

Glaxo India Ltd. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Aug-21-2002

Judge : A.H. Saikia, J.

Acts : Prevention of Food Adulteration Rules, 1955 - Rules 7, 16 and 37A

Appeal No. : Criminal Revision Nos. 308 of 1993 and 407 of 1994

Appellant : Glaxo India Ltd.

Respondent : State of Assam and ors.

Advocate for Def. : P.C. Gayan, PP and R.K. Jain, Adv.

Advocate for Pet/Ap. : D.K. Bhattacharyya, B.M. Choudhury, G. Baishya and S. Chakraborty, Advs.

Disposition : Appeal dismissed

Judgement :

A.H. Saikia, J.

1. Both these Criminal Revisions were heard and allowed by order dated 21.8.2002 for the reasons to be recorded later on and accordingly the reasons for allowing those revisions are stated as follows:

2. Both the Criminal Revisions have been presented by the petitioner under Section 482 Cr.PC praying for quashing of all the proceedings initiated against the petitioner in the Court of Chief Judicial Magistrate at Guwahati as well as at Jorhat.

3. Criminal Revision No. 308/93 has been directed against the initiation of the criminal proceeding in case No. 1661(C)/90 in the Court of Chief Judicial Magistrate, Kamrup Guwahati on the basis of a complaint lodged by Food Inspector, Kamrup, Guwahati, Respondent No. 3 under the provisions of Prevention of Food Adulteration Act, 1954 (for short 'the Act') and Prevention of Food Adulteration Rules, 1955 (for short 'the Rules') framed thereunder and subsequent issuance of the notice against the Petitioner.

4. In Criminal Revision No. 407/94 petitioner's grievance is against the complaint made by the Food Inspector, Jorhat, complainant/ Respondent No. 3, under the Act and the Rules leading to initiation of case No. 181/92 before the Court of Chief Judicial Magistrate, Jorhat, quashing of which is sought therein.

5. Since both the Criminal Revisions carry the common question of law based on similar and identical factual matrix, both are heard analogously and disposed of by this common judgment and order.

6. The common facts in both the Criminal Revisions, in a short compass, may be noticed as under. The Petitioner, being a manufacturer of Pharmaceutical and Food products under strict quality control measures, has been manufacturing in Its Aligarh Unit in U.P. under licence granted by the U.P. Health Authorities and selling, inter alia, Proprietary food products under the name and Registered Trade Mark 'GLUCON- C', a ready-to-use powder meant to be dissolved in water for being used as a drink and 'GLUCON-D' which is high-grade finely powdered glucose enriched with Vitamin-'D' and Calcium Phosphate.

7. As regards 'GLUCON-C' following informations can be rightly gathered on the labels of the package :-

'The ingredients of the product are duly noted on one side of the package as follows :

Ingredients:

Dextrose monohydrate (glucose), sucrose, citric acid, added flavour, calcium phosphate, sodium chloride. Vitamin C and permitted Colour.

Glucose: An easily assimilated ready source of energy for body tissues,

Vitamin C: For the development of teeth, bones and body tissues.

35 g. of Glucon-C provides Vitamin C 17.5 mg. Energy value 120 kcal

(b) On another side of the package it is stated as follows :

GLUCON-C

A cool delicious instant energy drink for children that keeps them active, alert and full of energy. Enriched with Vitamin C which is so essential for the development of teeth, bones and body tissues in children.

Contains glucose, a quick and convenient energy food that helps overcome tiredness.

Directions for use

Dissolve 4 heaped teaspoonfuls (35 g) in one large glass of cold water (200 ml). Stir. A delicious tangy drink is ready.

Store in a cool, dry place away from strong odours.

(c) On another side of the package it is written as follows :

GLUCON-C

An orange-flavoured glucose drink enriched with vitamin-C.

The name of the manufacturer, maximum retail price, etc. are also furnished.

(d) On another side of the package, it is stated in 5 Indian languages, to the meaning and effect that Glucon-C is a unique, refreshing instant energy drink with

a tangy orange taste.'

8. Similar information with regard to 'GLUCON-D' are also reflected on the package which contains the trade name 'GLUCON-D' and those informations are as follows :

'The ingredients of the product are duly noted on one side of the package as follows :

Ingredients per 10g, Dextrose Monohydrate 9.94g, Calcium Phosphate 0.04g, calcium Phosphate 0.02 g, Calcium 17mg, Phosphorus 10 mg, Vitamin D stabilized 90 I.U. Energy value 36 Kcal.

GLUCON-D(r) is intended for use as a food only and not for manufacturing purpose.

Glucose:

An easily assimilated ready source for energy for body tissues, Vitamin D:

Helps assimilation of Calcium and Phosphorus.

Calcium and Phosphorus :

Essential nutrients for development of bones.

Glucon-D(r)

Instant Energy for the Family.

(b) On another side of the package it is stated as follows :

ENJOY SWEET TASTING, REFRESHING 'GLUCON-D' ANY TIME YOU WANT, ANY WAY YOU WANT.

Every minute of the day you use up Glucose for energy. When your body's glucose store gets reduced, you feel tired. Glucon-D makes you feel energetic again.

Glucon-D(r) is a quick and convenient energy food for children, teenagers, housewives, students, office-goers, industrial workers, farmers, traders, professionals and sportsmen.

Glucon-D(r) is an excellent nutrient during travel sickness, morning sickness, during pregnancy, loss of appetite and rundown conditions. It provides extra energy required by the body to overcome tiredness due to summer heat. Add a few tea-spoonsful of Glucon-D(r) In soft drinks, milk, tea, coffee, or beverages. Take it in water or as a delicious powder. Store in a cool, dry place away from strong odours.

(c) On another side of the package, it is written as follows :

GLUCON-(D)(r)

High-grade finely powdered glucose enriched with Vitamin-D and Calcium Phosphates.

Max. Retail Price, inclusive of all taxes :

See bottom

(r) - Owner of the Registered Trade Mark.

(d) On another side of the package, it is stated in 7 Indian languages, to the meaning and effect that Glucon-D : an instant energy supplier for the family.

(e) On the lid of the package, it is written in English, Glucon-D(r) ; Instant Energy for the Family.

(i) On the bottom the lot number, month and year of packing, and the price is mentioned. It is also written that 'Use within 24 months from the month and year of manufacture embossed on the bottom'.

9. Situated thus the petitioner has to face the brunt of respondent No. 3 in marketing and selling of those products through its dealers namely respondent No. 5 at Guwahati in Criminal Revision No. 308/ 93 and respondent No. 5 in Criminal

Revision No. 407/94 at Jorhat.

10. In Criminal Revision No. 308/93, the respondent No. 3 filed a complaint being case No. 1661(r)/90, before the learned Chief Judicial Magistrate, Kamrup against the Respondent Nos. 5 and 6 on the basis of a report of Public Analyst for prosecution under Section 7 read with Section 16 of the Act and the Rules made examination of the complainant/respondent No. 3, the Court took cognizance and summons had been issued. It was alleged in the complaint that on or about 20.7.1990, respondent No. 3 visited one 'Amrit Stores', a grocery shop situated at Bamunimaidam, Guwahati-21 under the proprietorship of Respondent No. 5 and collected some sample of the said product Glucon 'C' for the purpose of analysis. Thereafter the sample had been sent to the Public Analyst who by his report dated 27.8.1990 submitted the result of the analysis as follows :

'Label:

GLUCON-C

An Orange Flavoured Glucose dring enriched with vitamin C.

Mftl. by GLAXO INDIA LIMITED. Dr. Annie Besant Road, Bombay - 400025, India,

Lot 7130 MONTH PKU FEE 90

Moisture ... 10.76%

Total Ash ... 0.85%(by weight)

Sucrose ... 47.68%(')

Glucose ... 46.76%(')

Sodium Chloride ... 0.73%(')

Test of Phosphate ... Positive

Test of Vitamine ... Positive

Test for Citric Acid ... Positive

Added Colour ... Sunset yellow

and am of the opinion that the sample of Orange Flavoured Glucose drink (Glucon-C) is misbranded and does not conform to the standards as per Rule 37A of Prevention of Food Adulteration Act, 1954 and Rule, 1955'

11. The complaint case No. 181/1992, the proceeding of which is under challenge in Criminal Revision No. 407/94, was instituted against the proforma respondent Nos. 5 to 8 before the learned Chief Judicial Magistrate, Jorhat, Assam on the basis of the complaint made by the respondent No. 3, Food Inspector of Jorhat for prosecution of the petitioner under Section 7 read with Section 16 of the Act. The complainant'/Respondent No. 3, Food Inspector presented the said complaint on the basis of the report dated 3.9.1992 of the Public Analyst, Assam, Guwahati alleging that on 28.7.1992, the Food Inspector collected a sample of Glucon 'D' from the Respondent No. 5, Mulchand Meheswari (Munib) of M/S Gangabishah Banshilal for the purpose of analysis and the said sample thereafter had been sent for analysis by the Public Analyst who submitted his report dated 3.9.1992 as under :

'Label: Glucon-D 100 g

Manufactured by

GLAXO INDIA LIMITED

Dr. Annie Besant Road,

Bombay - 400025

Lot Month PKD

884 MAR 92

Physical White powder with formation of lumps

Moisture - 10.02%

Dextrose Mono-hydrate - 98.58%

Total Ash - 0.60%

Test for Vitamin-D - Positive

Phosphorus - Positive.

and am of the opinion that, the sample of Glucon-D is misbranded.'

12. It is seen from a bare reading of those reports of Public Analyst above that the samples of both Glucon 'C' and Glucon 'D' were misbranded and it did not conform to the standards as per Rule 37A of the Rules. But curiously enough both the reports do not disclose how the products Glucon 'C' and Glucon 'D' are alleged to have violated various ingredients of misbranding as enumerated in Section 2(ix) of the Act.

13. The cardinal issue involved in this case is whether the samples of Glucon 'C' and Glucon 'D' are misbranded, as opined by the Public Analyst in his report as contemplated under the definition provided in Section 2(ix) (a) to (k) which is extracted as under :

'misbranded' - an article of food shall be deemed to be misbranded -

(a) if it is an imitation of, or is a substituted for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character,

(b) if it is falsely stated to be product of any place or country ;

(c) if it is sold by a name which belongs to another article of food;

(d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is ;

(e) if false claims are made for it upon the label or otherwise ;

(f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;

(g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or If the package is otherwise deceptive with respect to its contents ;

(h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article

(1) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses ;

(j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder ;

(k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder.'

Argument of Mr. D. K Bhattacharyya, the learned Senior counsel appearing on behalf of the petitioner is fourfold. Putting forward his first submission, he has strenuously contended that the reports of Public Analyst do not contemplate how both the articles of food Glucon 'C' and Glucon 'D' are misbranded in terms of the definition under the above mentioned section of the Act. Once the Public Analyst, admittedly failed to specify and state in his reports how Glucon 'C' and Glucon 'D' were misbranded under the aforesaid provision of law, there is no scope for prosecution to establish that the articles of food are misbranded. On this count alone the impugned proceeding, if allowed to continue, will result in the abuse of the process of Court. To declare an article to be misbranded, the same must fall

under the Clauses (a) to (k) under Section 2(ix) of the Act and unless these articles fall within any of those 11 clauses of the definition, the same cannot be said to be misbranded. To hammer home this point, the learned Senior counsel, has relied on a decision of this Court in Criminal Revision No. 422/89 (Food Specialities Ltd., M-54 Connaught Circle, New Delhi and another v. The State of Assam) In paragraph 8 of the said judgment this Court held as follows:

'The whole case is based on the report of the Public Analyst. His report does not indicate how the contents of the packet were misbranded. Nor any attempt was made on behalf of the Public Analyst in his report to show as to under which of the clause of Section 2(ix) of the Act this product would fall. In absence of such material in the report of the Public Analyst, it cannot be said that the prosecution has even made out prima-facie case for framing charge on the ground of misbranding. There is absolutely no material on record to Justify framing of charge against the petitioners for misbranding any article of food.'

15. His second contention is that the reports of Public Analyst (Annexure A to the Petition in Criminal Revision No. 308/93 and Annexure 'C' in Criminal Revision No. 407/94 respectively), ex-facie, are vague and devoid of any material facts not to speak of material particulars. From the said reports as well as the complaint petitions and other materials available on records, it cannot be deciphered how the concerned articles are misbranded, why the same is misbranded on the face of factual situation and under what circumstances the articles can be called misbranded. In absence of those material facts as well as particulars, the petitioner is deprived of any opportunity to defend his case and said Public Analyst's reports cannot form the basis of valid complaint. In case of Glucon 'C' under Criminal Revision No. 308/93, the Public Analyst submitted his report dated 27.8.1990 in a printed form under Rule 7(3) without specifying under which Clause from (a) to (k) of Section 2(ix), the sample of Glucon 'C' is misbranded. The report simply said that Glucon 'C' is misbranded and does not conform to the standard as per 37(A), of the Act and the Rules. So far the Glucon 'D' is concerned under Criminal Revision No. 407/94, the Public Analyst submitted his report dated 3.9.92 simply opining that the sample of Glucon 'D' is misbranded. The absence of any materials in details as evident from the above reports of Public Analyst has

deprived the petitioner of his right to know under what provision of law, it has been prosecuted. Therefore, the allegations made in the petitions, solely relying on the Reports of the Public Analyst, disclose no offences and as such the impugned proceedings are liable to be quashed for securing the ends of justice.

16. Taking on his third point, Mr. Bhattacharyya has forcefully urged that both Glucon 'C' and Glucon 'D' are the proprietary food as defined under Rule 37(A) of the Rules and the same has not been standardised under the Rules. Therefore, the question of nonconformity to the standards as laid down in Appendix 'B' under Rule 37 A does not arise at all.

17. In order to appreciate properly and effectively such contention of the learned Sr. counsel, it will be appropriate to refer to the-Rule 37(A) of the Rules and the same is extracted as under :

'37A. Manufacture of proprietary and effectively foods and infant milk Substitute/infant foods. - (1) An article of infant milk substitutes/infant foods whose standards are not prescribed in Appendix 'B', shall be manufactured for sale, exhibited for sale or stored for sale only after obtaining the approval of such article of food and its label from Government of India.

(2) In case of proprietary foods, the name of the food or category under which it falls in these rules shall be mentioned on the label.

Explanation - For the purpose of this rule -

(b) 'proprietary food' means a food which has not been standardised under the Prevention of Food Adulteration Rules, 1955'

18. Much reliance has been placed on a decision reported in 1993 Criminal Law Journal 1106 (Madras High Court) (Corn Products Company, Bombay v. Food Inspector, Tirunelveli Municipality, Tirunelveli). In that case, the Madras High Court, in dealing with similar matter pertaining to report of the Public Analyst in relation to GLUCOVITA GLUCOSE-'D' wherein it was opined by the Public Analyst that the said product was adulterated, was of the clear view that the GLUCOVITA GLUCOSE-'D' was a 'proprietary food' and it cannot at all be stated that any of

Sub-clause (a) to (c) and (h) of Clause (ia) of Section 2 of the Act was getting attracted on the face of the very averments adumbrated in the complaint in the sense of the product GLUCOVTTA GLUCOSE-'D' a proprietary food, shall be deemed to be adulterated falling under any one of these sub-clauses (para 29). Relying on the ratio of the said case, Mr. Bhattacharyya has submitted that it is clear and obvious that a proprietary food cannot be a subject-matter of standardization laid down in the Appendix B to the Act. Therefore, simply because the ingredients of the proprietary food do not tally with the said standards, it cannot be said as 'misbranded'.

19. Harping on his fourth limb of submission, it is vehemently contended by the learned Senior counsel that this is a fit case for quashing under Section 482 Cr.PC inasmuch as the initiation of the criminal proceedings on the basis of such reports of the Public Analyst which have been placed on record by the respondent No. 3 at the time of filing the complaint compelling the Court to initiate the proceeding against the petitioner, is itself a clear case of abuse of the process of the Court. According to him, on the basis of the facts and circumstances of the case, the inherent power of this Court may be exercised either to prevent the abuse of the process of Court or otherwise to secure the ends of justice. He has cited the following Apex Court's decisions -

1. R. P. Kapoor v. State of Punjab (AIR 1960 SC 866)
2. Smt. Nagawwa v. Veeranna Shivalingappa Konjalgy and others (AIR 1996 SC 1947)
3. State of Haryana v. Bhajan Lal (AIR 1992 SC 604)

20. Basically both the criminal proceedings are founded on the reports of the Public Analyst. But amazingly those reports did not reveal how the ingredients of the sample of Glucon-'C' and Glucon-'D', were misbranded. It is seen that even no endeavour was made at all by the Public Analyst in the reports in question to display as to under which of the clause of Section 2(ix) of the Act, the present articles of food would fall to be called as 'misbranded'. If the reports themselves failed to indicate how the products were misbranded, then where is the scope for

prosecution to proceed with the present criminal proceedings Therefore, it can be unhesitatingly held that those reports are nebulous and bereft of details and there is no material on records to justify the launching of the instant criminal proceedings against the petitioner on account of misbranding the products in controversy. Moreso, in view of total silence maintained in the reports as regards the comprehensive material facts and particulars, the petitioner is appeared to have been deprived of either any opportunity to defend its case or the right to know under what

provision of Law, it has been prosecuted. Accordingly this court finds sufficient force in the submission of the learned sr. counsel of the petitioner and is of the view that the ratio of Food Specialities's case (supra) is squarely applicable in this case.

21. Besides, be it noted that 'Dextrose' and 'Dried glucose syrup' have been standardised as item A.07.07 and item A.07.11 in the Appendix 'B' under Rule 37-A which is extracted hereunder.

'A.07.07 - Dextrose is a white or light cream granular powder, odourless and having a sweet taste.

When heated with potassium cupritartrate solution it shall produce a copious precipitate of cuprous oxide. It shall conform to the following standards :

Sulphated ash..... Not more than 0.1 percent on dry basis.

Acidity..... 5. Ogm. dissolved in 50ml. of freshly boiled and cooled water requires for neutralisation not more than 0.20ml. of N/ 10 sodium hydroxide to phenolphthalein indicator.

Glucose Not less than 99.0 per cent on dry basis.

Sulphur dioxide Content shall not exceed 70. p.pm.'

'A.07.11. - Dried glucose syrup means the material in the form of coarse or fine white to creamish white powder, sweet to taste, bland in flavour and somewhat hygroscopic. It shall be free from fermentation, evidence of mould growth, dirt or

other extraneous matter, or added sweetening or flavouring agent.

It shall also not contain any added natural or coaltar food colour. It shall conform to the following standards :

(a)

Total solid content

:

Not less than 93.0 per cent by weight.

(b)

Reducing sugar content

:

Not less than 20.0 per cent by weight.

(c)

Sulphate ash

:

Not more than 1.0 per cent by weight.

(d)

Sulphur dioxide

:

Not more than 40 p.p.m.

Sulphur dioxide may be present In an amount not exceeding 150p.p.m. if the product is Intended for manufacture' of confectionery to be sold under a label as specified under rule 42(x).'

22. Now keeping in view the provision of Rule 37A as well as standardisation of 'Dextrose' and 'Dried glucose syrup' as noticed above, one has to see as to whether the articles of products -GLUCON-'C' and 'GLUCON-D' can be categorized as item A.07.07 and A.07.11. respectively or can be called as 'proprietary food' falling within the parameters of Explanation (b) to Rule 37-A. Insofar GLUCON-'C*' is concerned, as already referred above, there was clear indication on one side of its package that said product is an orange flavoured glucose drink enriched with Vitamin-C, meant to be used as a ready-to-use drink to be dissolved in water and is constituted with various ingredients including Dextrose inonohydrate, sucrose (sugar), salt and enriched with vitamin-'C'. The product has been described as a 'glucose drink' on one side of the package. It contains glucose as vital factor which is an easily assimilated ready source for energy for body tissues. Sucrose (sugar) is added as a sweetening agent as the said product is a ready-to-use powder for a drink and to improve the taste of the product. Therefore the said product Grits preparation is not, and cannot be the same as 'Dextrose' or 'Dried glucose syrup' which foods have been standardized as item Nos. A.07.07 and A.07.11. Similarly, the product - Glucon 'D' also shown on one side of the package as high grade finely powdered glucose enriched with Vitamin-D and Calcium Phosphates meant to be used in soft drink, milk, tea, coffee or beverages and in water or as a delicious powder. Glucon-D is an excellent nutrient which provides extra energy required by the body and it supplies instant energy for the family. Accordingly preparation of this is not or cannot be the same as 'Dextrose' or 'Dried glucose syrup' which has been standardized in the above mentioned items in Appendix 'B'. On consideration of the ingredients and preparation of both GLUCON-C and GLUCON-D it can be safely held that these products as such, cannot at all be called an article of food under a misbranded name and without any hesitation one can come to the conclusion to call these products as 'proprietary food' to attract the Explanation (b) of Rule 37A of the Rules. That being so, since 'proprietary food' cannot be the subject-matter of standards laid down in Appendix 'B', the question of non-conformity of the product

'GLUCON-C and GLUCON-D with standards prescribed under Appendix 'B' under Rule 37A, cannot be considered at all for declaring this articles of food as misbranded. Accordingly, this Court is in respectful agreement with the views expressed by the Madras High Court in Corn Product's case (supra) as relied upon by the learned sr. counsel for the petitioner and the ratio of law laid down therein has been adopted in the case in hand.

23. Upon hearing the learned counsel of the parties as well as on careful perusal of the reports of the Public Analyst and having regard to above stated precedents, this Court is of the considered view that due to lack of Specification and elaboration to make the articles of foods, i.e., GLUCON-'C'and GLUCON-'D'misbranded, prosecution has failed to establish a prima facie case against the petitioner for proceeding with the complaint cases under challenge. The complaints, filed on the basis of these reports of the Public Analyst, lack of ingredients to bring home the allegations against the petitioner for attraction of provisions of Section 7 read with Section 16 of the Act for its conviction and punishment. Consequently, this Court is of the opinion that the entire proceedings in both the cases have resulted in the abuse of process of the Court and it is felt that for securing ends of justice both the proceedings need to be quashed. Accordingly 'both the criminal proceedings, i.e.,-C.R case No. 1661lc)/1990 pending before the Court of Chief Judicial Magistrate, Kamrup at Guwahati and in C.R case No. 181/ 1992 now pending in the Court of Chief Judicial Magistrate, Jorhat are hereby quashed.

24. In the result, both the Criminal Revisions are allowed. Interim order, if any, shall stand absolute.

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