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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 03.03.2020
Pronounced on: 23.03.2020

\+ CRL.M.C. 535/2017 & Crl.M.A. 2297/2017

RAGHAV GUPTA ..... Petitioner
Through Ms.Geeta Luthra, Sr. Adv. with Mr.Anshul Duggal, Mr.Prateek Yadav & Mr.Altamish Siddiki, Advs.

versus

STATE & ANR ..... Respondents
Through Mr. Izhar Ahmad, APP for State.

\+ CRL.M.C. 580/2017 & Crl.M.A. 2517/2017

DEEPAK KUMAR & ANR ..... Petitioners
Through Ms.Geeta Luthra, Sr. Adv. with Mr.Anshul Duggal, Mr.Prateek Yadav & Mr.Altamish Siddiki, Advs.

versus

STATE & ANR ..... Respondents
Through Mr. Izhar Ahmad, APP for State.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Since the facts and issues are same in the present petitions and are filed against the common impugned order dated 06.06.2016, therefore, both petitions are being disposed of vide this common judgment.

2. These petitions have been filed under Section 482 of Code of Criminal Procedure for quashing of complaint case bearing No.4/2012 and order dated 06.06.2016 passed by Ld. ACMM, New Delhi, Patiala House Courts, New Delhi whereby learned Judge was pleased to frame notice under Section 251 Cr.P.C. against the petitioners.

3. Case of petitioners is that they were erstwhile Directors of the company namely V & V Beverages, importer of *'Snapple Juice Drink'*, (hereinafter referred to as the alleged food article), which it imported from the United States, among other vendors and supplied to M/s A&M Enterprises, a distributor company, which in turn distributed the same to M/s Barista Coffee Company Limited, the end vendor. All the abovementioned are co-accused in the complaint.

4. Facts as alleged in the complaint are that on 03.05.2011, food officials including Food Inspector and Field Assistant under the alleged supervision of the Local Health Authority (LHA)/SDM reached at premises of M/s Barista Coffee Company Ltd., Connaught Place, New Delhi and lifted sample of 6 bottles of alleged misbranded product which were stored for sale in sealed glass bottles of 473 ml each. One counterpart of the sample was deposited with the Public Analyst (PA) and the remaining two

counterparts were deposited with SDM/LHA. Vide report dated 30.05.2011, the PA reported that alleged article was conforming to standards, yet the sample was found misbranded being in violation of Rule 32 (e) of the Prevention of Food and Adulteration Rules 1955, as amended, because there was ostensibly no batch number/ code number mentioned on the label.

5. Rule 32(e) reads as, "*Lot/Code/Batch Identification - Batch number Or Code number or Lot number which is a mark of identification by which the food can be traced in the manufacture and identified in the distribution, shall be given on the label".* However, after obtaining due sanction of the Director, PFA, the complaint came to be filed against 9 accused, including petitioners for alleged violation of Section 2 (ix)(k) read with Rule32 (e) of the Prevention of Food and Adulteration Rules 1955, as amended, punishable under Section 5/7 /16(1)(a) of Prevention of Food Adulteration Act,1954. Section 2(ix)(k) defines a food article to be "*misbranded*" if it is not labeled in accordance with the requirements of this Act or Rules.

6. Ms. Geeta Luthra, learned senior counsel appearing on behalf of petitioners submitted that the sample of "*snapple*" juice drink is not misbranded under Section 32(e), since the barcode/ Julian code mentioned on the packaging of the sample sufficiently complies with requirement of

batch/code/lot number i.e. a combination which can be used to find the batch of product the sample is a part of.

7. She further submitted that the complaint was filed by a public servant and petitioners were summoned vide order dated 05.05.2012.Other accused i.e. 1 to 6 were given benefit of warranty under section 19(2) of the Prevention of Food Adulteration Act and were ordered to be discharged. Subsequently, court ordered notice to be framed against the petitioners, V & V Beverages & Deepak Kumarie. However, Ld. Trial Court has failed to observe that allegation made against petitioners herein is without specifically prescribing any role against them. Thus, there is insufficient material available against which the cognizance should have been taken against petitioners. Only allegation against petitioners is *"as such both the above said directors are in-charge of and responsible for day to day conduct of its business"*. The above said allegation in the complaint made by respondent no.2 does not constitute a sufficient cause of action to prosecute and move further with the complaint.

8. Learned senior counsel submitted that the law is settled that use of words *"as such"* in the complaint to rope in persons who are directors of the company can be said to be inadequate for the criminal court to proceed to

summon them. A logical corollary of the present facts and circumstances and settled law makes it evident that the averment / allegation made by the respondent against the petitioners in the present complaint are insufficient to proceed with the trial.

9. Learned senior counsel further submits that the petitioners had in a previous complaint case bearing no. 26/2010 titled ***Food Inspector versus Jogi Rawal*** been implicated for similar offence on similar facts. This Court in the case titled ***Raghav Gupta vs. Food Inspector: 2012 SCO On Line Del 580*** was pleased to quash the complaint stating, *"In view of above discussion and having regard to the fact that petitioners in the present case have been arrayed as accused persons for their being partners and directors of the respective firms and there being no independent averment or material of their being in charge and responsible for conducting day-to-day business of their firms, the petition is consequently allowed and complaint case bearing no. 26/2010 and the summoning order dated 02.03.2010 passed by learned ACMM, Delhi qua them are hereby quashed."*

10. Learned senior counsel argued that similarly in the present complaint, Complainant has failed to furnish a single independent averment or material of petitioners herein being in charge and responsible for conducting day-to-

day business of their firms. Thus, the present complaint deserves to be quashed qua the petitioners. Moreover, petitioners had already resigned from the Company and were not in-charge or responsible for/or discharging any day to day activity and business of accused company, when the samples were seized by Complainant.

11. To strengthen her arguments, learned senior counsel has relied upon the case of ***Municipal Corporation of Delhi vs. Ram Krishan Rohtagi: (1983) 1 SCC 1,*** wherein Hon'ble Supreme Court of India held that:

> *"Reliance has been placed on the words 'as such' in order to argue that because the complaint does not attribute any criminal responsibility to accused Nos. 4 to 7 except that they were in-charge of and responsible for the conduct of the business of the company. It is true that there is no clear-averment of the fact that the Directors were really in-charge of the manufacture and responsible for the conduct of business but the words 'as such' indicate that the complainant has merely presumed that the Directors of the company must be guilty because they are holding a particular office. This argument found favour with the High Court which quashed the proceedings against the Directors as also against the Manager respondent No. 1."*

12. She further submits that this Court has taken into consideration the above issue placing reliance on ***Municipal Corporation of Delhi vs. Ram Krishan Rohtagi: (1983) 1 SCC 1; Shyam Sunder Bhartia vs. State (Through Food Inspector Govt. of NCT Delhi): 2009 (1) JCC 518*** and

Subhas Chand Gupta Vs. State: 2009 (3) Crimes 310 (Del); Padam Chand Jain vs. State: ILR 1978 Delhi 116 and proceeded to quash the complaints against the partners and directors on identical facts. Therefore, even though the petitioners are not directors and are not involved in the day to day conduct of its business, the Complaint deserves to be quashed against the petitioners herein even if in arguendo we consider the petitioners to be "*as such said director in-charge of and responsible for day to day conduct of its business*".

13. Learned senior counsel has pointed out that petitioners had moved an application under Section 294 Cr.P.C. r/w Section 19 (2) of the PFA Act for being discharged as an accused taking benefit of "*warranty*". As per Section 19(2) of the PFA Act, what is necessary for the accused is to show that he has purchased the article from any manufacturer, distributor, dealer with a written warranty in the prescribed form. Section 14 of the Act provides that a bill or cash memorandum given by the *manufacturer* or *distributor* would itself be deemed to be a warranty. Under Section 19(2) of the Act an accused shall not be deemed to have committed an offence pertaining to the sale of an adulterated article if he proves that he has purchased the article of food with the written warranty and that he sold it in the same state as he

purchased. However, in the impugned order, it is specifically mentioned in para 20, "...*There have been many instances where the distributors/suppliers have been given the benefit and acquitted of the charges of selling misbranded/adulterated food on the ground that the material was not sufficient to establish that the food article lifted from the vendor was a part of the same lot as was sold by them through a particular bill/invoice. It is therefore essential that the manufacturer/packer give a batch number/lot number/code number to his products so as to identify the same in the distribution process. Therefore, the intention of the legislature behind adding a batch number is purely to have a mechanism for tracing the product in the distribution process, which is provided through the bar code sufficiently."*

14. She further submitted that petitioners had submitted original invoices/bills at the time of purchase of the sample commodity from U.S. based manufacturer, Shwepps International Ltd., before the Ld. ACMM along with the Application under Section 294 Cr.P.C. r/w Section19(2) PFA Act, however, the Ld. Judge failed to appreciate the documents submitted herein and found no merit in the Application stating, *"...the complainant cannot be asked to verify those documents when such documents were not*

supplied during the course of the investigation and the complaint has already been filed. Similarly, the accused persons cannot be discharged at this stage on the ground that the goods were cleared by the customs...."

15. In addition to above, learned senior counsel submitted that according to Circular No.58/2001-CUS dated 25th October, 2001 regarding Application of PFA Act, 1954 and other Acts for the clearance of consignments of food articles -instructions, under point 2.1(c), the Central Board of Excise and Customs decided that the Customs shall undertake the following general checks *"...The product should meet the labelling requirements under the Prevention of Food Adulteration Rules and the Packaged Commodities Rules. This includes ensuring that the label is written not only in any foreign language, but also in English. The details of ingredients in descending order, date of manufacture, batch no., best before date etc. are mandatory requirements. All products will also have to indicate details of best before on all food packages. (Reference Ministry of Health notification No. GSR 537(E) dated 13th June 2000)...".* Since the consignment containing the sample was cleared by the custom authorities, accused no. 9, the Company herein is said to have a written warranty in the prescribed form as mentioned under Section 14 of the Act which puts the

onus on the manufacturer/packer of the product. However, vide order dated 06.12.2013 Ld. ACMM had discharged accused nos. 1 to 6, allowing their applications under Section 294 Cr.P.C. r/w Section 19(2) of the PFA Act on the ground that they had no role in the matter of printing and affixation of label declaration and the sample lifted by the Food Inspector on 03.05.2011 were sold to accused nos. 1 to 3 by accused nos. 4 to 6 and to accused nos. 4 to 6 from accused no.9 via undisputed bills/invoices without there being any dispute regarding tampering of label declaration of the sample commodity. The petitioners raised similar grounds, having purchased commodities from the manufacturer, Schwepps International Ltd. which was duly cleared for adherence to labelling requirements under the Prevention of Food Adulteration Rules and the Packaged Commodities Rules which includes checking for batch number by the Customs Authority while being imported to India. Therefore, applying the doctrine of parity, if co-accused nos. 1 to 6 were discharged under "*warranty*", petitioners herein are entitled to have been discharged on similar grounds.

16. It is further submitted that bar code is a globally recognized standard of labeling and instituted to make the entire system of supply and billing quick and efficient and easily readable through Bar Code Scanning

Facilities. Thus, it is clear that purpose of the statute is that the manufacturer of the product can be traced in case of any violation of any of the provisions of the Act and that whole batch of the product can be traced before it is distributed to the mass or identified, if it has already been distributed.

17. On the other hand, case of the respondent is that as per the complaint, on 03.05.2011, food officials including Food Inspector and Field Assistant under the supervision of Local Health Authority (LHA)/SDM reached the premises of M/s. Barista Coffee Company Ltd., Shop No. 9, Regal Building, Connaught Place, New Delhi, and lifted sample of 6 bottles of *"Snapple Juice Drink"* which were stored for sale in sealed glass bottles of 473 ml each. Sample was lifted as per procedure prescribed under the PFA Act and Rules and necessary documents were prepared at the spot. One counterpart of the sample was deposited with the Public Analyst (PA) and remaining two counterparts were deposited with SDM/LHA. Vide report dated 30.05.2011, the PA reported that the article was conforming to the standards, yet the sample was found misbranded being in violation of Rule 32(e), because there was no batch number / code number mentioned on the label. Based on the report of PA, investigation was carried out by Food Inspector as per the instructions of the SDM/LHA. After obtaining due sanction of the

Director, PFA, present complaint came to be filed against 9 accused persons for violation of the section 2(ix)(k) read with Rule 32(e), as Punishable under Section 5/7/16(l)(a) of PFA Act. Accused no. 3 was the vendor company, of which accused no. 1 was the manager and accused no.2 was the whole time director. Accused no. 6 was the distributor firm of which accused nos. 4 and 5 were stated to be the partners. Accused no. 9 is stated to be the importer and supplier company, of which accused no.7 and 8 are the directors responsible for its business affairs.

18. Learned counsel for respondents submitted that there is no stage of '*discharge'* contemplated in Cr.P.C. Moreover, Trial Court is not required to go into minute details of the matters and has to make out a prime facie view on the basis of material placed on record by the complainant. Present case is not like a warrant triable complaint case where the evidence has to be sufficient to convict an accused if considered un rebutted. Accordingly, the learned Trial Court has observed that the present case is only a case of misbranding as per the labelling standards in violation of Section 2(ix)(k) of PFA Act. In the complaint, it is alleged that accused no. 7 to 9 have imported such misbranded food in violation of section 5 and supplied them in violation of section 7of PFA Act, as punishable under section 16(l)(a) of

PFA Act. As far as Rule 32(e) is concerned, the petitioners have relied upon the judgment titled as ***Dwarka Nath vs. MCD: (1971) 2 SCC 314*** wherein Hon'ble Supreme Court of India had struck down said provision being beyond the rule making power under section 23(1) of the PFA Act. After going through the said judgment as well as the applicable rules, learned Trial Court observed that there was no definition of the expression "*batch number*" or "*code number*" in the Act or in the Rules. No affidavit had been filed on behalf of respondent to show whether any technical meaning in the trade was given to these expressions and the matter was based only on the evidence of the Food Inspector. Moreover, no notification issued by the Central Government had been brought to the notice of the court with respect to the food article in question showing the applicability of Section 23(l)(c) of PFA Act. As per Rule 32(e) [as it existed at that time (the said judgement was passed on 23.04.1971)], "*batch number or code number*", had to be mentioned in Hindi or English or numericals or alphabets or in combination, on every label. Accordingly, the Hon'ble Supreme Court has held that:-

> *(a) There was nothing in clauses (c), (f) and (g) of section 23(1) of PFA Act which would give power to the Central Government to frame rules requiring the batch number or code number to be given on the labels, particularly there was no notification brought to the notice of the Hon'ble Court under clause (c).*

Clause (b) and (d) of section 23 (1) would also not be applicable as there was no rational or remote connection between the batch or code number artificially given by a packer and the public or the purchaser being prevented from being deceived or misled as to the character, quality or quantity of the article, contained in a sealed tin.

(c) As there is no definition of the expression "batch number" or "code number" either in the Act or the Rules, and it was admitted that even where batch or code number was to be given, there was no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within which the article of food had to utilised, used or consumed, merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. Hence, Rule 32(e) was held to be beyond the rule-making power even under section 25(1)(d) of the Act.

19. This Court has heard learned counsel for the parties and perused the material available on record.

20. Learned Trial Court in my considered view after going through the case of ***Dwarka Nath (Supra)***, observed that there has been a lot of difference in the language of Rule 32(e) as it existed at the time when the Judgments of ***Dwarka Nath (Supra)*** or in ***Bharat Arora vs. State*** were passed and that as it existed on the day when the sample was lifted.

21. It is also pertinent to mention here that after 1971, when the judgment of ***Dwarka Nath (Supra)*** was passed holding Rule 32(e) as ultra vires of the

Constitution, said rule was amended. It was last amended in 2006 and clauses (d), (e), (f), (g) and (h) of Rule 32 were substituted by G.S.R. 491(E) dated 21.08.2006 (w.e.f 20.02.2008) as corrected by G.S.R.518(E) dated 31.07.2007. Thus, at the time of ***Dwarka Nath (supra)*** Rule 32(e) read as "*a batch number or code number either in Hindi or English numericals or alphabets or in combination".*

22. It is pertinent to mention here that Rule 32(e) as it is existed prior to the G.S.R. 491(E) read as "*a distinctive batch number or lot number or code number, either in numericals or alphabets or in combination, the numericals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words "Batch No.", or "Batch, or lot No.", or "lot" or any distinguishing prefix*." Thus, Rule 32(e) as it stood on the day of sampling in the present case read as "*lot/Code/Batch Identification- A Batch number or Code number or Lot number which is a mark of identification by which the food, can be traced in the manufacture and identified in the distribution, shall be given on the label".*

23. Thus, an apparent distinction, which can be seen in the language of Rule 32(e) as it existed earlier and as it exists today, is that the purpose of giving batch number / code number / lot number has been specified, that is

to identify the food article by any identification mark so as to enable it to be traced in the manufacturing and distribution process. Such meaning /purpose was earlier missing from the language of Rule 32(e).

24. Accordingly, the Trial Court held that in view of the present language of Rule 32(e), it cannot be said that there is no definition of these expressions in the Act or in the rules so as to reveal their purpose, as observed by the Hon'ble Supreme Court in ***Dwarka Nath (Supra)*** decided in 1971. The purpose of mentioning such batch number /code number /lot number has now been made clear by the legislature.

25. In view of above, it cannot be said now that a purchaser would not have any concern with the batch number or code number or lot number on the label artificially given by the manufacturer / packer. It is to be understood that if such a separate number is given to various lots of products prepared, it would be possible to trace the manufacturer /supplier/dealer and to fix their liability for selling adulterated or misbranded food.

26. This Court has noted that under PFA Act, not only the seller but distributors / suppliers and manufacturers are also liable for prosecution. Therefore, unless it is established that any particular product lifted from the vendor was purchased from a particular supplier/distributor, it shall not be

possible to apprehend any such person and fix his responsibility. In the absence of any such mark of identification, it would be very easy for any distributor/supplier to deny/disown the lifted incriminating food product to be the one sold by him through a particular invoice.

27. It is important to note that as per section 14 of PFA Act, every manufacturer or distributor or dealer has to sell an article of food by giving a warranty in writing in the prescribed form. As per section 19(2) of PFA Act, a vendor can seek benefit of warranty, if he is able to prove that he had purchased the article of food from any manufacturer, distributor or dealer with a written warranty in the prescribed form. Rule 12-A of PFA Rules provides that every manufacturer, distributor or dealer selling the article of food to a vendor shall give either separately or in the bill, cash memo or label, a warranty in Form-VI-A. Therefore, to get warranty under section 19(2) of PFA Act, every such vendor or supplier has to establish that he was having a written warranty conforming to Rule 12-A and Form VI-A as prescribed. This Form VI-A specifically provides a column of Batch number or Code number to be mentioned with respect to the product sold. This becomes necessary so as to identify the product as lifted by the food officials. Moreover, if a vendor has been purchasing a particular food article

from the distributor/supplier continuously in routine course for a long time, it is only through the batch number or code number mentioned on the article that it could be established as to by what bill/invoice the said product was purchased. In absence of any such batch number or code number having been mentioned on the bills and the products, it would almost be impossible for the food officials to identify if the product lifted for sampling is the same product as was sold to the vendor vide any particular bill or any bill prior thereto or any bill of some other supplier.

28. It is not out of place to mention here that the position would get all the more complicated if there are various distributors / suppliers and multiple vendors involved. The manufacturer might be supplying its product to various distributors who might supply them to multiple whole-sellers who in turn would supply the article to various vendors/retailers. In such position, if the bills/invoices do not mention batch / code / lot number, it cannot be ascertained with certainty as to from which supplier/distributor a particular product was purchased which was found to be adulterated or misbranded. Any such supplier/distributor can deny his liability merely by taking a stand that the product sold by him through a particular bill was not the one as lifted by the food officials. In the absence of any such batch/lot/code number

on the product itself, there remains no scope for its being mentioned on any bill / invoice, making it impossible to track the chain of distribution.

29. In view of above, there have been many instances where the distributors/suppliers have been given the benefit and acquitted of the charges of selling misbranded /adulterated food on the ground that the material was not sufficient to establish that the food article lifted from the vendor was a part of the same lot as was sold by them through a particular bill/invoice. Thus, it is essential that the manufacturer/packer gives a batch number / lot number /code number to his products so as to identify the same in the distribution process.

30. Accordingly, it is to be taken into consideration that the Hon'ble Supreme Court had held Rule 32(e), as it existed at that time, ultra vires. Thus, upon passing of the said judgment, Rule 32(e) no more existed in the eyes of law. However, when Rule 32(e) in modified language was again inserted and then substituted with a different language as it exists now, such a provision cannot be said to have been declared ultra vires merely because the number of Rule 32(e) is the same. The said provision inserted / substituted by G.S.R, 491(E) as corrected by G.S.R. 518(E) has to be considered as valid unless declared unconstitutional by any court.

31. Since Rule 32(e) stood amended and substituted in 2006 /2007, it would be applicable in the present case where the sample was lifted on 03.05.2011. The said rule has not been declared unconstitutional or ultra vires and is therefore binding.

32. As far as the policy no. F6(228)/85/ENF/PFA dated 23.09.1985 is concerned, it mandated that in case of misbranding under Rule 32 of PFA Rules, only a written warning was to be issued for the first offence and the prosecution had to be instituted only upon a subsequent offence. However, it is to be noted that this policy was subsequently withdrawn vide office order no. 5/07 dated 14.09.2007, as also observed in the judgment titled as **S. S. *Gokul Krishnan vs. State***: ***2009(1) FAC 132***, as relied upon by the petitioners. It is not in dispute that said precedent was followed in ***Hindustan Unilever Ltd. vs. State: 2011(1) FAC 183; Jaykal Exports vs. NCT of Delhi: (2011)122 DRJ 432; Pepsi Food Pvt. Ltd. vs. State: (2012)194 DLT 468 and Gupta Tea Traders vs. State: 2012(2) FAC 415*** only because the policy was in existence when the samples in those cases had been lifted. But the samples in the case in hand were lifted on 03.05.2011 on which date there was no such policy in existence, therefore, petitioners cannot seek benefit of such policy that already stood withdrawn.

33. It is important to note here that there is specific averment that in addition to the accused no. 9 company, accused nos. 7 and 8 i.e. the directors were also liable for prosecution as they were in charge of or responsible to the company for conduct of its business affairs under section 17 PFA Act. Vide his letter dated 11.07.2011, Food Inspector had sought reply from the company to inform him about the directors responsible for conduct of its business. In response, the company had named the accused nos.7 and 8 (petitioners herein) as its directors. Thus, prima facie, such information was in the personal knowledge of the company as to the particulars of the person who was in charge of or responsible to it for its affairs. When the accused no. 9 had not furnished specific details and only named accused nos. 7 and 8 to be such persons, the material would be sufficient to take a prima facie view to frame notice against them.

34. In view of above facts, the judgments relied upon by the petitioners are not relevant.

35. Accordingly, I find no illegality or perversity in the impugned order passed by Ld. ACMM,-II, New Delhi, Patiala House Courts.

36. Accordingly, I find no merit in the present petitions and they are, accordingly, dismissed.

Crl.M.A. 2297/2017 in Crl.M.C.535/2017

Crl.M.A. 2517/2017 in Crl.M.C.580/2017

37. In view of the order passed in the present petitions, these applications have been rendered infructuous and are, accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

MARCH 23, 2020
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