
case (*supra*) applies and the appellant wife is not entitled to have the benefit of her own wrong. Besides the allegations made by the husband in his written statement stand duly established and substantiated.

(22) In the circumstances, no fault can be found with the order of the trial Court which would warrant interference by this Court. Consequently, the appeal is dismissed. However, in the circumstances there shall be no order as to costs.

R.N.R.

Before S.S. Saron, J

VINOD KUMAR—*Petitioner*

versus

THE STATE OF PUNJAB—*Respondent*

CrI. M. No. 11536/M of 1998

20th November, 2002

Prevention of Food Adulteration Act, 1954—Ss. 16, 19(2)(a)(ii) & (b)—Prevention of Food Adulteration Rules, 1955—Rls. 12—A & 32—Sample of sealed packets found to be misbranded as month & year of manufacture/packing not clearly mentioned—Proceeding against a retail dealer for breach of Rl. 32(f)—Sample found not to be adulterated—Dealer selling the sealed packets in the same condition in which they were purchased from the manufacturer—Liability to correctly depict the label as required u/s 32(f) is of the manufacturer—Dealer held to be entitled to benefit of defence u/s 19(2)(a)(ii) & (b)—Criminal proceedings against the dealer liable to be quashed.

Held, that the petitioner would be entitled to the defence permissible u/s 19(2)(a)(ii) and (b) of the Act as the Public Analyst in his report has found that the month of manufacture/package had not been mentioned on the packet. This is the requirement of Rule 32(f) of the Rules. It is not the case of the State that the sample was adulterated or did not conform to the prescribed standard. The case is that the sample of Tata Tea has not been labelled in accordance with the provisions of Rule 32 of the Rules as month of manufacture/packing had not been mentioned on the packet. It is the admitted

case of the State even as per the report of Public Analyst that the contents of the sample received were in a sealed packet. There is no tampering with the seal. It is not the case that the sample did not belong to the manufacturer or that it showed misbranded product of an unspecified or unknown Company. Therefore, in this situation, the petitioner would be entitled to the benefit of the defence u/s 19(2)(a) (ii) and (b) of the Act.

(Para 24)

G.S. Sawhney, Advocate, *for the petitioner*

Ashish Sharma, AAG Punjab *for the respondent State.*

JUDGMENT

(1) This petition under section 482 of the Code of Criminal Procedure, has been filed for quashing the complaint dated 12th March, 1998 (Annexure P-2) and resultant proceedings initiated under section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) pending in the Court of learned Sub Divisional Judicial Magistrate, Nawanshahr.

(2) The facts leading to the filing of the present petition are that a team headed by Dr. Buta Ram Gill, District Health Officer, Nawanshahr, inspected the shop of the petitioner on 28th August, 1997. The Government Food Inspector, who is the complainant in this case, was part of the team and he disclosed his identity and purpose of visit. He found about 25 bags of Tata Tea, each bag containing 96 packets. A demand for three sealed packets of Tata Tea was made by serving a notice in form VI upon the petitioner. The said form was duly attested by the complainant and the witnesses Hari Krishan and Dr. H.S. Gupta, Medical Officer. Each packet was labelled separately and wrapped in strong khaki thick paper and secured by means of gum and strong twine. A paper slip duly signed by Local Health Authority, Nawanshahr bearing serial number was pasted on each sample packet and fastened. Each sample was sealed. The sealed sample was sent to the Public Analyst, Punjab, Chandigarh in Form VII. The Public Analyst, Punjab, Chandigarh, under section 13 (5) of the Act gave his report to the following effect :—

“that the product has not been labelled in accordance with the provisions of Rule 32 of PFA Rules, 1955 as month

of manufacture/packing has not been mentioned on the packet. The product is, therefore, misbranded”.

(3) On the basis of the above report, the complaint dated March, 12, 1998 (Annexure P-2) has been filed.

(4) The present petition has been filed *inter alia* on the ground that no offence is made out against the petitioner and that in any case, cognizance was not liable to be taken by the learned trial Court. It is also submitted that Rule 32 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to “the Rules”) which is alleged to have been violated in the case has in fact, been quashed by the Hon’ble Supreme Court in the case of **Dwarka Nath and another v. Municipal Corporation, Delhi, (1)** holding that there was no obligation to specify on the label the date of packing and manufacture of the article of food or the period within which the article of food is to be utilised, used or consumed. The Judgment in Dwarka Nath’s Case (supra) has been followed in the case of **Ajit Singh v. The State of Punjab and others. (2)** and **M/s Jagan Nath Dalip Singh v. The State of Punjab (3)**. It is also contended that in terms of the Explanation III to Rule 32 of the Rules for the purpose of declaration of month and year of manufacture, the provisions under Rule 6 (B) of Standard of Weight and Measures (Packaged Commodities) Rules, 1977, shall apply and, therefore, under the given circumstances, prosecution, if any, ought to have been launched under the said Act/ Rules and not under the Act, as has been done in the present case. Besides it is contended that in case, sample was taken in the form of packets and forwarded as such to the Public Analyst for analysis then taking of the sample in the form of packets is in clear violation of Rules 14 and 16 of the Rules as held by a Full Bench of this Court in the case **State of Punjab v. Raman Kumar (4)**. It is contended that even cardboard box was not a packing better than a paper packing as it could easily and certainly admit moisture and can be tampered with. Besides, the alleged violation ought to have been detected by the Food Inspector and not by the Public Analyst. It is also contended that the petitioner is protected under section 19(2)(a)(ii) and (b) of the

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- (1) 1972 FAC 1 = AIR, 1971 S.C. 1844
 - (2) 1993 Criminal Law Times 160
 - (3) 1993 Criminal Law Times 330
 - (4) 1997 (4) RCR 772

Act and Rule 12-A of the Rules, as the article was brought from the manufacturer which had the label of the said manufacturer and the label is a warranty under Rule 12-A of the Rules. In other words, the manufacturer of the Product M/s Tata Tea was liable to be impleaded as accused as it was mandatory under the provisions of the Act and the Rules.

(5) Notice was issued to the respondent/State, and reply has been filed through Dr. Buta Ram Gill, District Health Officer, Nawanshahr. In the reply, it is submitted that the complaint in question was lodged in the competent court in accordance with the provisions of the Act. Therefore, the petition merits dismissal.

(6) I have heard the learned counsel for the parties and with their assistance perused the record.

(7) The learned counsel for the petitioner has contended on the strength of the judgment in Dwarka Nath's case (supra) that the complaint is liable to be quashed. It is contended that the Hon'ble Supreme Court had held Rule 32(b) and (e) of the Rules to be ultra vires and beyond the Rule making power under Section 23 of the Act. It is also contended that there was no obligation on the part of the petitioner to specify on the label the date of packing and manufacture of the article seized.

(8) The learned counsel for the petitioner further contends that in view of the Explanation III to Rule 32 of the Rules for the purposes of declaration of the month and year of manufacture the provisions of Rule 6(B) of the Standard of Weight and Measures (Packaged Commodities) Rules, 1977 are to apply. As such, the provisions of the Act and the Rules are inapplicable. Besides, the petitioner is protected under Rule 12-A of the Rules, as the article was brought from the manufacturer which had the label of the said manufacturer. Therefore, it is contended that the proceedings were liable to be initiated against the manufacturer.

(9) Learned counsel for the State, however, contends that the petitioner was required to give necessary particulars with regard to the month and year in which the commodity is manufactured or pre-packed so that public or purchaser are able to find out the date of packing of the material being purchased is fresh or not.

(10) In order to appreciate the respective contention of the parties, it is necessary to refer to the provisions of Ruls 32(e), (f) and (g) of the Rules, which read as under :—

“32. Package of Good to carry label - Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label -

(e). 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 ;

Provided that in case of canned food, the batch number may be given at the bottom, or on the lid of the container, but the words “Batch No.” given at the bottom or on the lid, shall appear on the body of the container.

(f). the month and year in which the commodity is manufactured or prepacked ;

Provided that in case of package weighing 20g. less and liquid products marketed in bottles which are recycled for refilling, particulars under clause (b) need not be specified :

Provided further that such declaration shall be given on the label of multipiece package either on the label of multipiece package or in a separate slip inside the multipiece package in such a manner the same is readable even without opening the package :

Provided also that in case of carbonated water containers and the packages of biscuits, confectionery and sweets, containing more than 60g but not more than 120g. and food packages weighing not more than 60g. particulars under clauses (d) and (e) need not be specified :

Provided also that in case of package containing bread and milk including sterilised milk, particulars under clause (e) need not be specified.

Provided also that in case of any package containing bread or liquid milk, sterilized or Ultra High Temperature treated milk, soya milk, flavoured milk, any package containing dhokla, bhelpuri, pizza, doughnuts, khoa, paneer or any uncanned package of fruits, vegetables, meat, fish or any other like commodity which has a short shelf life, the date, month and year in which the commodity is manufactured or prepared or prepacked shall be mentioned, on the label ;

Provided also that in case of package containing confectionery weighing 20g. or less, the particulars under this clause need not be specified :

(g). the date of expiry in case of packages of aspartame which shall not be more than three years from the date of packing :”

(11) A perusal of the 32(f) shows that a every package of food shall carry a label and unless otherwise provided, there shall be specified on every label a distinctive batch number or lot number or code number, either in numerical or alphabets or in combination, the numerals 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 :

(12) Provisions of Rule 32 (f) referred to by the learned counsel for the petitioner are applicable in the present case. Rule 32(f) provides that every package of food shall carry a label specifying month and year in which the commodity is manufactured or prepacked. The allegation in the present case is that the Public Analyst in his report has given the description of the contents of the sample as follows :—

“The contents of the sample received in a sealed packet printed as Tata Tea PREMIUM CTC LEAF ASLI TAAZGI TATA PLANNING PACKET NET WEIGHT 250 g. Max RETAIL PRICE INCLUSIVE OF ALL TAXES Rs. 29.00 PACKED/CODE 97/J/3. A TATA TEA LIMITED 1 BISHOP LAFROY ROAD CALCUTTA-7000020. A TATA PRODUCT TATA TEA LIMITED Macro & Macro analysis= No iron filling detected.”

(13) The offence attributed to the petitioner is that the sample does not indicate the date of manufacture. It merely records "Packed/Code 97 J/3".

(14) Learned counsel for the petitioner contends that use of the word "J" after the year "97" and before figure "73" shows that the product was manufactured either in January, June or July and that the sample in question was taken in August, 1997. Therefore, no prejudice is caused to any body.

(15) The contention of the petitioner is that in Dwarka Nath's case (supra) the provisions of Rules 32(b) and (e) have been quashed and that, therefore, in any case there was no requirement for writing the date and month of manufacture. In Dwarka Nath's case (supra) Rule 32 that was considered was as it stood before 29th April, 1989. Rule 32 has been substituted by Notification G.S.R. 422(E.) dated 29th April, 1987 and has come into force w.e.f. 29th April, 1989. The learned counsel for the petitioner has not shown as to how the Rule which is now said to be violated is beyond the Rule making power under the provisions of the Act. Besides, the Rule that is violated is Rule 32(f) inasmuch as the month and year in which the commodity is manufactured or prepacked has not been mentioned. In fact every package of food is to carry the same in accordance with Rule 32(f). Besides, in Dwarka Nath's case (supra) Rule 32(b) was held to be not beyond the rule making power of the Central Government under section 23(l)(d) of the Act. It was Rule 32(e) that was held to be ultra vires of the Rule making power of the Central Government under Section 23(l) of the Act. Their Lordships of the Supreme Court in Dwarka Nath's case were considering the case of pure ghee." On analysis of the sample therein, it was found to be conforming to the standard. It was thus held to be difficult to appreciate how the giving of the batch number and code number alone, such as date of manufacture of the article of food and the period within which the said article has to be used and consumed and the quantity of the item in the container would prevent the public or purchaser being deceived or misled as to the character quality and quantity of the article. The present is not such a case. The allegation is that the petitioner has not clearly mentioned the month and year in which the commodity was manufactured and prepacked. Therefore, there is a breach of

Rule 32(f) of the Rules, and the ratio of the judgment in Dwarka Nath's case as also Ajit Singh's case and M/s Jagan Nath Dalip Singh's case, would not apply. In the present case it is not shown as to whether Rule 32(f) which has substituted by notification dated 29th April, 1987 and has come into force w.e.f 29th April, 1989, as already referred to above, is beyond the rule making power of the Central Government. Therefore, this contention of the petitioner is without any force.

(16) The next contention of the petitioner is that by virtue of Explanation III to Rule 32 of the Rules for the purposes of declaration of month and year of manufacture, provisions under Section 6(B) of the Standard of Weight and Measures (Packaged Commodities) Rules, 1977, are to apply and, therefore, under the given circumstances, prosecution under the provisions of the Prevention of Food Adulteration Act, is not maintainable.

Explanation III to Rule 32 reads as under :—

“Explanation III.—For the purpose of declaration of month and year of manufacture, the provision under rule 6(B) of Standards of Weight and Measures (Packaged Commodities) Rules, 1977 shall apply.”

(17) It has already been held that the provisions of Rule 32(f) requires the month and year in which the commodity is manufactured or prepacked to be recorded by way of label on every package of Food. Therefore, the contention of the petitioner that the provisions of the Standard of Weight and Measure (Packaged Commodities) Rules, 1977, would apply for the purpose of prosecuting the petitioner is without any merit. Explanation (III) to Rule 32 is to explain the main Rule and not create any new Rule de hors the substantive Rule. Even otherwise, the Standards of Weight and Measures (Packaged Commodities) Rules, are for the purposes of maintaining the standard and not create any independent Rule of the substantive Rule 32 of the Rules.

(18) The next contention of the petitioner is that the taking of samples in the form of packets is a clear violation of Rule 14 to 16 of the Rules, as held by a Full Bench of this Court in *State of Punjab vs. Raman Kumar (supra)*. Rules 14 to 16 fall under Part V of the Rules under the heading ; 'Sealing, Fastening and Despatch of Samples.'

Rule 14 provides for manner of sending sample for analysis, Rule 15 provides for bottles or containers to be labelled and addressed and Rule 16 provides for manner of packing and sealing the samples. Rules 14 to 16 read as follows :—

“14. Manner of sending sample for analysis.—Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and shall be carefully sealed.

15. Bottles or containers to be labelled and addressed.—All bottles or jars or other containers containing samples for analysis shall be properly labelled and the parcels shall be properly addressed. The label on any sample of food sent of analysis shall bear :—

- (a) Code number and Serial number of the Local (Health) Authority ;
- (b) Name of the sender with official designation, if any ;
- (xxx)
- (d) Date and place of collection ;
- (e) Nature of article submitted for analysis ;
- (f) Nature and quantity of preservative if any, added to the sample :

(Provided that in the case of a sample of food which has been taken from Agmark sealed container, the label shall bear the following additional information :—

- (a) Grade ;
- (b) Agmark label No./Batch No. ;
- (c) Name of packing station.)

16. Manner of packing and sealing the samples.—All samples of food sent for analysis shall be packed, fastened and sealed in the following manner, namely :—

- (a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit ;

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- (b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive ;
- (c) A paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature and code and serial number of the Local (Health) Authority, shall be pasted on the wrapper, the signature or the thumb impression of the person from whom the sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb impression :

Provided that in case, the person from whom the sample has been taken refuses to affix his signature or thumb impression, the signature or thumb impression of the witness shall be taken in the same manner ;]

- (d) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

(19) It is contended by the learned counsel for the petitioner that the sample has been taken in the form of package and the ratio of the judgment referred to above applies. I have considered this contention of the petitioner but find no merit in the same. The report of the Public Analyst Annexure P-1 records that he received the sample in properly sealed and fastened and he found the seals intact and unbroken. He further records that the seals fixed on the container and the outer cover of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and that the sample was in a condition fit for analysis. Therefore, there is no merit in this

contention of the petitioner and the ratio of the judgment in Raman Kumar's case (supra) is not applicable.

(20) The next contention of the learned counsel for the petitioner is that the petitioner is protected by the Provisions of Section 19(2)(a)(ii) and (b) of the Act and Rule 12-A of the Rules.

(21) The provisions of Section 19(1) and (2) (a) (ii) and (b) of the Act reads as under :—

19. Defences which may or may not be allowed in prosecutions under this Act.—(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded articles of food to allege merely that the vender was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

[(2) A vender shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of good if he proves—

(a) that he purchased the article of food—

(i) xx xx xx xx xx xx

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form ; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.]

Rule 12.-A of the Rules reads as under :—

“[12A. **Warranty.**—Every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or a [label] a warranty in Form VIA.]

(22) Perusal of the above shows that every manufacturer, distribution or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or a label of warranty in Form VIA. Form VIA of the Rules is as follows :

FORM VIA

See rule 12 A)

Form of Warranty

Invoice No..... Place.....
Form..... Date.....
To.....

Date of Sale	Nature and quality of Article/Brand Name if any	Batch No. or Code No.	Quantity	Price.
1	2	3	4	5

I/We hereby certify that food/foods mentioned in this voice is/are warranted to be of the nature and quality which it/these purports/purport to be.

.....

Signature of Manufacturer
Distributor or Dealer

Name and Address of
Manufacturer/Packer
(in case of packed article)

Licence No.....
(Wherever applicable)

(23) In support of his contention, the learned counsel for the petitioner has referred to the judgment of the Hon'ble Apex Court in case of *P. Unnikrishnan vs. Food Inspector, Palghat Municipality, Kerala State (5)*. In *P. Unnikrishnan's* case (supra) the appellant was tried for an offence under Section 7(1) read with Section 16(1A)(a)(i) of the Act. The Food Inspector in that case purchased a sealed tin containing 100 grams of arrow root for the purposes of analysis and the Public Analyst found it to be adulterated. The accused took the plea that a representative of the Manufacturer, located about 200 kms. from the place of the accused came to his shop and sold the article and he also pleaded that he has a bill which has the necessary warranty signed by the representative of the said firm. He put up the defence permissible under Section 19(2) of the Act, which was accepted by the learned Magistrate, who acquitted the accused. The Hon'ble High Court, reversed the finding. The Hon'ble Supreme Court allowed the appeal of the purchaser. It was held that the article was in sealed tin which was not tampered and the label was to the effect that it was a product of the manufacturer and that the accused sold it in the same condition in which it was purchased by him. The further proof that the manufacturer from whom the accused purchased the articles, has been licensed, depends upon the facts of each case. In every case the accused cannot be expected to verify further whether the contents of the label on the tin and those in the bill containing the warranty are correct or not.

(24) In the case in hand, I am of the view that the petitioner would be entitled to the defence permissible under Section 19(2) (a) (ii) and (b) of the Act as the Public Analyst in his report Annexure P-1 has found that the month of manufacture/package had not been mentioned on the packet. This, as already noticed above, is the requirement of Rule 32(f) of the Rules. It is not the case of the State that the sample was adulterated or did not conform to the prescribed standard. The case is that the sample of Tata Tea Premium CTC Leaf Asli Taazagi TATA has not been labelled in accordance with the provisions of Rule 32 of the Rules, as month of manufacture/packing had not been mentioned on the packet. It is the admitted case of the State even as per the report of the Public Analyst Annexure P1 that the contents of the sample received were in a sealed packet. There is no tempering with the seal. It is not the case that the sample did not belong to the manufacturer or that it showed misbranded product of an unspecified or unknown Company. Therefore, in this situation,

the petitioner would be entitled to the benefit of the defence under Section 19(2) (a) (ii) and (b) of the Act.

(25) It was for the manufacturer to correctly depict one label with regard to its manufacture and year of package in accordance with Rule 32 of the Rules. As held by the Hon'ble Supreme Court in **P. Unnikrishnan's** case (*supra*), that the proof that the manufacturer from whom the accused purchased the article has been duly licenced, depends on the facts of each case. In every case, the accused cannot be expected to verify further whether the contents of the label on the tin and those in the bill containing the warranty are correct or not. The State has not set up a case that the Tea Leaf which were analysed by the Public Analyst were not of the manufacturer. The case is that the month and year of manufacturer had not been given. Even the contents of the various ingredients which were analysed do not show that the commodity was in any manner adulterated.

(26) Therefore, in the above facts and circumstances, the petition is allowed and the complaint dated 12th March, 1998 Annexure P-2 and consequential proceedings in pursuance thereof are quashed.

R.N.R.

Before Jawahar Lal Gupta & S. S. Grewal, JJ

MANJIT WALIA—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 16080 of 1999

31st July, 2002

Constitution of India, 1950—Art. 226—Extension in service to a teacher as an incentive for getting 'State Award' as well as 'National Award' as a teacher of outstanding merit—Before considering case for extension Govt. requiring petitioner to deposit an amount of award given by Central Govt.—Neither any rule, instruction nor any order