
Before V.M. Jain, J

SURINDER NATH SOOD,—*Petitioner*

versus

U.T., CHANDIGARH,—*Respondent*

CrI. M. No. 17026/M OF 2001

18th May, 2001

Prevention of Food Adulteration Act, 1954—Ss. 7(ii), 16(1)(a)(i) and 19(2)—Prevention of Food Adulteration Rules, 1955—Rl. 32—A—Public sale of misbranded food articles—Complaint—Quashing of—Nothing on record to show that accused dealer purchased packets of food articles against any bill or cash memo or that label thereon contained any warranty—Plea of the accused that he is entitled to protection of S.19(2) negatived—Criminal complaint & proceedings taken thereon cannot be quashed only on the ground that the accused is a dealer or that he had stored articles in same condition in which they had been purchased.

Held that from a perusal of the provisions of S.19(2) of the Act, it would be clear that for the protection u/s 19(2) the accused petitioner, who is a dealer is required to prove that he had purchased the article of food, namely Suji Rusk, from any manufacturer, distributor or dealer, with written warranty, in the prescribed form and for this purpose, he was required to produce either separate warranty or a bill or cash memo etc. in this regard. There is absolutely nothing on record to show that any such warranty, bill or cash memo was produced by the accused-petitioner before the Food Inspector at the time when the sample was taken or at any time subsequent thereof, either before the Food Inspector or before the Court. Merely because the packets were properly stored and /or were sold in the same state, in which the same were purchased, by itself, would not be sufficient to absolve the accused-petitioner of the offence committed by him, especially when neither there is any written warranty nor there is any bill, cash memo or label produced by the accused-petitioner in this regard.

(Paras 16 & 17)

Prevention of Food Adulteration Act, 1954-S.23(1-A)(d) as amended by Act No. 34 of 1976- Prevention of food Adulteration Rules, 1955—Rl.32(e)(f) as substituted by notification dated 29.4.87-

Provisions of Rl. 32(e)&(f) provide that batch No. and month of year of manufacturing/packing to be given on food packets—Central Government has power to make rules as provided under amended Section 23(1-A)(d)—Complaint filed after the said amendment for violation of rules—Rl.32(f) not declared invalid—Criminal complaint not liable to be quashed.

Held that rule 32(f) of the Rules w.e.f. 30th April, 1989 provides that every package of food shall carry a label and it shall be specified on every label, the month and year in which the commodity is manufactured or pre-packed. In the present case, it was found by the public Analyst that not only the Batch No. was not mentioned on the sample, but even the month and year of manufacturing/packing had not been mentioned/printed on the label of the sample, as required under clauses (e) and (f) of Rule 32 of the Rules. Since Rl.32(f) has not been declared invalid, the criminal complaint, filed against the accused for violation of rule 32(f) could not be quashed.

(Para 11)

G.S. SAWHNEY, ADVOCATE,—*for the Petitioner*

JUDGMENT

V.M. Jain, J.

(1) This is a petition under Section 482, CRPC, filed by the accused-petitioner, Surinder Nath Sood, seeking quashment of the criminal complaint under sections 7(ii) and 16(i)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) read with Rule 32(e) and (f) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules) and the subsequent proceedings taken thereon by the CJM, Chandigarh.

(2) Annexure P2 is the copy of the criminal complaint dated 27th November, 2000, filed by the Chandigarh Administration, against the accused-petitioner, Surinder Nath Sood, about the aforesaid provisions of the Act and the Rules. It has been alleged in the criminal complaint that on 31st July, 2000 at 11 a.m., Sh. M.K. Sharma, Food Inspector, inspected the premises of Surindra Traders, Sector 22 C, Chandigarh, belonging to accused, Surinder Nath Sood, and found

him in possession of about 20 packets of 500 gms each of "Suji Rusk" for public sale in his shop and the Food Inspector demanded sample of Suji Rusk for analysis and examination from the accused, by giving him necessary notice. It was further alleged that at that time, the Food Inspector had associated Anil Kumar as a witness to watch the process of sampling. It was alleged that the Food Inspector purchased 3 packets of 500 gms each of Suji Rusk from the accused for analysis, against cash payment and thereafter those packets were duly sealed and a spot memo was also prepared by the Food Inspector with regard to the entire proceedings. It was alleged that one sealed part of the sample along with a copy of memo on Form VII was sent to the Public Analyst, Haryana, Chandigarh, for analysis and examination in a sealed packet by hand, under intimation to the local Health Authority, UT, Chandigarh, and a copy of the memo in Form VII, bearing the seal impression, was separately sent to the Public Analyst in a sealed envelope, while the remaining 2 sealed parts/packets of the sample, along with 2 copies of memo in Form VII were deposited with the local Health Authority, UT, Chandigarh, in a sealed cover, for safe custody. It was alleged that the report of the Public Analyst, Haryana, Chandigarh, was received through local Health Authority, UT, Chandigarh, according to which "Batch No. and month of year of manufacturing/packing, are not mentioned/printed on the label of the sample, as required under Clauses (e) and (f) respectively of Rule 32 of the Rules. Therefore, the same has been found to be mis-branded." It was alleged that since the accused, Surinder Nath Sood, possessed mis-branded Suji Rusk for Public sale, in his shop, he had committed the aforesaid offences.

(3) On receipt of the aforesaid complaint, the accused-petitioner was summoned by the learned CJM. Aggrieved against the same, the accused-petitioner, Surinder Nath Sood, has filed the present petition, seeking quashment of the criminal complaint and the subsequent proceedings, taken thereon, inter alia on the ground that Rule 32 of the Rules had been declared as ultra vires, being beyond the rule making power by the Hon'ble Supreme Court in 1972 FAC, 1 and the same had been followed by this Court in various authorities. It was further alleged that in the present case, the article had remained in the same condition as it was supplied to the dealer by the manufacturer and there was no allegation that the same was tampered with or was not properly stored or that it was not in the same condition, when it

was sold to the Food Inspector and as such the proceedings against the accused-petitioner, who was a dealer, were liable to be quashed on this ground as well, as the said packets of Suji Rusk were manufactured by Magan Standard Bakery, Delhi. It was alleged that the manufacturer, Magan Standard Bakery, had not been impleaded as accused in the present complaint and on this ground as well, the present proceedings against the accused-petitioner were liable to be quashed.

(4) I have heard learned counsel for the petitioner and perused the record carefully.

(5) The first point submitted before me by learned counsel for the accused-petitioner was that Rule 32(e) of the Rules was declared ultra vires by the Hon'ble Supreme Court in the case reported as *Dwarka Nath and anr v. Municipal Corporation of Delhi (I)*, and on that ground, the proceedings under the Act and the Rules, initiated by the Chandigarh Administration, were liable to be quashed. It was further submitted that the law laid down by the Hon'ble Supreme Court in the aforesaid authority was followed by this Court in the various authorities, reported as *Jagan Nath Dalip Singh v. The State of Punjab (2)*, *Ajit Singh v. The State of Punjab and ors*, (3) *Om Parkash v. The State of Punjab (4)*, and *M/s Punjab Food Products v. Punjab State, Criminal Misc 12925-M of 1995* decided by Hon'ble Mr. Justice V.K. Bali, on 4th May, 2001. Reliance was also placed on the law laid down in the cases reported as *Bharat Arora and ors v. State of Punjab (5)*, *Babulal v. The Food Inspector (6)* and *KV Ramamurthi and ors v State of M.P (7)*.

(6) In 1972 FAC, 1(supra), the Hon'ble Supreme Court had considered the provisions of Section 23 of the Act and Rule 32(b) and (e) of the Rules, which existed at the relevant time. After considering the abovesaid provisions of the Act and the Rules, it was held by their Lordships of Supreme Court that Rule 32 (e) of the Rules (as it existed

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- (1) 1972 FAC I
 - (2) 1993 Criminal Law Times 330
 - (3) 1993 Criminal Law Times 160
 - (4) 2000 (4) RCR 769
 - (5) 1999 (3) CCC 391 (Delhi)
 - (6) 1992 All India Prevention of Food Adultration Journal 339
 - (7) 1990 All India Prevention of Food Adultration Journal 533

at the relevant time) was beyond the rule making power given under Section 23(1)(d) of the Act (as it existed at the relevant time) and as such, the accused could not be convicted for any violation of clause (e) of Rule 32 of the Rules as the said provision was invalid. However, with regard to Rule 32(b) of the Rules (as it existed at that time), it was held by their Lordships of Supreme Court that their Lordships were not inclined to accept the contention of the counsel for the accused that clause (b) of Rule 32 of the Rules was beyond the rule making power of the Central Government under Section 23(1) (d) of the Act. It was further held in the said authority that their Lordships were of the opinion that clause (b) of Rule 32 of the Rules, was a valid rule.

(7) From a perusal of the above, it would be clear that Rule 32(e) of the Rules, which existed at the relevant time, was declared as invalid, being beyond the rule making power, under Section 23(1)(d) of the Act, as it existed at the relevant time, whereas, Rule 32(b) of the Rules (as it existed at the relevant time) was held to be a valid rule and was not beyond the rule making power of the Central Government, under Section 23(1)(d) of the Act (as it existed at the relevant time).

(8) After the aforesaid judgment of their Lordships of Supreme Court, Section 23 of the Act was amended by the Parliament, while rule 32 of the Rules was amended by the Central Government. Under Section 23(1-A)(d) of the Act, it has been provided that the Central Government may make rules to carry out the provisions of the Act and that the rules may provide for restricting the packing and labelling of any article of food and the design of any such packet or label with a view to prevent the public or the purchaser being deceived or misled as to the character, quality or quantity of the article or to preventing adulteration. In sub Clause (d) of Section 23(1-A), the words "or to preventing adulteration" had been added, vide Act No. 34 of 1976 w.e.f. 1st April, 1976. So far as Rule 32 of the Rules is concerned, it was substituted vide notification dated 29th April, 1987 (w.e.f. 30th April, 1989). Earlier sub Rule (e) of Rule 32 of the Rules specified that unless otherwise provided in those Rules, there shall be specified on every label a Batch No. or Code No., either in Hindi or English numerals or alphabets or in combination, provided that in case of food package weighing not more than 60 gms, particulars under

Clauses (d) or (e) need not be specified. As referred to above, Rule 32 of the Rules was substituted vide notification dated 29th April, 1987 w.e.f. 30th April, 1989. As per the amended Rule 32(e) of the Rules, it has been provided that every package of food shall carry a label and unless otherwise provided in those Rules, there shall be specified on every label a distinctive Batch No. or Lot No. or code No. either in numerals or alphabets or in combination, representing the Batch no. or Lot No. or Code No., 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 No. may be given at the bottom or at 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. It has also been provided that in case of carbonated water containers and the packages of biscuits, confectionery or sweets, containing not more than 60 gms but not more than 120 gms and food packages weighing not more than 60 gms, particulars under Clauses (d) and (e) need not be specified. It is further provided that in case of package containing bread and milk, including sterilised milk, particulars under Clause (e) need not be specified.....”

(9) From a perusal of the above, it would be clear that after the judgment of their Lordships of Supreme Court, in the case reported as 1972 FAC, 1 (supra), the Parliament had amended Section 23(1)(d) of the Act, whereas, the Central Govt had substituted Rule 32 of the Rules, including Sub Rule (e) of Rule 32 of the Rules. As per Rule 32(e) of the Rules, it has become necessary to give distinctive Batch No. or Lot No. or Code No. and this Rule had been framed by the Central Government, exercising the powers under Section 23(1)(d) of the Act, whereby the Central Government could frame Rules to carry out the provisions of the Act and those Rules might provide for restricting the packaging and labelling of any article of food, etc., in order to prevent adulteration. In the present case, the sample was taken by the Food Inspector from the premises of the accused-petitioner on 31st July, 2000 i.e. much after Section 23(1)(d) of the Act was amended and Rule 32 of the Rules had been substituted by the Central Government. Learned counsel for the accused-petitioner has failed to show that even after Section 23(1)(d) of the Act was amended, still Rule 32(e) of the Rules was beyond the rule making power, given under Section 23(1)(d) of the Act. Under these circumstances, it could not be said that the present Rule 32(e) of the Rules was invalid or

was beyond the rule making power of the Central Government, as provided under Section 23(IA)(d) of the Act (after the aforesaid amendment of the Act).

(10) The various other authorities, relied upon by learned counsel for the accused-petitioner, in my opinion, cannot be made the basis for holding that Rule 32(e) of the Rules was invalid. In 1993 Criminal Law Times 330 (supra), 1993 Criminal Law Times, 160 (supra), 2000 (4) Recent Criminal Reports, 769 (supra) and Criminal Misc 12925-M of 1995 (supra), the criminal complaints and consequent proceedings were quashed by this Court merely by referring to the law laid down by their Lordships of Supreme Court, in the case reported as 1972 FAC,1, without noticing that not only Rule 32(e) of the Rules had been substituted, but even Section 23(1)(d) of the Act had been amended. Thus, these judgments cannot be taken as a precedent for holding that Rule 32(e) of the Rules (even after the amendment of the Act and substitution of Rule 32 of the Rules), had been declared invalid. Similarly, the authority 1999 (3) CCC, 391 (Delhi) (supra), would be of no help to the petitioner, as in this authority as well, the amendment made in the Act and Rules had not been considered.

(11) In any case, in the present case, there is violation of not only the Rule 32(e) of the Rules, but also Rule 32(f) of the Rules. There is absolutely nothing on the record to show that Rule 32 (f) of the Rules had also been declared ultra vires of the Rule making power of the Central Government. Merely because Rule 32(e) of the Rules (as it existed at the relevant time) was declared invalid and beyond the rule making power of the Central Government under section 23(1) (d) of the Act, in the case reported as 1972 FAC,1 (supra), it could not be said that Rule 32(f) of the Rules was also invalid or was beyond the rule making power of the Central Government, as provided under Section 23(1)(d) of the Act. This is especially so when in 1972 FAC, 1 (supra), the Hon'ble Supreme Court had declared Rule 32(f) of the Rules (as it existed at the relevant time) as a valid rule. Nothing has come on the record to show that Rule 32(f) of the Rules is also invalid or beyond the rule making power of the Central Government. Infact, learned counsel for the accused-petitioner has failed to point out as to in what manner, Rule 32(f) of the Rules is invalid. Rule 32(f) of

the Rules, w.e.f. 30th April, 1989, provides that every package of food shall carry a label and it shall be specified on every label, the month and year in which the commodity is manufactured or pre-packed. In the present case, it was found by the public Analyst, in his report dated 31st August, 2000, copy Annexure P1, that not only the Batch No. was not mentioned on the sample, but even the month and year of manufacturing/packing had not been mentioned/printed on the label of the sample, as required under Clauses (e) and (f) of Rule 32 of the Rules. Since Rule 32(f) of the Rules, has not been declared invalid, the criminal complaint, filed against the accused-petitioner, for the violation of Rule 32(f) of the Rules, could not be quashed.

(12) The two authorities, relied upon by learned counsel for the accused-petitioner, one of Madhya Pradesh High Court and the other of Madras High Court, in my opinion, also would be of no help to the accused-petitioner. In 1992 All India Prevention of Food Adulteration Journal, 339 (supra), regarding Rule 32(e) of the Rules, the law laid down by their Lordships of Supreme Court, in 1972 FAC,1, was relied upon, without considering the subsequent amendments to the Act and the Rules, whereas with regard to Rule 32(f) of the Rules, it was held by the Madhya Pradesh High Court that the commodity in question i.e. Ghee, which was akin to butter, the alleged breach of Rule 32 of the Rules, was misconceived, as under Rule 32(f) of the Rules, it was directed that no declaration, as to the month and year, in which the commodity was manufactured/prepared, shall be required to be made on the package containing bread and any uncanned package of vegetables, fruits, ice cream, butter, cheese, fish, meat or any other like commodity. Thus, this authority, would not help the accused-petitioner, either for Rule 32(e) or for Rule 32(f) of the Rules. In 1990 All India Prevention of Food Adulteration Journal, 533 (supra), the Madras High Court was considering the provisions of Rule 32(e) and (f) of the Rules. In the reported case, it was observed that by introducing Clause (f), by way of amendment, the effect of the judgment of the Hon'ble Supreme Court, striking down Clause 32(e) had not at all been taken into account and Clause (f) had been added independently of Rule 32(e) and as such, it could not be said that by introduction of Clause (f), by way of amendment, Clause (e) could automatically be stated to have been revived. The

Madras High Court, striking down Rule 32(e), was very much in force and the benefit accrued from the judgment might go to the rescue of the petitioners.

(13) With respect to the Hon'ble Judge of the Madras High Court, it appears that the relevant provisions of the Act and Rules were not brought to the notice of his Lordship. As referred to above, Section 23(1)(d) of the Act was amended in the year 1976. Rule 32 of the Rules had been substituted w.e.f. 30th April, 1989. so far as Sub Rule (f) of Rule 32 of the Rules is concerned, it existed even earlier, prior to the substitution of Rule 32 w.e.f.30th April, 1989. Rule 32(f) of the Rules, prior to the substitution w.e.f. 30th April, 1989, required that unless otherwise in those Rules, there should be specified on every label, the month and year in which the commodity was manufactured or packed. After the substitution of rule 32 w.e.f. 30th April, 1989, Sub Rule (f) of rule 32 of the Rules, requires that every package of food shall carry a label and unless otherwise provided in those Rules, there shall be specified on every label the month and year, in which the commodity is manufactured or pre-packed. Thus, it would be clear that this Rule existed even prior to the date, when it was substituted w.e.f. 30th April, 1989. So far as Rule 32(e) of the Rules is concerned, as referred to above, this sub-Rule was substituted w.e.f. 30th April, 1989 and the Cental Government derived its powers in this regard from Section 23(1A)(d) of the Act, which was amended with effect from 1st April, 1976. In this manner, in my opinion, the law laid down by Madras High Court, in this authority, would also of no help to the accused-petitioner.

(14) It was then submitted before me by learned counsel for the accused-petitioner that the packets of "Suji Rusk", which were taken into possession by the Food Inspector, by way of sample, were in sealed packets and that the same were properly stored and were sold in the same condition in which these were purchased from the manufacturer/distributor and as such, the petitioner, a dealer, was protected under Section 19(2) of the Act and Rule 32(A) of the Rules. Reliance was placed on the law laid down by their Lordships of Supreme Court, in the cases *Rajaldas Gurunamal Pamanani versus State of Maharashtra (8)* and *P. Unnikrishnan versus Food Inspector, Palghat Municipality, Kerala State, (9)*.

(8) 1975 FAC I

(9) 1996 (2) FAC 25

(15) However, I find no force in this submission as well of the learned counsel for the accused-petitioner. Section 19(2) of the Act reads as under :

“A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulteration or misbranded article of food if he proves—

(a) that he purchased the article of food—

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(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 :—

“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 label, a warranty in Form VI-A.”

(16) From a perusal of the above, it would be clear that for the protection under Section 19(2) of the Act, the accused petitioner, who is a dealer, is required to prove that he had purchased the article of food, namely Suji Rusk, from any manufacturer, distributor or dealer, with written warranty, in the prescribed form and for this purpose, he was required to produce either separate warranty or a bill or cash memo, etc. in this regard.

(17) In the present case, there is absolutely nothing on the record to show that any such warranty, bill or cash memo was produced by the accused-petitioner before the Food Inspector at the time when the sample was taken or at any time subsequent thereof, either before the Food Inspector or before the Court, during evidence or otherwise.

Merely because the packets were properly stored and/or were sold in the same state, in which the same were purchased, by itself would not be sufficient to absolve the accused-petitioner of the offence committed by him, especially when neither there is any written warranty nor there is any bill, cash memo or label produced by the accused-petitioner in this regard.

(18) The two authorities relied upon by learned counsel for the accused-petitioner, in my opinion, would be of no help to the accused-petitioner. In 1975 FAC,1 (supra), it was held by their Lordships of Supreme Court that in order to avoid the sale of adulterated/misbranded articles, a written warranty was enjoined in both the cases, in Section 19(2)(i) and (ii). It was further held therein that Section 19(2)(a) of the Act would provide a defence, where a vendor purchased an article of food from a licensed manufacturer/distributor or a dealer, with a written warranty. Again a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food, if he proved that he purchased the article from a manufacturer/distributor or dealer with a written warranty in the prescribed form. These salutary provisions were designed for the health of the nation and, therefore, a warranty was enjoined and no laxity should be permitted. It was further held in the said authority that Rule 12(A) contained a proviso that no warranty in such Form shall be necessary if the label of the article of food or the cash memo, delivered by the trader to the vendor, in respect of that article, contained a warranty certifying that the food contained in the package or container or mentioned in the cash memo was the same in nature, substance and quality, as demanded by the vendor. In 1996(2) FAC, 25 (supra), it was held by their Lordships of Supreme Court that taking into consideration Section 19(2) along with Rule 12(A), what was necessary for the accused to show was that he had purchased the article from a manufacturer/distributor or dealer with a written warranty, in the prescribed form. In the reported case, admittedly, there was a bill Ex D1, which contained the warranty and it was the admitted case that the tin purchased from the alleged manufacturer was sold to the Food Inspector in the same form and in the same condition. It was under those circumstances, that it was held by their Lordships of Supreme Court that the requirements of

Section 19(2) read with Rule 12(A) were satisfied for the purposes of the defence taken by the accused.

(19) In the present case, the case is still at the stage of evidence of the complaint. The accused has yet to produce his defence. There is absolutely nothing on the record to show that the accused-petitioner had purchased the packets of 'Suji Rusk' from a manufacturer/dealer or distributor with a written warranty, nor there is anything on the record to show that he had purchased the same against any bill or cash memo, nor there is anything on the record to show that the label thereon, contained any warranty, etc. In this regard. Under these circumstances, at this stage, the criminal complaint and the proceedings taken thereon, cannot be quashed only on the ground that the accused-petitioner is a dealer or that he had stored the article of food in the same condition, in which he had purchased the same, in the absence of any warranty, bill or cash memo or label.

(20) No other point has been urged before me.

(21) For the reasons recorded above, I find no merit in this petition and the same is hereby dismissed.

R.N.R.

Before M.L. Singhal, J

M/S PUNJAB STEEL CORPORATION —*Petitioner*

versus

M.S.T.C. LTD—*Respondent*

C.R. No. 1427 of 2001

3rd July, 2001

Code of Civil Procedure, 1908—0.18 Rl. 3—Several issues—Plaintiff leading evidence on issue onus of which lay on it and closing evidence in affirmative without expressing any reservation to adduce evidence by way of rebuttal—Defendant leading evidence onus of which lay on it—Whether plaintiff entitled to adduce evidence to rebut the evidence led by the defendant—Held, yes.