

Prakash Chand Vs. State

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Court : Rajasthan Jodhpur

Decided On : May-30-2012

Appellant : Prakash Chand

Respondent : State

Advocate for Pet/Ap. : Mr. Rajesh Joshi

Judgement :

S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.) 1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ORDER Prakash Chand. Versus State of Rajasthan & Anr. S.B. Criminal Misc. Petition No. 1330/2006... Date of Order: May 30, 2012 PRESENT HON'BLE MR. JUSTICE SANDEEP MEHTA Mr. Rajesh Joshi, for the petitioner. Mr. A.R. Nikub, Public Prosecutor for the State. BY THE COURT: Reportable The instant miscellaneous petition has been preferred by the petitioner seeking quashing of the proceedings of the Complaint Case No. 179/2001 pending in the Court of the Additional Chief Judicial Magistrate, Kanore, district Udaipur and against the order dated 27.7.2001 passed by the learned trial Court whereby cognizance was taken against the petitioner for the offence under Section 7 (1) read with Section 16 (1) (a) and (i) of the Prevention of Food Adulteration Act, 1954 (for short, the P.F.A. Act). Succinctly stated, the facts of the case are that the petitioner is said to be running a proprietorship concern in the name and style of M/s. Hemant General Stores at Kanore. S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.) 2 The Food Inspector

of the area is said to have taken a sample of prepackaged salt of the brand Annpurna from the petitioner's shop on 22.12.2000 and the same was subjected to analysis by the Public Health Laboratory, Udaipur. The Public Analyst submitted his report dated 24.01.2001 and the conclusion as per the report was that the sample was misbranded because the statement regarding month/year, upto which the product could be best for consumption, was not mentioned on the packet in capital letters as required by rule 32 (i) of the Prevention of Food Adulteration Rules. The petitioner's prosecution was thus recommended for violation of Section 2 (ix) (k) of the Act for selling misbranded food. The Food Inspector thus proceeded to file a complaint against the petitioner for the offence under Section 7 (ii) read with Section 16 (a) (i) of the Act in the Court of A.C.J.M. Kanore. The learned Magistrate took cognizance against the petitioner for the aforesaid offence by order dated 27.7.2001. A challenge to the complaint, as well as the order dated 27.7.2001 taking cognizance passed by the learned Additional Chief Judicial Magistrate, has been made by the petitioner by way of the instant miscellaneous petition. Mr. Rajesh Joshi, the learned counsel for the petitioner contends that the petitioner's prosecution has been launched for the infringement of a law/Rule which was not in force when the sample was collected; thus it is submitted that the prosecution of the petitioner is absolutely illegal and an abuse of process of the Court. Referring to the certified copy of the complaint, spot S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.) 3 memo and the Public Analyst's report annexed with the petition, it is submitted that in none of these documents, it has been mentioned as to what was the best before date, which was inscribed on the packaged salt of which the sample was drawn from the petitioner's premises. For the purpose of resolving this factual dispute, when the matter came up before this Court on 22.9.2011, this Court directed the learned trial Court to inspect the record as well as the sample of the seized salt and to verify the date of manufacture mentioned on the packet. Based on the said direction, the learned Additional Chief Judicial Magistrate has submitted his report dated 02.11.2011 to this Court, as per which, the second sample of salt available with the Chief Medical & Health Officer, Udaipur, bears the packaging date as 05/2000 (May 2000). Mr. Rajesh Joshi, learned counsel for the petitioner contends that on the date, the article of food was manufactured /packed the requirement to

inscribe the best before date on the prepackaged food article in capital letters was not existing in the Rules. He submits that this requirement of mentioning the best before date in capital letters was introduced for the first time by an amendment in the Prevention of Food Adulteration Rules introduced through a Notification dated 13.6.2000, whereby rule 32 (i) was inserted in the Prevention of Food Adulteration Rules. He further contends that the Central Government issued another Notification in exercise of its power under Section 22-A of the Act, whereby the Notification dated 13.6.2000 was made effective from S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.

01. 9.2000. Learned counsel, thus, submits that as the sample of packaged salt, which was collected from the petitioner's premises, was manufactured in May 2000, the petitioner's prosecution is absolutely illegal because the Rule regarding the mentioning of the best before date came into force four months after the sample was manufactured. As such it could not have been possible for mentioning of best before date in bold letters as per rule 32 (i) of the Rules at that point of time. He submits that the provision was not even in existence on the statute book when the salt was packed and, therefore, ex facie the proceedings of the complaint are liable to be quashed. Learned Public Prosecutor has opposed the arguments advanced on behalf of the petitioner and submits that soon upon the enactment of the Rule 32 (i) requiring the prepackaged food to have the best before date printed in capital letters, the petitioner should have returned back the salt packets to the manufacturer instead of keeping the same for sale in his shop. He submits that as the inscription made on the packet of salt was admittedly found infringing the rule on the date of seizure, the petitioner's prosecution cannot be called into question. Having considered the arguments advanced at the bar and after going through the complaint, which is the subject matter of challenge in this case, as well as the report of the Public Health Laboratory, Udaipur and the report dated 02.11.2011 submitted by the learned trial court, it is evident that the prepackaged article of food, i.e. the salt, was packed by the manufacturer in the month of May,2000. The Notification S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.) 5 requiring the mention of best before date on the prepackaged food article in capital letters, was made effective from 01.9.2000. Therefore, when the sample was packed and was received by the

petitioner for sale, there was no such provision on the statute book which required mentioning of best before date in capital letters. Therefore, when the prepackaged food was manufactured, the same was not misbranded as there was no requirement for mentioning the best before date in capital letters on that day. The Criminal Law, which increases the rigour of punishment or creates a new offence, can never be retrospective. Article 20(2) of the Constitution of India provides that no person shall be convicted of any offence except for the violation of law in force at the time of commission of the act charged as an offence. Article 20(2) of the Constitution of India reads as under:- (2) Protection in respect of conviction for offences.- (1) 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, nor 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. When the petitioner received the prepackaged food article, i.e. salt, from the manufacturer, there was no requirement that the same should bear the best before date in capital letters as rule 32 (i) was then not in existence. The said rule was enacted in the statute book in June, 2000 and thereafter was effective from 1.9.2000. Thereafter also, the Central Government issued another clarification under Section 22 S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.) 6 (a) of the Act, whereby directions were issued to the concerned Food & Health Authorities not to book cases for violation of provisions of this Notification during the first year of the Notification. The Guidelines issued by the Central Government in this regard are reproduced hereinunder:- Similarly, we have also introduced through notification GSR No. 537 (E) dated 13.6.2000 the concept of best before on packaged food. This is to come into effect from 1.9.2000. In this context it is important to note that the choice of date indicated as best before is left to the manufacturers and we have no say in it. In other words, different manufacturers are free to indicate different periods as best before based on their assessment of what would be the period up to which their product will retain its optimum quality. It may be noted that a product can still be consumed after the best before date and hence can continue to be sold. The responsibility of the food authorities would therefore be limited only to ensuring that the products comply with the standards of quality prescribed under the PFA Rules, irrespective of their choice of the date of

best before. They will also have to ensure that all products carry the information regarding best before, as required in the notification on the body of the package duly printed and not through a sticker. The notification regarding best before also allows manufacturers some flexibility in the language used to indicate the best before details, for the period of one year to facilitate use of any stationery printed in the past. Some sectors, like bread, milk etc. sold in plastic pouches, are items of mass consumption which are often manufactured and marketed by small scale manufacturers who would be introducing this concept for the first time. In all such cases, it may be ensured that they are given adequate opportunity, and are encouraged rather than penalized in the first year of implementation of the notification. Both the notifications mentioned in this letter have significance from consumer's point of view and involves additional commitment from the manufacturers, who apprehend some commercial implications in terms of sales of their products. Since these are path-breaking notifications in the S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.) 7 food sector, it is essential that they are carefully enforce through persuasion and education of the manufacturer, retailer and the consumer, rather than through penal action. It would, therefore, be necessary to advise food health authority not to book cases for violation of the provisions of either of these notifications during the first year of implementations. The focus should primarily be on collecting information about the manufacturers who violate these provisions and on writing to them advisory letters which provide information about the best before regulations. Such letters can request compliance and advise that violation noted after one year of the notification coming into effect, would invite strict penal action. Such a long way in facilitating the smooth implementation of` these notifications. A copy of the final notification and the related press note, are enclosed (emphasis supplied). You are requested to issue instructions on the above lines to the food health authorities for implementing these two notifications, and also to give wide publicity to their contents amongst both consumers and industry associations, and wholesale and retail associations. We could appreciate some feedback about the course of action taken by the State Food Authorities in this regard. The thrust of Rule 32(i) of the Notification/clarification issued by the Government under Section 22-A of the Act is that the manufacturer is caste with a burden of complying with

the requirement of mentioning the best before date in bold letters on the prepackaged article of food. The said onus cannot be shifted to the vendor alone. Manufacturer was admittedly not impleaded as a party accused in the complaint. In this view of the matter, this Court has no hesitation in concluding that the petitioner's prosecution in this case is nothing short of gross abuse of process of the law. S.B. Criminal Misc. Petition No. 1330/2006 (Prakash Chand Vs. State of Rajasthan & Anr.) 8 The upshot of the above discussion is that the miscellaneous petition succeeds; the order dated 27.7.2001 passed by the learned Additional Chief Judicial Magistrate, Kanore, district Udaipur, taking cognizance against the petitioner and all subsequent proceedings thereupon are hereby quashed. (SANDEEP MEHTA), J.

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