

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 20TH DAY OF DECEMBER 2022 / 29TH AGRAHAYANA,
1944

CRL.MC NO. 3354 OF 2015

AGAINST CC 3240/2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS

-II, THIRUVANANTHAPURAM

PETITIONERS:

- 1 M/S.PARLE AGRO PVT.LTD.
OFF WESTERN EXPRESS HIGHWAY
SAHAR - CHAKALA ROAD
PARSIWADA, ANDHERI (E)
MUMBAI - 400 009.
- 2 M/S.PARLE INTERNATIONAL
(UNIT OF PARLE AGRO PVT.LTD),
VILLAGE - VANIVALI, PATALGANGA
MAHARASHTRA - 410 220.
- 3 PARKASH CHAUHAN
CHAIRMAN AND MANAGING DIRECTOR,
REGD.CORPORATE HEAD OFFICE,
OFF WESTERN EXPRESS HIGHWAY
SAHAR - CHAKALA ROAD,
PARSIWADA, ANDHERI (E)
MUMBAI - 400 099.
- 4 ALISHA CHAUHAN
DIRECTOR, PARLE AGRO PVT.LTD.,
OFF WESTERN EXPRESS HIGHWAY
SAHAR - CHAKALA ROAD,
PARSIWADA, ANDHERI (E)
MUMBAI - 400 099.
- 5 SCHAUNA CHAUHAN
DIRECTOR, PARLE AGRO PVT.LTD.,
OFF WESTERN EXPRESS HIGHWAY
SAHAR - CHAKALA ROAD
PARSIWADA, ANDHERI (E)
MUMBAI - 400 099.
- 6 NADIA CHAUHAN
DIRECTOR, PARLE AGRO. PVT.LTD.,
OFF WESTERN EXPRESS HIGHWAY

SAHAR - CHAKALA ROAD
PARSIWADA ANDHERI (E)
MUMBAI - 400 099.

BY ADVS.
SRI.MADHU RADHAKRISHNAN
SRI.NELSON JOSEPH

RESPONDENTS:

- 1 SENIOR INSPECTOR
OFFICE OF THE SENIOR INSPECTOR
LEGAL METROLOGY
THIRUVANANTHAPURAM PIN - 695 001.
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031.

BY SRI.NOUSHAD K.A, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
05.12.2022, THE COURT ON 20.12.2022 PASSED THE FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

Crl.M.C. No.3354 of 2015

Dated this the 20th day of December, 2022

ORDER

The manufacturer and the Directors of the fruit-based beverage popularly known as 'FROOTI' are facing prosecution for alleged violation of the provisions of the Legal Metrology Act, 2009 (for short 'the Act') and the Legal Metrology (Packaged Commodities) Rules, 2011 (for short 'the Rules'). Petitioners have invoked the jurisdiction of this Court under section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.'), challenging the complaint filed by the Inspector of Legal Metrology.

2. On 03.03.2014, the first respondent purchased a 1.5-litre pre-packed plastic bottled fruit-based beverage called 'FROOTI'. On the next day, he issued a notice to the manufacturer, alleging that the product manufactured by them

violated the provisions of rule 8(2) as well as rule 31(2) of the Rules. The reason alleged was that as a bottle not intended to be refilled, the product purchased by him did not contain the retail sale price printed on the 'principal display panel' and also that the font size of the declaration of MRP was not the same as that of the net quantity declaration and hence punishable under section 36(1) of the Act.

3. Immediately, a reply notice was issued on behalf of the petitioners to the first respondent, contending that the product satisfied the requirements of the Act and the Rules, and hence there was no violation. However, disregarding the reply notice, the first respondent filed a complaint on 18.08.2014 before the Judicial First Class Magistrate, Thiruvananthapuram, alleging violation of Rules 4, 6, 7(2), 9(1)(b), 9(3) read with rule 8(2) and 18 of the Rules, apart from section 18 and section 36(1) of the Act. Cognizance was taken as C.C No. 3240 of 2014 on the files of the Judicial First Class Magistrate's Court-II, Thiruvananthapuram. The manufacturer, the manufacturing unit, the Chairman and Managing Director and other Directors of the manufacturer are all arrayed as accused. The accused are seeking to quash the complaint.

4. Sri.Madhu Radhakrishnan, learned counsel contended that the prosecution initiated against the petitioners is an abuse of the process of court as it is instituted with malafides without any basis. It was contended that, despite the existence of a nominee under section 49 of the Act, petitioners have been arrayed as accused contrary to the statute. Learned counsel also argued that from the very complaint itself, it is evident that the product seized and produced before the court cannot evidence the commission of any offence under the Act and the Rules, since the contents of the seized package were wholly removed. It was further submitted that the allegation that on the bottle of 'FROOTI', the information on retail sale price was not printed on the label, as mandated by the Rules, is baseless and also that the numerals declaring the MRP and packing date were of sufficient size. According to the learned counsel, the allegation in the complaint is based upon a complete misunderstanding of the statutory provisions, then in force, especially the definition of the terms 'label' and 'principal display panel' as every detail and information contemplated by the Act and the Rules were followed.

5. Sri.K.A.Noushad, learned Public prosecutor opposed the

petition and contended that as per Rule 6, every package has to "bear thereon or on the label", the details regarding MRP and requisite information as contemplated under the Rules and the Act and that in the instant case, there was no compliance of the Rules. It was further contended that the name of the nominee was never informed to the first respondent, despite two show cause notices and hence petitioners cannot take the cover of section 49 of the Act. The learned Public Prosecutor also contended that the scope of interference under section 482 Cr.P.C is very limited and that the case can only be decided on merits, that too after a trial.

6. I have considered the rival contentions.

7. Section 18 of the Act stipulates that every pre-packaged commodity must bear thereon, such declarations and particulars in such manner as may be prescribed. The Rules have prescribed the manner in which the declarations and particulars are to be provided.

8. The bottle of 'FROOTI' seized by the first respondent on 03.03.2014 is alleged to be not conforming to the mandatory declarations prescribed under the Rules. The criminal proceedings have been initiated alleging violation of two specific

requirements: (i) the declaration of MRP was not printed on the label and was not legible, and (ii) the font size of the numerals of MRP and packing date was not of the required size.

9. It is worthwhile to mention that the Act and the Rules had undergone amendments in the year 2017. Since the product involved in this case was purchased by the 1st respondent on 03.03.2014, the Rules as in force on that date alone are applicable.

10. To appreciate the contentions advanced, it is necessary to refer to certain provisions of the Act and the Rules. Section 2(f) of the Act, defines the term 'label' and is as below:

"S.2(f) "label" means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity."

11. Rule 2(h), Rule 2(k) and Rule 2(p) of the Rules define the terms 'principal display panel', 'retail package' and 'standard package'. For the purpose of reference, the said provisions are extracted as below:

R.2(h) "principal display panel", in relation to a package, means the total surface area of the package where the information required under these rules are to be given in the following manner, namely:

- (i) all the information could be grouped together and given at one place ; or*
- (ii) the pre-printed information could be grouped together*

and given in one place and on line information grouped together in other place.

R.2(k) "retail package" means the packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein and includes the imported packages:

R.2(p)"standard package" means a package containing the specified quantity of a commodity."

12. Rule 6 specifies the declarations that are to be made on every package. In order to have a better comprehension of the contentions raised, it is relevant to extract Rule 6(1)(e) and Rule 9(3) which are as follows:

*"R.6(1). Declarations to be made on every package. -
(1) Every package shall bear thereon or on the label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to*

(a) xxx

(b)xxx

(c)xxx

(d)xxx

(e) The retail sale price of the package:

Provided that for packages containing alcoholic beverages or spirituous liquor the State Excise Laws and the rules made thereunder shall be applicable within the State in which it is manufactured and where the state excise laws and rules made thereunder do not provide for declaration of retail sale price, the provisions of these rules shall apply.

R.9(3) Where a package is provided with an outside container or wrapper such container or wrapper shall also contain all the declarations which are required to appear on the package except where such container or wrapper itself is transparent and the declarations on the package itself are easily readable through such outside container or wrapper:

[Provided that no such declarations on the inner package as required under the said rules is required, if the inner package

does not contain any declaration on its outer cover.]”

13. The provisions of Rule 8 are also relevant and the said rule is also extracted as below:

"R.8. Declaration where to appear. - (1) *Every declaration required to be made under these rules shall appear on the principal display panel:*

Provided that the area surrounding the quantity declaration shall be free from printed information.

- (a) above and below by a space equal to at least the height of the numeral in the declaration, and*
- (b) to the left and right by a space at least twice the height of numeral in the declaration.*

(2) For soft drink, ready to serve fruit beverages or the like, the bottle which is returnable by the consumer for being refilled, the retail sale price may be indicated either on the crown cap, or on the bottle or on both and if the retail sale price is indicated on the crown cap or the bottle, it is sufficient to indicate the retail sale price in the form of 'MRP Rs..../₹'

14. The declaration of MRP and the date of manufacture are online information. It is printed using a printer. The pre-printed information includes details of the manufacturer, the net contents, the ingredients etc. The question that requires an answer is whether the online information when grouped together and printed on the neck of the bottle of 'FROOTI' violated the provisions of rule 8(2). The first respondent insists that the retail sale price (which forms the online information) can be printed on the bottle, only if the product is a soft drink or ready-to-serve

fruit beverage and the bottle is returnable by the consumer for being refilled.

15. A perusal of the rules indicates that the interpretation canvassed on behalf of the first respondent is not contemplated either by the Rules or by the Act. As per rule 8(1), every declaration ought to appear on the principal display panel. However, Rule 2(h) defines the principal display panel as the total surface area of the package. An option is also given to the manufacturer to print all the information (both pre-printed and online) either grouped together at one place on the principal display panel, or the pre-printed information grouped together and given at one place and the online information grouped together and given at another place of the principal display panel. In the instant case, the pre-printed information is given on the wrapper encircling the bottle, while the online information, though grouped together, is printed on the neck of the bottle.

16. As mentioned in the preceding paragraph, primarily, the declaration required by the rules must appear on the principal display panel either grouped together in one place or at

different places. Though in ordinary perception, the principal display panel will mean only the wrapper encircling or affixed on the bottle, the Rules perceive the principal display panel differently. The definition of the aforesaid term regards the total surface area of the package as the principal display panel. When Rule 8(1) directs that the total surface area of the package as the place where the information can be given in the manner specified, Rule 8(2) stipulates that for soft drinks and ready-to-serve fruit beverages or the like, to indicate the retail sale price either on the crown cap or on the bottle or on both, if the bottle is one which can be refilled. There is nothing in Rule 8(2) which indicates the clause to be restrictive in character. Rule 8(2) can be regarded only as an addition to and not as a restriction or exception to Rule 8(1). In other words, Rule 8(2) is only an enabling provision, enabling the manufacturer to have the option to specify those required details printed in the places mentioned in the sub-rule also.

17. In this context, it is appropriate to refer to the definition of the word 'label' as appearing in section 2(f) of the Act. As per the said definition, 'label' includes any written,

marked, stamped, printed or graphic matter affixed to or appearing upon any pre-packaged commodity. Therefore, even the print of MRP and other online information on the bottle will, by the definition itself, become a label.

18. In fact, the contention of the learned Public Prosecutor by referring to Rule 6 that every package shall bear thereon or on the label securely affixed thereto, a definite plain and conspicuous declaration about the retail sale price of the package, though impressive on first blush, the same can find an answer by reference to the definition of the word label in section 2(f) of the Act. Viewed in the light of the definition, it can be understood that every package is required to have the print of the MRP either on the package or on the label securely affixed. The first respondent has no case in his complaint that the retail price has not been affixed on the bottle. In such circumstances, the mere affixing of the retail price and the other online information grouped together and printed on the neck of the bottle satisfy the requirements under the Rules then in force, and there is no violation of rule 8(2) as made out from the complaint.

19. In a recent decision, in **Pepsico India Holdings Pvt. Ltd. v. State of Kerala and Another** (2022 (1) KHC 141), this Court had held that the authorization to indicate the details on the bottle of the neck or on the crown cap of the bottle, as provided under R.8(2), is an exception to Rule 8(1), and is applicable only to the soft drinks and fruit-based beverages packed in bottles which are returnable for refilling. Reliance was placed on Rule 7 to come to the conclusion that the principal display panel is confined to certain areas and excludes the neck of the bottle except in the case of refillable bottles. The aforesaid decision can be distinguished. Though the facts in that case related to a product purchased in 2013, what was pointed out to the Court was only the Rules after the amendment in 2017. Till 2017, the neck of the bottle was not excluded from the 'principal display panel'. Thus a distinction can be drawn in this case from **Pespico's case** (supra), since Rule 7 as it stood prior to the amendment of 2017, did not exclude any part of the bottle from the term 'principal display panel'.

20. In this context, a reference to the decision in **Danone Narang Beverages Pvt. Ltd. v. State of Karnataka and Ors.**

MANU/KA/2020/2016 is apposite. The Karnataka High Court had held in the aforesaid decision that Rule 8(2) is only an enabling provision and not a restrictive provision. I am in agreement with the said decision.

21. Since at the time the first respondent purchased the product of the petitioners, the rules treated the entire bottle itself as a principal display panel and since the information, both online and pre-printed, could be affixed separately or together on the principal display panel, this Court is of the view that there is no legal basis for the allegation of infraction of Rule 8(2).

22. The second violation alleged in the complaint is that the font size of the numerals of MRP and packing date was not of the required size. To appreciate the above complaint, it is necessary to bear in mind that the pet bottle purchased by the first respondent was a 1.5 litre bottle. Rule 7 provides the minimum height of the numerals and a tabular column is given in the rules specifying the minimum height of the numerals. For the purpose of easier comprehension, the table is extracted as below:

TABLE I

Minimum Height of Numeral

Serial Number	Net quantity in weight/volume	Minimum height in mm	
		Normal case	When blown, formed, molded, embossed or perforated on container
1	Upto 200g/ml	1	2
2	Above 200g/ml and upto 500g/ml	2	4
3	Above 500g/ml	4	6

23. A glance at the above table will indicate that if the net quantity of the product is above 500g or 500 ml, the minimum height of the numerals must be 4mm in normal cases and it must be 6mm when the numerals are blown, formed, molded embossed or perforated on the container. In the instant case, the allegation is that the height of the numeral is not 6mm. On a perusal of the complaint, it is evident that the product in question is not stated to be containing any blown, formed, molded embossed or perforated numerals on the container. In other words, the height of the numeral needs to be only 4mm as in the normal case and not 6mm as alleged in the complaint. In the absence of any specific allegation in the complaint that the product purchased by the first respondent, contained any blown,

formed, molded, embossed or perforated numerals, the allegation of the requirement of a minimum height of 6mm for its numerals, is without any basis.

24. It is necessary to mention at this juncture that in the complaint filed by the first respondent, it is specified that the sample package produced before the court has the name 'FROOTI' and one bottle of the commodity from which the contents have been removed as being perishable, is produced. In other words, what is produced before the court is only the plastic bottle, without the product or the commodity inside it. The removal of the commodity from the bottle has a significant impact as regards the allegations. The legibility and clarity of the label or the online information printed on the bottle become clear only with the commodity inside the bottle. Merely because the product or the commodity is perishable, it was not open for the Inspector to remove the commodity from the bottle without complying with the provisions of the Act or the Rules, as that will prejudice the accused during the prosecution. It is for this purpose that the Act read with the Rules stipulate that if the commodity is perishable, the provisions of section 451 Cr.P.C. is

required to be followed. There is no mandate or stipulation that enables the Inspector to remove the commodity from the bottle, rendering the accused to prejudice. The proceedings are liable to be quashed for this reason also.

25. Apart from the above, though there is an allegation that Rule 9(3) is violated, there is no mention as to how the said rule is violated. Therefore no offence can stand against the petitioners for violation of Rule 9(3) of the Rules.

26. Even though the learned Counsel for the petitioner had argued on the issue relating to non-prosecution of the nominee and illegal, prosecution of the Managing Director and other Directors of the company contrary to section 49 of the Act, I am of the view that since the entire complaint itself is required to be quashed, the question of non-prosecution of the nominee becomes only academic in nature. The said question is left open.

27. In view of the above discussions, this Court is of the considered view that the prosecution against the petitioners is an abuse of the process of law and is liable to be interfered with. Hence, I quash all proceedings against the petitioners in C.C. No.3240 of 2014 on the files of the Judicial First Class

Crl.M.C. No.3354/15

-:18:-

Magistrate's Court-II, Thiruvananthapuram.

The Criminal Miscellaneous Case is allowed.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF CRL.MC 3354/2015

PETITIONER'S/S' ANNEXURES

- ANNEXURE-A1 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE IST RESPONDENT TO THE IST PETITIONER
- ANNEXURE-A2 TRUE COPY OF REPLY DATED 18TH MARCH, 2015 ISSUED BY THE IST PETITIONER TO THE IST RESPONDENT
- ANNEXURE-A3 TRUE COPY OF ONE OF THE REPLIES DATED 12TH APRIL, 2014 ISSUED BY THE IST RESPONDENT TO ANNEXURE A2
- ANNEXURE-A4 TRUE COPY OF THE REPLY DATED 22ND APRIL, 2014 TO ANNEXURE - A3
- ANNEXURE-A5 CERTIFIED COPY OF THE COMPLAINT FILED BY THE IST RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE-2, THIRUVANANTHAPURAM.
- ANNEXURE-A6 CERTIFICATE OF NOMINATION ISSUED BY THE DEPUTY CONTROLLER LEGAL METROLOGY, MAHARASHTRA STATE, MUMBAI.