

Representative Mr. Sushil Sharma vs Sh. Beli Ram Sharma & Others" on 30 September, 2021

Author: Anoop Chitkara

Bench: Anoop Chitkara

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IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 30th DAY OF SEPTEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE ANOOP CHITKARA

CRIMINAL MISC. PETITION (MAIN) U/S 482 CrPC No. 225 of 2019

Between: -

M/S PEPSICO INDIA HOLDINGS

PRIVATE LIMITED HAVING ITS
REGISTERED OFFICE AT LEVEL 3-6,
PIONEER SQUARE, SECTOR 62,
NEAR GOLF COURSE EXTENSION ROAD,

GURUGRAM-122101
THROUGH ITS AUTHORIZED

REPRESENTATIVE MR. SUSHIL SHARMA.

....PETITIONER

(BY SHRI RAJESH BATRA &
SHRI JANESH GUPTA, ADVOCATES)

AND

1. STATE OF HIMACHAL PRADESH

THROUGH SH. L.D. THAKUR,
FOOD INSPECTOR, OFFICE OF
CHIEF MEDICAL OFFICER

DISTRICT SHIMLA,
HIMACHAL PRADESH.
2. SHRI BELI RAM SHARMA,
S/O K.R. SHARMA, MANAGER,
M/S DEEP WOODS RES
TAURANT
AT HOTEL WOOD PARK,
WOODRINA ESTATE DHALLI, SHIMLA.
3. M/S DEEP WOOD RESTAURANT
AT HOTEL WOOD PARK,
WOODRINA ESTATE DHALLI,
SHIMLA THROUGH ITS

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NOMINEE/PARTNERS/DIRECTORS.

4. M/S MALOOK SONS,
MALOOK COTTAGE,

LOWER BAZAR SHIMLA

BEING DISTRIBUTOR THROUGH
ITS PROPRIETOR SMT. GURMEET MAKIN.

....RESPONDENTS

(1. SHRI NAND LAL THAKUR, ADDITIONAL ADVOCATE
GENERAL, WITH SHRI KUNAL THAKUR, DEPUTY
ADVOCATE GENERAL , FOR R-1.

2.

3.

SHRI Y.P. SOOD, ADVOCATE, FOR R-2 AND R-3

SHRI BALWANT KUKREJA, ADVOCATE, FOR R-4.)

RESERVED ON: 28.09.2021

DECIDED ON : 30.09.2021

This petition coming on for hearing this day, the Court passed
the following:

ORDER

Challenging the order to implead as an accused under Section 20-A of Prevention of Food Adulteration Act, 1954, and also the original complaint, based on which, the distributor has arraigned M/s Aradhana Soft Drink Company, as an accused, which the petitioner Company subsequently took over, came up before this Court under Section 482 of the Code of Criminal Procedure, 1973.

2. The brief facts of the case are that on 16th August 2003, the Food Inspector (R-1) collected samples of Lehar Mountain Dew (Sweetened Carbonated Water) from the premises of respondent No.3. The Food Inspector purchased three bottles against a proper receipt. After that, the Food Inspector sent the memorandum in form No.VII to Public Analyst at Kandaghat for .

analysis. The Public Analyst gave its report on 25.09.2003, which reads as under:

"The month and year of manufacture and packing is not legible and the quantity of added sugar in the product has not been mentioned on the label and hence the sample is misbranded."

3. The Food Inspector sought sanction for prosecution from Chief Medical Officer Shimla. The Chief Medical Officer, Shimla, vide his order dated 23.12.2003, found a prima-face case for the commission of offenses punishable under Section 16(1)(a)(i) read with Section 7 of PFA Act against respondents No.2 and 3.

4. Based on the above report, the Food Inspector filed a complaint on 31.12.2003, before the Court of learned Chief Judicial Magistrate, Shimla and the learned Court issued process on 6th June 2004 against respondent No.2, Manager of Hotel Wood Park and also respondent No.3, restaurant of Wood Park.

5. On 8th March 2006, respondent No.3 filed an application under Section 20-A of PFA Act to implead respondent No. 4, M/s Malook Sons, distributor of Lehar Mountain Dew. Vide order dated 28th August 2006, learned trial Court allowed the application and impleaded M/s Malook Sons as an accused in the proceedings.

6. On 27th August 2007, the newly arraigned accused, M/s Malook Sons, applied Section 20-A of the PFA Act to implead the manufacturer .

company, i.e., M/s Aradhana Soft Drinks Company. Vide order dated 30th November 2007, learned trial Court allowed the application and impleaded M/s Aradhana Soft Drinks Company, as an accused in the said complaint.

7. Feeling aggrieved, M/s Aradhana Soft Drinks Company filed a petition before this Court being CrMMO No.167 of 2009. Vide order dated 23rd July 2012, Annexure P-8, the said petition was partly allowed, and the accusation to the extent of non-mentioning of the quantity of added sugar on the label was quashed.

8. Paragraph-16 of the order passed by a Co-ordinate Bench of this Court in Cr.MMO No.167 of 2009, reads as follows: -

"16. Accordingly, in view of the observations and analysis made hereinabove, the petitions are partly allowed. The notice of accusation so far it pertains only to the extent of non-mentioning of 'quantity of added sugar' on the label, is concerned, is quashed, however, the rest of the part of notice of accusation will be tried by the Magistrate in accordance with law."

9. During the pendency of the trial, the Legislature repealed the Prevention of Food Adulteration Act, 1954 and, in its place, introduced Food Safety and Standards Act, 2006, with effect from 23rd

August 2006. However, this Court had partly allowed the petition on 23rd August 2007, that is, after coming into force the Food Safety and Standards Act, but the main ground for which the Company has again come up before this Court is the notification dated 2nd August 2016, issued by the Food Safety and Standards Authority of India, the said notification is extracted as under: -

"F. No. P. 15017184/2015-FSSAI/Legal Food Safety and Standards Authority of India
A Statutory Authority established under Food Safety and Standards Act, 2006 FDA
Bhawan, Kotla Road, New Delhi -

100002- _____
Dated, the 2nd August 2016 □□The Commissioners of Food Safety, All States/UTs
Governments.

Subject: Cases pending under PFA Act and other orders repealed by FSS Act, 2006 (Schedule 2)-reg. Sir, It is understood that a large number of cases under the Prevention of Food Adulteration Act & other orders specified in Schedule 2 of the Food Safety and Standards Act, 2006, are still pending in various courts and tribunals across the county. In a sizable number of such cases, the offences alleged to have been committed may not be very serious in nature and the penalties/punishments prescribed for such offences are also not substantial. The pendency of such cases for a long time not only burdens the judicial system, but also diverts the scarce resources of the government in pursuing these matters rather than deploying them in effective implementation of the provisions of the FSS Act to ensure safe and wholesome food for the consumers.

2. In the view of the above, Commissioners of Food Safety of all States/ UTs may like to examine all pending cases against Food Business Operators under provisions of various enactments & orders repealed on enactment of Food Safety and Standards Act, 2006 and take a view on withdrawal of the same, if considered appropriate. The results of this exercise may please be shared with FSSAI from time to time.

Yours faithfully, Sd/-

(Raj Singh) Head (Legal)"

10. A perusal of the executive order reveals that the executive is .

aware of the burden on the judiciary because of the pendency of cases under the old Act and new Act for petty offenses. The subject of this notification reads that it pertains to the cases under the PFA Act and FSS Act, 2006, that is, the old Act and the new Act. On the failure of the concerned Commissioner to consider the present case, the trial is continuing for the last eighteen years, that is, from 2003.

11. The accused had filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court, challenging the judgment dated 23rd July 2012;

however, vide order dated 14.12.2012, the same was dismissed in limine.

12. During the pendency of the petition, i.e., of CrMMO No.167 of 2009 before this Court, Hon'ble High Court of Punjab and Haryana sanctioned a scheme of amalgamation of M/s Aradhana Soft Drinks Company Limited (Transferor Company) with M/s PepsiCo India Holdings Private Limited (Transferee Company) in Company Petitions No.9 and 55 of 2011. This order was passed on 14.10.2011, that is, before the decision of quashing the petition before this Court.

13. After that, the name of transferee company M/s Aradhana Soft Drinks Company Limited accused No.4 in the present case was changed to M/s PepsiCo India Holdings Private Limited.

14. Consequently, on 19.11.2015, M/s PepsiCo India Holdings Private Limited filed an application for discharge from the prosecution.

15. Vide order dated 2nd March 2019, learned trial Court dismissed the said application and directed the applicant-M/s PepsiCo India Holdings

Private Limited to furnish the addresses of the Directors of M/s Aradhana Soft Drinks Company Limited.

16. The applicant, instead of filing the address of its Director, has filed another application, and vide order dated 6th April 2019, the learned trial Court again directed the transferee Company M/s PepsiCo India Holdings Private Limited either to furnish the addresses of the Directors of M/s Aradhana Soft Drinks Company Limited or to file original nomination letter, issued in the name of Hasmukh Maweda. The relevant portion of the order dated 6th April 2019, is extracted as follows:-

"Since, Aradhana Soft Drink Company has amalgamated with Pepsico India Pvt. Ltd., they were directed to file the address of Director of Aradhana Soft drink company which is them. Instead of filing of the address of the said Director, present application has been filed mentioning reasons why Director should not be summoned. Further, it has been alleged in the application that one Hasmukh Maweda was the nominee at the time of commission of offence and photocopy of nominee letter has been filed regarding his nomination. In view of the fact that original nomination letter has not been produced before the court, this court again directs Pepsico India Pvt. Ltd. either to file address of the Directors of Ardhna Soft Drink company which is with them or to file original nomination letter issued in the name of Hasmukh Maweda and also produce him before the court as he is now there employee for 20.04.2019."

17. Challenging this order, the M/s PepsiCo India Holdings Private Limited, has come up before this Court with the following substantive prayers:-

"(a) Quash the complaint and proceedings in case RBT No.244/3 of 07/04 renumbered as Food Act/9005384/2004 titled "State of H.P. Versus Sh. Beli Ram Sharma & Others".

(b) In the alternate, set-aside the impugned order dated .

02.03.2019 dismissing the deletion of name/discharge application filed by Petitioner Company and direct the trial Court to consider the application on its merits."

18. I have heard learned counsel for the parties and have also gone through the record with utmost care.

19. The present prosecution is currently confined to the report of the Public Analyst, according to which, month and year of manufacture and packaging were not legible. The remaining part of the report was already quashed by this Court earlier in CrMMO No.167 of 2009.

20. Thus, the prosecution is pending only for misbranding, and that too because the month and year of manufacture and packaging were not legible.

21. The notification issued by the Central Government on 2nd August 2016 (supra) specifically asked the Commissioners of Food Safety of all States/UTs to examine all pending cases against food business operators and take a view on withdrawal of the same. However, the concerned authority did not examine the present case.

22. The Hon'ble Supreme Court in Nemi Chand Vs State of Rajasthan 2016 SCC OnLine SC 1715, dealt with the similar issue and held as follows:-

"[2]In the instant appeal, the appellant was tried and convicted for offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'Act') by the trial court vide judgment dated 19.10.1995 and was sentenced to undergo six months' Rigorous Imprisonment as well as fine of Rs.1,000/- and in default, further Rigorous .

Imprisonment for one month. This order was challenged by the appellant by filing appeal before the Sessions Judge which was dismissed on 11.09.1996, thereby confirming the order of the trial court. The appellant filed Revision Petition thereagainst in which also he failed as the said petition has been dismissed by the High Court vide the impugned judgment dated 06.11.2012.

[3] It is not in dispute that the charge against the appellant was only of sub-standardization of goods. Mr.Sushil Kumar Jain, learned senior counsel appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below. He

has, in this behalf, argued that there has been an amendment in the Act by the Central Amendment Act 34 of 1976 whereby Section 16A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in 'T. Barai v. Henry Ah Hoe and Another, 1983 1 SCC 177' wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. In the said judgment, the Court held as under:

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp. 388-89:

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A retrospective statute is different from an ex post facto statute. "Every ex post facto law...." said Chase, J., in the American case of *Calder v. Bull* "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

[4] From the facts of the present case, we have no doubt in mind that the aforesaid judgment squarely applies thereon. This appeal is, therefore, partly allowed and the sentence imposed upon the appellant is modified by imposing fine of Rs. 50,000/- which shall be deposited within two

months with the trial court. On deposit of the aforesaid amount, the bail bonds furnished by the appellant shall be discharged."

23. Similar stand was taken by the Hon'ble High Court of Gujarat at Ahmadabad in case PepsiCo India Holdings Pvt. Ltd. Vs UOI R/Special Criminal Application No.2281 of 2008 and also the Hon'ble High Court of Rajasthan in Ramkishan Agarwal Versus State of Rajasthan through PP S.B. Criminal Miscellaneous (Petition) No.2223 of 2013 and connected matters.

24. The judgment passed by the Hon'ble Supreme Court in Nemi Chand's case (supra) applies to the present case on all fours. The trial for .

misbranding is continuing from 31st December 2003. The original company M/s Aradhana Soft Drinks Company Limited, stands amalgamated with M/s PepsiCo India Holdings Private Limited. The concerned Officers and the Directors of erstwhile M/s Aradhana Soft Drinks Company Limited would not have any excess to its record, which would seriously prejudice them at this belated stage. The accused were not responsible for delaying the trial. In the entirety of the facts and circumstances of the case, it is a fit case where a petition can be allowed, and the complaint and all consequential proceedings are required to be quashed.

25. Since, the original accused had filed application under Section 20-A of PFA Act to implead the person, from whom they had purchased the stock, eventually pushing down the responsibility to the manufacturer, therefore, there would be no justification to continue proceedings even against them. The silence of manufacturer about the product being spurious and absence of any allegation that the company was not a manufacturer would also be valid reasons to terminate prosecution of the retailers, suppliers and the dealers. Given above, the complaint and proceedings deserve to be quashed in entirety.

26. Given above, the instant petition is allowed, and the complaint and all the consequential proceedings are quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

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In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms.

September 30, 2021
(R.Atal)

(Anoop Chitkara),
Judge

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