

THE HIGH COURT OF MADHYA PRADESH BENCH GWALIOR
(Single Bench – Rajendra Mahajan J.)
Miscellaneous Criminal Case No.11644/2016.

In-charge, Hindustan Lever Limited,
(Now known as Hindustan Unilever
Limited).

Petitioner.

Versus

The State of Madhya Pradesh,
Through : S.S.Kushwaha,
Food Inspector, Gwalior (M.P.)

Respondent

For petitioner :- Shri Surendra Singh, learned
Senior Advocate with Shri
Saurabh Agrawal learned
counsel,
For respondent/State :- Shri Rajesh Pathak, learned
Public Prosecutor.

ORDER.

(Passed on the 23rd day of November, 2017)

This petition has been filed under Section 482 of the CrPC for quashment of the complaint of Criminal Case No.2473 of 2007 pending before the Court of Judicial Magistrate, First Class, Gwalior insofar as the complaint is related to the petitioner.

2. The facts which are necessary for adjudication of the petition are given below :-

2.1 On 21.12.1996, S.S.Kushwaha, the Food Inspector Flying Squad Gwalior, visited the shop of the firm Ashok Kumar Madibhai Patel and Company (for short 'the firm') situated at Jiyaji Chowk, Gwalior, which is the distributor, stockist and seller of the food products marketed by the Brooke Bond Lipton India Ltd in Gwalior region. He saw Manish Kumar selling from the shop the packages of "Top Ramen instant noodles" (for short "the noodles") to customers. He doubted the noodles are adulterated and misbranded. Thereupon, he introduced himself and made a detailed enquiry from him. He (Manish Kumar) told him that he is the cashier of the firm, and he also manages the business affairs of the firm at Gwalior. The firm is proprietary and the owner of the firm is Ashok Kumar Patel. The noodles were purchased in the wholesale from M/s K.S.Enterprises Govindpura Bhopal. He asked Manish Kumar to show him the license for the sale of the noodles and a document of a nominee as per the provisions of Sections 7(3) and 17(2) of the Prevention of Food Adulteration Act 1954 (for short

“the PFA Act’). But he did not produce the relevant documents thereto. He purchased three packages of the noodles weighing 300 grams each, month of packaging 10/96, batch No.XG from Mansih Kumar on payment after showing his intention that he would get the noodles analyzed by the Public Analyst. On the spot, he sealed the three packages in accordance with the provisions of the PFA Act and the Prevention of Food Adulteration Rules 1955 (for short “the rules) in the presence of Manish Kumar and the panch witnesses. Later, he sent one of the sample packages to the Public Analyst, State Food Laboratory, Bhopal through local Health Authority district Gwalior. As per the report dated 29.1.1997 of the Public Analyst R.P.Shrivastava, the sample package tested positive for MonoSodium Glutamate (for short ‘MSG’). Thus, the sample package is misbranded.

2.2 After receiving the report of the Public Analyst, S.S.Kushwaha made further inquiry into the matter. In the course of which, he came to know that the Paam Eatables Ltd has been producing the noodles

in the brand name of the "Top Ramen instant noodles" for the "Indo Nissin Foods Ltd" under an agreement dated 8.7.1996. The former stock transfers the noodles so produced to the latter which has appointed the Brooke Bond Lipton India Ltd, the sole selling agent of the noodles in the territory of India. M/s K.S Enterprises Bhopal is one of the distributors and stockists of the Brooke Bond Lipton India Ltd, which had sold the noodles to the firm in the wholesale.

2.3 S.S.Kushwah got particulars from the aforestated companies regarding the licenses and the nominations under the provisions of Sections 7(3) and 17 (2) of the PFA Act. Thereafter, he sought the prosecution sanction in terms of Section 20 of the PFA Act from the Local Health Authority, Gwalior, which has granted prosecution sanction vide order dated 20.3.1998.

2.4 On 8.7.1998, S.S.Kushwaha filed a complaint mentioning therein the aforestated facts against 18 persons including the petitioner for being prosecuted under Sections 7 (2) (3) of the PFA Act

with Rule 50 of the Rules and Sections 14 and 14(A) r.w 16 (1) (a) (i) and (ii) of the PFA Act in the Court of Additional Chief Judicial Magistrate, Gwalior. The complaint came to be registered as Criminal Case No.2473 of 2007 (for short "the case"). Later, the case is transferred to the Court of J.M.F.C Gwalior.

3. Learned Senior Counsel Shri Surendra Singh for the petitioner having referred to the report of Public Analyst dated 29.1.1997 in detail submitted that the Public Analyst has declared the noodles misbranded because it tested positive for MSG and there was no declaration of MSG over the package of sample. Therefore, it is prima facie a case of violation of Rule 42 (s) of the Rules. He further submitted that the report is silent on the two points namely percentage of MSG present in the sample and MSG is added in the sample from outside source or it is present in natural form. He contended that the declaration as per Rule 42 (S) of the Rules is mandatory only when MSG is added from outside source. Since MSG has not been added in the noodles by the manufacture the declaration as per

the said rule over a package of noodles is not required. In support of the contention, reliance is placed upon the decisions rendered by the Madhya Pradesh High Court and Chhattisgarh High Court in the matters of C.L.Yadav and another Vs. State of M.P and another, 2007 (1) FAC 357, and Vinay Hegde Vs. State of Chhattisgarh and others, 2012 (2) FAC 375, respectively. After referring to the orders of the Calcutta High Court and the Bombay High Court, he further submitted that the Brooke Bond Lipton India Ltd is amalgamated with the Hindustan Lever Ltd, now known as Hindustan Unilever Ltd, with effective from 20.3.1997. He further submitted that the alleged offence committed by the Brooke Bond Lipton India Ltd in the year 1996 i.e. before its merger with the Hindustan Lever Ltd. He contended that as per the settled law, the criminal liability of the Brooke Bond Lipton India Ltd cannot be transferred to the Hindustan Lever Ltd on amalgamation. In support of the said contention, reliance is placed upon a decision rendered by the Bombay High Court in the case

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(2) FAC 4. He also drew the attention of this court to an order dated 31.3.2016 passed by the Food Safety and Standards Authority of India regarding the clarification of use of MSG as flavour enhancer in seasoning for Noodles and Pastas and its letter dated 2.8.2016 regarding the pending cases under the PFA Act. Upon these submissions, learned Senior Counsel for the petitioner prayed to quash the complaint and subsequent proceedings of the case in respect of the petitioner.

4. In reply, learned Public Prosecutor admitted that the Public Analyst described the sample misbranded on the ground that the contents of its tested positive for MSG. Thus, the declaration of MSG on the packages of the noodles by the manufacture is mandatory as per the Rule 42(S) of the Rules. But there was no such declaration on the sample package. He submitted that the Brooke Bond Lipton India Ltd is amalgamated with the petitioner Hindustan Lever Ltd. Therefore, the prosecution of the petitioner is proper

for the offences committed by the Brooke Bond Lipton India Ltd under the PFA Act. Upon these submissions, he prayed for the dismissal of the petition moved by the petitioner.

5. I have considered earnestly the rival submissions made at the Bar and perused the entire material on record.

6. In the present case, the following two questions fall for consideration before me :

(I). When the compliance of Rule 42 (S) of the Rules is required?

(ii). Whether the noodles can be held to be misbranded because of the positive test of MSG?

7. To answer the first question, Rule 42 (S) of the Rules is reproduced below :

“Every advertisement for and/or a package of food containing added Monosodium Glutamate, shall carry following declaration namely :

This package of(name of the food) contains added MONOSODIUM GULTAMATE : [NOT RECOMMENDED FOR INFANT BELOW-12 MONTHS]"

As per language of the rule, in my considered view the word "added" has great significance. The aforesaid declaration is required only when MSG is added from outside source in a particular food product and such declaration is not required when MSG is present in the food product in natural form. A Public Analyst can describe a food product misbranded in terms of Rule 42 (S) of the Rules only when he gives a definite finding based on test-results that MSG is added in the food product from outside source. My aforesaid interpretation of Rule 42 (S) of the Rules is fortified by the decisions rendered in C.L. Yadav and another (Supra) and Vinay Hegde and Another (Supra).

8. To answer the second question, the order dated 31.3.2016 passed by the Food Safety and Standard Authority is relevant in the context of use of MSG, therefore, it is reproduced below :

"Order".

Subject : Clarification on use of Monosodium Glutamate as flavour enhancer in seasoning for Noodles and Pastas.

Under Regulation 3.1.11 of the Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011. Monosodium Glutamate (MSG), a flavour enhancer bearing INS number 621 may be added to specified foods as per the provisions of Appendix A, subject to Good Manufacturing Practice (GMP) level and under proper declaration as provided in 2.4.5 (18) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

2. It is widely known that Glutamate is naturally found in several common foods such as milk, spices, wheat, vegetables, etc. MSG is the sodium salt of Glutamic acid and one of the many forms of glutamate. Presently, there is no analytical method to determine whether MSG was added to the product during its manufacture or was naturally present in the product. This can however be checked through inspection of the manufacturing premises.

(underlined by me).

3. To prevent, both, avoidable harassment/prosecution of Food Business Operators (FBOs) as well as to ensure that consumers are facilitated to exercise informed choices in respect of what they eat, proceedings may be launched against FBOs only when the labels state "No MSG" or "No added MSG" and MSG is actually found in the impugned foodstuff. Commissioners of Food Safety are advised that specific enforcement/prosecution may not be launched against the manufacturers of Noodles/Pasta on account of presence of MSG/Glutamic Acid unless, it is ascertained by the department that Monosodium Glutamate

flavour enhancer (INS E-621) was deliberately added during the course of manufacture without required declaration on the label as indicated in Para 1 above".

(underlined by me).

As already stated that the Public Analyst has not clarified in its report whether the MSG in the sample is added from outside or it is naturally present in the product. Therefore, if the sample tested positive for MSG, it cannot be made a ground for prosecution of the petitioner for violation of Rule 42(S) of the rules in view of underlined portions of the said order.

9. In the present case, complainant S.S.Kushwaha, the Food Inspector, collected the samples on 21.12.1996 and the case is pending before the J.M.F.C Court as on 9.1.2017 for the appearance of accused Manish Kumar meaning thereby, the prosecution has not so far commenced. In this background, the circular letter dated 2.8.2016 issued by the Food Safety and Standard Authority of India matters in the case, which is reproduced below :

"To,
The Commissioners of Food Safety,
All States/UTs Governments.

Subject : Cases pending under PFA Act and other orders repealed by FSS Act, 2006 (Schedule 2)-reg.

Sir,

It is understood that a large number of cases under the Prevention of Food Adulteration Act & order/orders specified in Schedule 2 of the Food Safety and Standards Act, 2006, are still pending in various courts and tribunals across the country. In a sizable number of such cases, the offences alleged to have been committed may not be very serious in nature and the penalties/punishments prescribed for such offences are also not substantial. The pendency of such cases for a long time not only burdens the judicial system, but also diverts the scarce resources of the government in pursuing these matters rather than deploying them in effective implementation of the provisions of the FSS Act to ensure safe and wholesome food for the consumers.

2. In the view of the above, Commissioners of Food Safety of all States/UTs may like to examine all pending cases against Food Business Operators under provisions of various enactments & orders repealed on enactment of Food Safety and Standards Act, 2006 and take a view on withdrawal of the same, if considered appropriate. The results of the exercise may please be shared with FSSAI from time to time.

Yours faithfully.

-Sd-

Raj Singh.

Head (legal)".

10. Upon the perusal of the orders passed by the

High Court of Calcutta and the High Court of Bombay, the Brooke Bond Lipton India Ltd is merged with Hindustan Lever Ltd, the petitioner herein with effect from 20.3.1997. It is settled law that a criminal liability of transferor company into the transferee company cannot be transferred or fastened on transferee company upon its amalgamation, because with the amalgamation, the transferor company suffers a civil death and it is ceased to exist. In the present case, the offence is occurred on 21.12.1996 and the Brooke Bond Lipton India Ltd merged with the Hindustan Lever Ltd on 20.3.1997. Thus, the Brooke Bond Lipton India Co. Ltd. committed the alleged offence before its merger with the petitioner Hindustan Lever India Co. Ltd. Consequently, the petitioner cannot be prosecuted. This view of mine is strengthened by a decision rendered in Hindustan lever Co. Ltd. (Supra).

11. For the aforesaid reasons and discussions, I hold that the petitioner cannot be prosecuted for the charges as mentioned in the complaint. Therefore, I

allow this petition and quash the complaint and the subsequent proceedings in Criminal Case No.2473 of 2007 in respect of the petitioner "only" in exercise of powers under Section 482 Cr.P.C.

12. Interim order dated 19.4.2017, whereby the trial proceedings against the petitioner has been stayed, shall stand withdrawn.

**(Rajendra Mahajan)
Judge**

Rks.