles, the provisions of the Foods Safety and Standards Act, 2006 and the rules made thereunder shall apply.

Provided further that nothing in this sub-clause shall apply in case of packages containing seeds which are labelled and certified under the provisions of the Seeds Act, 1966 and the Rules made thereunder."

9. From the reading of the aforesaid proviso it is evident that, the 1st proviso therein is applicable only in respect of stipulations contained in Rule 6(1)(d), which contemplates declaration of month and year of manufacturing. It is to be noted that, separate provisos were provided in sub rules (1) (e) and (g) of Rule 6, which would indicate that, provisos provided below rule 6(1)(d), is applicable only for the stipulation contained therein. In other words, the said proviso is applicable in respect of declarations regarding month and year of manufacturing only. In this case, the allegation is that the petitioner failed to provide legible and prominent declarations regarding sale price and month & year of packing. Thus, it is evident that, in addition to allegation regarding the declaration of month and year, there is allegation of improper declaration of retail sale price as well, which is dealt with in Rule 6(1) (e). The proviso mentioned above is not applicable to the retail sale price, as Rule 6(1)(d) does not contemplate declaration of sale price and it is confined to month and year of manufacturing alone. So the fact that, article is 'food' as defined under section 3(j) of Food Safety and Standards Act, has no relevance at all, as far as the declaration regarding the sale price is concerned.

10. There is yet another aspect, which goes against the contention of the petitioner. When coming back to the proviso relied on by the petitioner, it can be seen that, even though it is provided thereunder that, the provisions of the Food Safety and Standards Act, 2006 and the Rules thereunder shall apply, there is nothing to indicate that such application of Food Safety and Standards Act would exclude the application of Rules 6(1) (d) of Rules, 2011, as such. The aforesaid aspect is very clear, when we examine the relevant provisions of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, (hereinafter referred to as Food Safety Regulations, 2011). As per stipulations contained in Food Safety regulations 2.2 (9), it can be seen that in respect of certain classes of products, in addition to the declaration of month and year, date of manufacturing is also to be provided. This would indicate that, as far as the month and year of manufacturing is concerned, it is a mandatory requirement in both the said enactments. Therefore, the only conclusion possible is that, the application of the provisions of Food Safety and Standards Act, 2006 as contemplated under proviso to Rule (1) (d) of Rules, 2011 is only to ensure that, in addition to the declaration of month and year as stipulated in the aforesaid provisions of Rules, 2011, the manufacturer also has to comply with the stipulations made in Food Safety Regulations, 2011 in respect of food items, by making a declaration of date of manufacturing as well. In other words, the proviso, to Rule 6(1) (d) is not intended to exclude the operation of the provisions of Rule, 2011.

11. It is to be noted in this regard that, the first proviso to Rule 6 (1) (d) does not contain specific expression indicating exclusion of the said provision in respect of food articles and this would become more evident, from the examination of certain other provisions contained in Rule 2011. In the second proviso to Rule 6(1) (d) itself, it is provided that, in respect of packages contained seeds which are labelled under the provisions of Seeds Act 1966, the obligation of stipulation contained in Rule 6(1) (d) was specifically not made applicable. Similarly, in explanation III of Rule 6(1) (a) of Rules, 2011 reads as follows:

"In respect of packages containing food articles, the provisions of this sub-rule shall not apply, and instead, the requirement of the Foods Safety and Standards Act, 2006

and the Rules made thereunder shall apply."

12. It is to be noted that, expression used is that "provisions of these sub rule shall not be apply and instead, requirement of Food Safety and Standards Act (34 of 2006) of Rules thereunder shall apply.". Rule 6(1) (a) deals with the name and address of the manufacturer. Therefore, it is evident that, wherever the legislature wanted application of Rules, 2011 to be excluded, specific provisions were incorporated for the said purpose. However, as far as the stipulations in proviso to Rule 6(1) (d) is concerned, no such exclusion of application of provisions of Rule, 2011 is specifically made. Therefore, the only conclusion possible is that, in respect of the declarations concerning month and year of the manufacturing, the stipulation contained in Rules, 2011 would continue to apply even in respect of the articles coming with the definition of 'food' as defined under Section 3(j) of Food Safety and Standards Act. Therefore, the contention put forward by the learned counsel for the petitioner in this regard is not legally sustainable, as they are bound to make declarations which are required to be made with regard to the retail price and month & year of manufacturing.

13. Another contention of the learned counsel for the petitioner is that, they have specifically provided the Maximum Retail Price and year and month of manufacturing on the neck of the bottle and therefore, there cannot be any violation. In support of their contention, a clarification issued by Government of India on 26.07.2012, which is produced as Annexure-F was also relied on. On going through the contents of Annexure-F, it can be seen that, in respect of declaration of MRP on crown/neck of the bottle contained packaged drinking water, the same shall be treated as proper compliance of Rules, 2011. It is true that, the aforesaid provisions enables the manufacturer of packaged drinking water to make the declaration of MRP on crown/neck of the bottle. However, in this case, the allegation in the complaint is that, the declaration on the bottle with regard to the aforesaid aspect were not legible and prominent. In Annexure-B mahazar, it is specifically stated that the statutory declarations were not complied as well. Therefore, it is evident that the dispute which form the basis of allegation against the petitioner is not in the place where the declaration was made. On the other hand, dispute is regarding the manner in which such declarations were made and according to the complainant, the same was not legible. Rule 9(1)(a) of Rules, 2011 provides that the declaration shall be legible and prominent. The question whether such declaration made was legible and prominent is a matter of evidence. The same cannot be considered in a proceeding under Section 482 Cr.P.C. This being a pure question of fact, it can only be examined during the course of trial.

14. It is well settled position of law that, the powers under section 482 Cr.P.C. has to be invoked sparingly and under exceptional circumstances, when the allegations raised against the accused, even if accepted to be true, do not make out an offence. From the discussion which I have made, it is clear that, this cannot be treated as a case coming within that category. In such circumstances, I am of the view that, this is not a fit case in which inherent powers of this Court under Section 482 Cr.P.C. can be invoked.

In such circumstances, I do not find any merit in this CrI.M.C and accordingly, it is dismissed.

Sd/-

ZIYAD RAHMAN A.A. JUDGE DG/27.1.22 PETITIONER ANNEXURES ANNEXURE A CERTIFIED COPY OF THE IMPUGNED ORDER OF ISSUING PROCESS DATED 05.02.2017 ALONG WITH THE COPY OF THE IMPUGNED COMPLAINT DATED 02.02.2017 BEFORE THE FIRST CLASS MAGISTRATE COURT, IX, ERNAKULAM.

ANNEXURE B	TRUE COPY OF THE MAHAZAR DATED 19.08.2016.
ANNEXURE C	TRUE COPY OF THE SEIZURE RECEIPT NO.2 OF BOOK NO.55 DATED 19.08.2016.
ANNEXURE D	TRUE COPY OF THE REPLY DATED AUGUST, 2016 GIVEN BY PVR LTD.
ANNEXURE E	TRUE COPY OF THE SHOW CASE NOTICE DATED 05.12.2016 ISSUED BY THE OFFICE OF THE SENIOR INSPECTOR OF LEGAL METROLOGY, ERNAKULAM TO THE PETITIONER.
ANNEXURE F	TRUE COPY OF CLARIFICATION LETTER NO.WM-9(37)/2012 DATED 26.07.2012 ISSUED BY THE DIRECTOR, LEGAL METROLOGY, MINISTRY OF CONSUMER AFFAIRS, LEGAL METROLOGY DIVISION, FOOD AND PUBLIC DISTRIBUTION, GOVT. OF INDIA.