

M/S Hamilayan Ales Private Limited vs The State Of Madhya Pradesh on 8 December, 2022

Author: Sunita Yadav

Bench: Sunita Yadav

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IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE
HON'BLE SMT. JUSTICE SUNITA YADAV
CRIMINAL APPEAL No. 2439 of 2021

BETWEEN: -

1. M/S HAMILAYAN ALES PRIVATE LIMITED DEPUTY MANAGER,
16 BHAI VEER SINGH MARG, NEW DELHI -110001

2. MANISH SAXENA S/O SHRI SHYAM NARAYAN SAXENA
OCCUPATION: DEPUTY MANAGER, M/S HIMALAYAN ALES
PRIVATE LIMITED INDUSTRY AT F-5 TO F-9 AND F-11
GHIRONGI MALANPUR INDUSTRIAL AREA,
APARTMENT TAGORE NAGAR, GOVINDPURI
GWALIOR (MADHYA PRADESH) R/O DISTRICT

(BY SHRI ANKUR MAHESHWARI- ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH FOOD SAFETY
OFFICER SMT. REENA BANSAL, FOOD SAFETY DEPARTMENT,
DISTRICT BHIND (MADHYA PRADESH)

(SHRI NAVAL KISHORE GUPTA- PUBLIC PROSECUTOR)

Reserved on: 24-11-2022

Delivered on: 08-12-2022

This appeal coming on for hearing this day, the court passed the following:
ORDER

The present criminal appeal under Section 71(6) of the Food Safety and Standard Act, 2006 and Rules, 2011 has been filed assailing the order dated 15/02/2021 passed by learned District Judge and Appellate Tribunal, Food Safety and Standard Act, Bhind in MCA No.43/2020 (Food), whereby the order of adjudicating authority has been confirmed.

2. The facts in brief to decide the present appeal are that the respondent Food Safety Officer has filed a complaint u/S.52 and Section 26(2)(ii) of Food Safety and Standard Act, 2006 and Food Safety and Standard Rules, 2011 (hereinafter referred to as "The Act of 2006 & Rules of 2011"). As

per the complaint, on 20/09/2018, the Food Safety Officer went to appellant's industrial unit at Ghirongi, Malanpur for inspection and search of the unit where she found the packets of rolled wheat used for manufacturing of beer with no symbol of veg or non-veg, and, therefore, the said Officer had given a notice of Form-5a and took the samples of food product called as "rolled wheat". The alleged sample of rolled wheat was sent to the State Food Laboratory for analysis and the report received on 16/10/2018 of State Food Testing Laboratory stipulates that the sample "rolled wheat" is confirmed in quality but found to be misbranded because it violates the Food Safety and Standard (Packaging and Laboratory) Regulation, 2011. The report also states that due to absence of vegetarian symbol, it is termed as "misbranded".

3. Thereafter a show cause notice was issued to the appellants and reply was submitted stating therein that the appellant company is the end user of the product and had not violated any provisions of the Act of 2006 & Rules of 2011.

4. The learned Additional District Magistrate and Adjudicating Officer after hearing the parties passed the order dated 09/09/2020 penalizing the appellant company u/S.52 of the Act. The appellant filed an appeal u/S.70 of the Act of 2006 & Rules of 2011 before the learned Appellate Tribunal. The learned Appellate Tribunal by its order dated 15/02/2021 passed in MCA No.43/2020 dismissed the appeal against which present criminal appeal has been filed.

5. Learned counsel for the appellants argued that the impugned orders are perverse, illegal and contrary to settled principles of law. It is well settled that there cannot be a penalty for two times for single act. The learned Adjudicating Officer has imposed the penalty on the appellant M/S. Himalayan Ales Pvt. Ltd. as well as on the Appellant No.-2 who is Deputy Manger of appellant company of Industrial unit Malanpur. It is further argued that the order of adjudicating Officer is absolutely erroneous and contrary to the provisions of law because even for the sake of contention, it is accepted that food product 'rolled wheat' does not contain the vegetarian symbol then also it cannot be categorized as misbranded food. Undisputedly, the appellant company had purchased the food material rolled wheat from Global Organics Gurgaon. The product rolled wheat is being manufactured by Global Organics Gurgaon and further purchased by appellant company for preparation of beer and appellant company is the end user of the product rolled wheat, therefore, in such circumstances, the act of the appellant company does not come within the purview of misbranding and the food product cannot be termed as misbranded food. The learned counsel for the Appellants further argued that the learned Adjudicating Officer and learned Tribunal have not considered the objections of the Act while imposing penalty. The Global Organics Gurgaon has sent an email on 17/12/2019 and accepted its mistake that it has not put the logo veg or non-veg on the packed material. The further argument is that in this case, the sanction of prosecution is granted without applying the mind and; therefore, without proper sanction, the order of Adjudicating Officer is illegal. Therefore, appellants can not be penalized u/S.52 of the Act of 2006.

6. On the other hand, learned counsel for the State argued that the impugned orders are passed in accordance with law and there is no need for interference in the same.

7. Heard learned counsel for the rival parties and perused the material available on record.

8. For ready reference and convenience, Section 26(2)(ii) of Food Safety and Standard Act, 2006 is reproduced below;

26. Responsibilities of the food business operator.-

(1) Every food business xxx xxx xxx..... (2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-

(i) which is unsafe; or

(ii) which is misbranded or sub-standard or contains extraneous matter; or

(iii) for which a licence is required, except in accordance with the conditions of the licence; or

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

9. In this case the record reveals that the packets of product rolled wheat did not have declaration regarding veg or non veg. At this juncture the provisions of Section 3(zf)(C) of the Act are relevant which clarifies the "misbranded food."

Section 3(zf)(C) if the article contained in the package-

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

10. In view of above provisions, the findings of courts below that the product rolled wheat was "misbranded" is found to be in accordance with law, since in this case, the food product "rolled wheat" did not have declaration regarding veg or non veg which is mandatory as per Regulation 2.2.2(4) of the Food Safety and Standard (Packaging and labeling Regulations, 2011) Rules.

11. As per the argument of the appellants, the appellant No.-1 is the end user of rolled wheat which was found to be misbranded; therefore, he can not be convicted for misbranding of rolled wheat. However, the above argument is not acceptable because the appellant No.-1 is a Food Business Operator and is involved in food business by manufacturing of beer as defined under Section 3(n) and 3(o) of The Food Safety and Standards Act, 2006; therefore, he is bound for ensuring the compliance of this Act, rules and regulations made thereunder as provided in Section 26(2)(ii) of

Food Safety and Standard Act, 2006. In the present case, the misbranded rolled wheat was stored in the plant of appellant No.-1 which proves that he has failed to ensure the compliance of provisions of Section 26(2)(ii) of this Act as well as rules and regulations made thereunder.

12. Section 66 in The Food Safety and Standards Act, 2006 provides as below:

66. Offences by companies.-

Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

13. In view of the above provisions, the penalty imposed on the appellant M/S. Himalayan Ales Pvt. Ltd. as well as on the Appellant No.-2 who is the Deputy Manger of appellant company of Industrial unit Malanpur is also found to be in accordance with law.

14. After perusal of Exhibit P-17 which is sanction for prosecution, it is clear that sanctioning authority has applied its mind before granting sanction for prosecution. Therefore, the argument of the learned counsel for the appellants is not acceptable that without proper sanction order for prosecution, the order of Adjudicating Officer is illegal.

15. In view of the above discussions, the impugned order penalizing the appellants u/S.52 for breach of provisions of Section 26(2)(ii) of Food Safety and Standard Act, 2006 is found to be in accordance with law.

16. So far as the quantum of penalty is concerned, in view of the facts and circumstances of the case, the penalty imposed upon the appellants by the learned District Judge and Adjudicating Officer appears to be higher side. Hence, by partly allowing this appeal, this Court is inclined to reduce the penalty imposed upon the appellants from Rs.1,00,000/- to Rs.50,000/- for each appellant (total Rs.1,00,000/-).

17. With aforesaid modifications, the present appeal is partly allowed and disposed of.

(SUNITA YADAV) JUDGE vpn VIPIN KUMAR AGRAHARI 2022.12.08 11:26:24 +05'30'