

SUPREME COURT OF INDIA

Consumer Action Group

Vs.

Cadbury India Ltd.

(Dr. A. S. Anand , C.J., K. T. Thomas and S. Rajendra Babu JJ.)

Crl.A.No.917 of 1995

12.01.2000

ORDER

DR. A.S. ANAND, C.J.

1. The appellant, Consumer Action Group, filed a complaint, being ST No. 55/ 90 in the Court of the learned Additional Chief Judicial Magistrate alleging that the complainant had purchased two packets of Cadbury's Butter Glucose Biscuits from Accused No. 3 - M/s. S. Pottivelu & Sons, S.P. Central Stores, M.G. Road, Trivandrum on 20.12.1989 and those packets were found not labelled in accordance with the requirements of Rule 32(b) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules'). It was alleged that there was misbranding of an article of food within the meaning of Section 2(ix)(k) and as a consequence there has been contravention of the provisions of Section 7(2) punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act'). Along with the complaint, the complainant filed Sanction Order No. PFA2-130714/89/DHS dated 22.1.1990 issued by the Director, Health Services and a cash memo dated 20th December, 1989 issued by M/s. S. Pottivelu & Sons (A-3), evidencing sale of "misbranded biscuits". The learned trial court took cognizance of the matter and issued process against A-1 to A-3. The respondent-herein (A-1) filed a petition under Section 482 Cr.P.C. in the High Court on 13th November, 1991, seeking quashing of the complaint and proceedings taken by the trial court thereon which was allowed. Aggrieved thereby, the complainant has filed this appeal by special leave.

2. The appeal came to be listed for hearing before a Division Bench of this Court but since there was difference of opinion between the two learned Judges, constituting the Bench, on an interpretation of Section 20 of the Act, the matter was referred to a three Judge Bench. That is how, the appeal is before us.

3. We find that the complaint, as such, filed by the appellant, was not maintainable on facts and that being the position, we are not inclined to express any opinion on the question, on which there was difference of opinion between the two learned Judges of the Division Bench.

4. We have perused the complaint. In the complaint, it is stated in paragraph 2 that the complainant had purchased from A-3, two packets of Cadbury's Butter Glucose Biscuits manufactured by M/s. Hindustan Cocoa Products Ltd. (A-1). A cash memo was filed along with the complaint in support of the averments contained in paragraph 2. The cash memo records sale of "Biscuits" for Rs. 4 on 20th of December. There is no mention, whatsoever of the brand name of the biscuits which were allegedly sold by A-3 to the complainant. Under the circumstances, it was not possible to maintain the complaint alleging 'misbranding' unless the cash memo, which was made the basis of the complaint, contained the brand name of the sold product.

5. That apart, we find that when sanction was sought for by the appellant, the Director Health Services, Trivandrum granted sanction on 22nd of January, 1990 to prosecute A-1 only. No sanction for prosecution of A-2 or A-3 was granted. How the trial court issued process against A-2 and A-3 is not understandable. That apart, in the absence of sanction for prosecution of A-3, we fail to appreciate how A-1 could be prosecuted, in the established facts as emanating from the complaint. Before issuing process, the trial court ought to have looked into all these aspects. It failed to do so. There was nothing in the complaint which could justify issuing of process against A-1, since the cash memo did not show the sale of any misbranded food article. The trial court ought not to have taken cognizance of the complaint which did not even lay down proper factual matrix for proceeding further. The High Court, therefore rightly, quashed the complaint and the proceedings taken by the learned Additional Chief Judicial Magistrate, Trivandrum. We uphold the order of the High Court, though for different reasons stated herein above.

6. The appeal fails and is dismissed. No costs.