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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 26.05.2026**Judgment pronounced on: 14.09.2026**Judgment uploaded on: 14.09.2026*+ **CRL.M.C. 2503/2012****KANCOR INGREDIENTS LTD. & ORS.Petitioners**

Through: Mr. Pramod Kumar Dubey,
Senior Advocate along with
Mr. Puneet Relan, Mr.
Ramchandurni B Siddhartha,
Ms. Khushi Arora and Ms.
Shivangi Mishra, Advocates.

versus

GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr. Digam Singh Dagar, APP
for the State.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 [Cr.P.C.], the petitioners seek quashing of the Complaint Case No. 71/1996, pending before the learned ACMM-II, Patiala House Courts, New Delhi [hereafter '**Trial Court**'] *qua* them, as well as setting aside the order dated 25.05.2012 [hereafter '**impugned order**'], passed by the learned Trial Court in the said complaint case.



2. Briefly stated, the facts of the case are that, on 31.10.1995, Sh. Bal Mukund, Food Inspector (PFA), Delhi [*the complainant*], took a sample of 'Hot and Spicy Marinade', a food article, from Sh. Vikas Vij, Assistant Restaurant Manager of M/s Pepsico Restaurant International (India) Pvt. Ltd., situated at 20, Community Centre, New Friends Colony, New Delhi-110065. The said food article was found ready for use in the preparation of chicken, etc. The cooking medium was also not found displayed in the said restaurant. The sample consisted of three originally sealed packets, each containing 680 gms. of 'Hot and Spicy Marinade'. Although the packets bore identical label declarations, they did not mention any Code No., Batch No. or Lot No. The complainant thereafter divided the sample into three equal parts, each of which was separately packed, fastened, marked and sealed. Upon completion of the requisite formalities, one counterpart of the sample was sent to the Public Analyst in an intact condition. The Public Analyst, vide report dated 04.11.1995, opined that the sample was misbranded and violated Rules 32(e) and (f) of the Prevention of Food Adulteration Rules, 1955 [hereafter '**PFA Rules**']. It was further found that the said 'Hot and Spicy Marinade' had been sold and supplied by M/s Kancor Flavours and Extracts Limited, Bazar Road, Cochin-682002, to M/s Pepsico Restaurant International (India) Pvt. Ltd. The said food article was allegedly imported into India by M/s Kancor Flavours and Extracts Limited from M/s Mc Cormic Ingredients Southeast Asia Pvt. Ltd., 4 Enterprise Road, Jurong, Singapore-2262, the manufacturer of the



product, despite such import being prohibited under Section 5 of the Prevention of Food Adulteration Act, 1954 [hereafter '**PFA Act**'].

3. Consequently, the complaint in question was filed against 11 accused persons. Accused nos. 1 and 2 were Sh. Vikas Vij and M/s Pepsico Restaurant International (India) Pvt. Ltd., respectively, who were alleged to have violated Section 2(ix)(k) of the PFA Act and Rules 32(e) and 50(7) of the PFA Rules, and to have committed an offence punishable under Section 16(1) read with Section 7 of the PFA Act. Accused nos. 3 to 11 comprised M/s Kancor Flavours and Extracts Limited, its seven directors and its general manager; they were alleged to have violated Section 2(ix)(k) and Section 5 of the PFA Act and Rule 32(e) of the PFA Rules, and to have committed an offence punishable under Section 16(1) read with Section 7 of the PFA Act.

4. The learned Trial Court, after perusing the complaint and the Public Analyst's report dated 04.11.1995, passed the order dated 09.09.1996, *vide* which summons were issued to all the accused, including the petitioners herein, for 19.11.1996. On 19.11.1996, the learned Trial Court exempted the petitioners from personal appearance and adjourned the matter to 17.12.1996 for issuance of fresh summons to accused nos. 8 to 10, who were residents of the United States of America. Thereafter, the matter was adjourned on various dates on account of the failure to serve summons upon accused nos. 8 to 10. It is stated that during this period, the petitioners, who were represented by the learned counsel, were



exempted from personal appearance on a day-to-day basis. However, *vide* order dated 31.03.2010, the learned Trial Court separated the trial *qua* accused nos. 8 to 10 and directed the remaining accused, including the petitioners, to remain present in person so that notice could be framed against them. In the meantime, accused no. 1, i.e., the Assistant Manager of the concerned restaurant, was declared a proclaimed offender.

5. Subsequently, in October 2010, the petitioners herein, excluding petitioner no. 6, Sh. J.J. Negandhi, who filed a separate petition, preferred CRL.M.C. 3497/2010 before this Court seeking quashing of the complaint case, wherein the proceedings before the Trial Court were stayed. Before this Court, it was contended that various judgments interpreting the notification dated 20.09.1985 issued by the Government of Delhi were squarely applicable to the facts of the present case and that the continuation of the criminal proceedings amounted to an abuse of the process of the Court. However, *vide* order dated 29.02.2012, this Court permitted the petitioners to withdraw the petition, since notice had not yet been framed, and the petitioners were granted liberty to raise all such pleas before the learned Trial Court. The learned Trial Court was directed to consider and decide the same, in the first instance, at the stage of framing of notice itself, within three months from the date of the said order.

6. Pursuant thereto, the petitioners preferred applications on 16.04.2012 seeking their discharge or, in the alternative, dropping of



the proceedings. The learned Trial Court, however, dismissed the said applications *vide* the impugned order dated 25.05.2012.

7. Aggrieved by the impugned order dated 25.05.2012 passed by the learned ACMM, the petitioners, who are accused nos. 3 to 7 and 11 before the learned Trial Court, have preferred the present petition.

8. *Vide* order dated 27.07.2012 passed in the present petition, this Court stayed the proceedings arising out of the complaint case in question.

9. The learned senior counsel appearing for the petitioners argues that the impugned order dated 25.05.2012, whereby the learned Trial Court dismissed the applications filed on behalf of the petitioners seeking their discharge from the present complaint case, primarily on the ground that it had no power to discharge them at that stage, is unsustainable in law. It is contended that, while passing the said order, the learned Trial Court failed to take into consideration the order dated 29.02.2012 passed by this Court in CRL.M.C. 3497/2010. It is argued that, under Section 251 of the Cr.P.C., the Court is required to examine the allegations in the complaint and the material on record to determine whether any offence is disclosed. The learned Trial Court, therefore, erred in holding that the merits of the case could not be gone into at the stage of framing of notice. Reliance in this regard is placed upon the decision of the Hon'ble Supreme Court in ***Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.: (2012) 5 SCC 424.***



10. It is submitted that the allegations forming the subject matter of the complaint pertain solely to the offence of ‘misbranding’ of the food article in question, on account of the absence of a batch-code/lot number, and not to any adulteration thereof. It is contended that the Public Analyst’s report dated 04.11.1995 records the sample to be misbranded solely on account of violation of Rules 32(e) and (f) of the PFA Rules. Even the complaint has been filed for violation of Rule 32(e), and contains no finding whatsoever regarding adulteration. In this regard, reliance is placed by the learned senior counsel upon the Notification bearing No. F6(228)/85/ENF/PFA, dated 20.09.1985, issued by the Government of NCT of Delhi [hereafter ‘**Notification dated 20.09.1985**’]. It is contended that the said Notification, issued in supersession of earlier instructions, contemplates that, in respect of a first offence of misbranding under Rule 32 of the PFA Rules, the erring party ought to be issued only a written warning, and that prosecution ought to be resorted to only in the case of a second or subsequent violation. It is argued that, admittedly, the present case concerns the first alleged offence attributable to the petitioners, or even to the other accused persons, and that no warning, written or otherwise, was ever issued to them prior to the institution of the complaint. The launching of prosecution in the teeth of the said Notification, therefore, renders the continuation of the proceedings against the petitioners wholly unsustainable and amounts to an abuse of the process of law. It is further contended that, even if the complaint is framed under Section



5 of the PFA Act, i.e. for import of misbranded food, the allegation remains one of misbranding. The Notification dated 20.09.1985, therefore, applies equally, since the alleged misbranding in this case arising out of violation of Rule 32 of the PFA Rules is punishable under Section 16 of the PFA Act, which is subject to the protection contemplated in respect of a first offence. The reasoning of the learned Trial Court that violation of Section 5 of the PFA Act creates a separate offence is, according to the learned senior counsel, legally untenable.

11. It is further argued on behalf of the petitioners that the complaint contains no specific allegations against the petitioners, who have been roped in merely on the bald assertion that they were “in-charge and responsible”. Such an assertion, it is contended, is directly contrary to the settled law on vicarious liability. It is also argued that the petitioners are, in any event, entitled to the protection available under Section 19(2) of the PFA Act, inasmuch as the food article in question had been purchased by them from the manufacturer in a duly sealed and labelled condition and was thereafter sold/supplied in the very same condition, without the seal or label having been tampered with or altered in any manner. It is also argued that Rule 50(7) of the PFA Rules is not attracted to the present petitioners. It is accordingly submitted that the present case is a fit one for exercise of the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. and that the complaint, insofar as it relates to the petitioners, along with the impugned order dated 25.05.2012,



be quashed and set aside.

12. On the other hand, the learned APP for the State refers to the Status Report placed on record and admits that the Department of PFA used to issue warnings in cases involving violation of Rule 32 of the PFA Rules. However, it is contended that the present case involves not only a violation of Rule 32(e), but also violations of Section 5 of the PFA Act and Rule 50(7) of the PFA Rules. Since the case pertains to multiple violations, and not merely to a violation of Rule 32, it is argued that the same is not covered by the policy of warning contained in the Notification dated 20.09.1985, which was being followed at the relevant time. It is, therefore, argued that the present petition ought to be dismissed and that there is no infirmity in the impugned order passed by the learned Trial Court.

13. This Court has **heard** arguments addressed on behalf of the petitioners as well as the State, and has perused the material available on record.

14. One of the principal questions which arises for consideration is whether, in the facts and circumstances of the present case, the petitioners could have been prosecuted for the alleged violation of Rule 32(e) of the PFA Rules and the consequential violation of Section 5 of the PFA Act, without first being issued a written warning in terms of the Notification dated 20.09.1985.

15. Section 2(ix) of the PFA Act defines the expression “misbranded”. The relevant provision, i.e. Section 2(ix)(k), provides



that an article of food shall be deemed to be misbranded if it is not labelled in accordance with the requirements of the PFA Act or the Rules made thereunder. The provision reads as under:

“(ix) "misbranded" – an article of food shall be deemed to be misbranded :-

xxx

(k) if it is not labelled in accordance with the requirements of this Act or Rules made thereunder...”

16. Thus, the misbranding contemplated under Section 2(ix)(k) is specifically related to failure to comply with any statutory requirement relating to labelling.

17. In the present case, the allegations against the accused persons are not founded on any defect in the contents of the food article. The Public Analyst report does not record that the sample was adulterated or that its contents failed to conform to the prescribed standards. The alleged violation arises only on account of the absence of a distinctive batch number, lot number or code number on the packets, as required under Rule 32(e) of the PFA Rules.

18. Rule 32 forms part of Part VII of the PFA Rules, which deals with “Packing and Labelling of Food”. Rule 32 requires every package of food to carry a label containing the particulars specified therein. Clause (e) specifically requires the label to contain a distinctive batch number, lot number or code number, preceded by the prescribed words or distinguishing prefix. The said Rule reads as under:



“32. Package of food to carry a label.

Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label:-

xxx

(e) A distinctive batch number or lot number or code number, either in numerals or alphabets or in 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.”

19. It is, therefore, evident that the allegation against the petitioners is confined to a deficiency in labelling. The provision of the PFA Act invoked for this purpose is Section 2(ix)(k), which treats non-compliance with the labelling requirements as misbranding. The alleged misbranding, in turn, is based only on the violation of Rule 32(e). There is no allegation that the food article was adulterated, unsafe, sub-standard or otherwise defective in its contents.

20. At this stage, this Court notes that the Notification dated 20.09.1985 records that, in several cases, the contents of sealed food articles were found to conform to the prescribed standards, whereas the labelling on the container or packet was deficient in some respect and did not comply with Rule 32 of the PFA Rules. It was accordingly appreciated that, where the contents of the sealed packet or container conformed to the prescribed standards, the deficiency in labelling constituted a technical offence. The policy decision embodied in the Notification was that, in such cases, the affected



party should initially be issued a written warning drawing attention to the requirements of Rule 32. Prosecution was contemplated only if the same practice was repeated after the issuance of such warning. The Notification expressly clarified that this policy would not apply where the contents of the sealed packet or container did not conform to the prescribed standards and were found to be ‘adulterated’. In such cases, prosecution could be launched both for adulteration and for breach of Rule 32. The relevant portion of the Notification is set out below:

“2. It would be noted from the perusal of the above Rule that an elaborate procedure has been prescribed for labeling sealed contents indicating therein the code number date of packing etc. However, it has been noticed that in quite a few cases contents of the sealed article of food was found conforming to the standard prescribed under the Rules, whereas the labeling done on the container or the packet was deficient in certain respect and was not in conformity with the provision contained in Rule 32 of the PFA Rules, 1955. After detailed discussion on the subject, it was appreciated that in case the contents of the sealed packets or container conform to the standard laid down under the PFA Rules, deficiency with regard to Rules 32 which pertains to the particulars of the labeling on the container or packet, was only a technical offence, though it attracted Rule 32 and there was breach of this Rule in some respect in the course of packing the article of food. In such cases there was unanimous view during the course of discussion that the party effected may be given a written warning drawing his attention to Rule 32 which provides for labeling particulars to be exhibited on the sampled Tin or the packet and in case the practice is repeated after a written warning to the party concerned, the party committing the offence second time should be prosecuted. However, this could not apply in case where the contents of the sealed packed or container are not conforming to the prescribed standard and hence are adulterated. In such cases, prosecution would be launched both for adulteration and for breach of Rules 32.



After the Secretary (Medical), as the consenting Authority, has approved the above proposal all the pending cases would be disposed of accordingly.”

21. Therefore, the distinction made in the Notification is clear – where the defect concerns only the particulars required to be displayed on the label, and the contents of the food article conform to the prescribed standards, the violation is treated as a technical first-time violation for which a written warning is required. On the other hand, where the contents themselves are adulterated, the benefit of the warning policy is unavailable and prosecution may be launched for both adulteration and breach of the labelling requirements.

22. The aforesaid policy has also been considered by the Coordinate Benches of this Court in several decisions which have been placed on record by the petitioners. In *M/s Hindustan Unilever Ltd. v. State: 2011 [1] JCC 689*, the Coordinate Bench of this Court observed that where the prosecution was based on misbranding under Rule 32, and there was no allegation that the petitioners had previously been served with a warning notice or that the alleged violation had been repeated after such warning, the requirement of the notified policy had not been adhered to. The Court consequently held that prosecution for misbranding of the food products was not justified and was violative of the notified policy, and was accordingly quashed. The relevant observations of the Coordinate Bench are extracted hereunder:

“8. In the instant matters also, it is not the case of the



prosecution that the petitioners arrayed in the complaints were given warning by way of a notice, drawing their attention to Rule 32 of PFA Rules, 1955 framed under the Prevention of Food Adulteration Act, 1954, which requires for particulars to be exhibited on the packaged food products. It is also not the case of the prosecution that the complaints in question related to the violation of Rule 32 after the service of requisite warning notice on the respective petitioners. Thus, the ratio of the judgment of this court in the matter of **S.S. Gokul Krishnan** (supra) squarely applies to the facts and circumstances of this case and the respondent, before taking a decision to prosecute the petitioners, was required to serve the warning notice upon them as envisaged by Rule 32, which requirement of the policy has not been adhered to. Therefore, the prosecution of the petitioners on the allegation of misbranding of the food products is not justified, being violative of the notified policy.”

23. Therefore, in the considered opinion of this Court, the prosecution cannot disregard the procedure contemplated by the Notification dated 20.09.1985. Where the alleged violation is a first-time violation of Rule 32 and there is no allegation of adulteration, the concerned party had to first be issued a written warning. In the absence of such warning, prosecution for the alleged misbranding was not justified.

24. In the present case, it is not in dispute that the alleged violation of Rule 32(e) was a first-time violation insofar as the concerned restaurant and the petitioners are concerned. There is no allegation that any written warning had previously been issued to them in respect of the same or a similar violation. It is also not the case of the prosecution that the petitioners had repeated the alleged violation after receiving a warning. Further, there is no allegation of



adulteration in the present case. The sample was allegedly found to be misbranded only because the packets did not bear the requisite distinctive batch number/lot number/code number. Thus, the case falls squarely within the category of cases contemplated by the Notification dated 20.09.1985.

25. The respondents have sought to distinguish the Notification on the ground that the complaint also invokes Section 5 of the PFA Act and that the food article was imported. However, this Court is of the opinion that this contention also cannot advance the case of the respondents. It is apposite to take note of Section 5 of PFA Act, which reads as under:

“5. Prohibition of Import of certain articles of food. No person shall import into India—

- (a) any adulterated food;
- (b) an misbranded food;
- (c) any article of food for the import of which a license is prescribed, except in accordance with the conditions of the license; and
- (d) any article of food in contravention of any other provision of this Act or any rule made thereunder.”

26. Section 5 prohibits the import into India of, *inter alia*, misbranded food. The provision is thus attracted when the imported food article is alleged to be “misbranded” within the meaning of Section 2(ix) of the PFA Act.

27. In the present case, the allegation of misbranding is traceable only to Section 2(ix)(k), which deals with non-compliance with the



labelling requirements prescribed under the PFA Act or the Rules made thereunder. The particular labelling requirement allegedly violated is Rule 32(e), concerning the absence of a distinctive batch number/lot number/code number. Consequently, the invocation of Section 5 of PFA Act is not based on any independent defect in the imported food article, but is only a consequence of the allegation that the imported article was misbranded on account of the alleged violation of Rule 32(e). The fact that the food article was imported cannot, by itself, take the case outside the scope of the Notification. The Notification does not make a distinction between a labelling deficiency in an article manufactured in India and the same labelling deficiency in an imported article. Its applicability depends upon the nature of the violation – i.e., whether the contents conform to the prescribed standards and whether the alleged defect is confined to the labelling particulars required under Rule 32. If an imported food article had been found to be adulterated, or if there had been any other substantive violation of the PFA Act or the PFA Rules, the warning policy would not have protected the concerned party. However, merely because the food article was imported, the prosecution cannot ignore the fact that the only alleged defect in the present case pertains to requirements under Rule 32(e). Thus, once it is found that the primary violation is only a first-time violation of Rule 32(e) of PFA Rules, and that there is no allegation of adulteration, and that no prior written warning was issued, the mere addition of Section 5 of PFA Act cannot defeat the benefit of the



policy contained in the Notification dated 20.09.1985.

28. The Court is, therefore, of the view that the prosecution of the petitioners for the alleged violation of Rule 32(e), and for the consequential violation of Section 5 of the PFA Act, could not have been initiated without first complying with the requirement of issuing a written warning as contemplated by the Notification dated 20.09.1985. Since admittedly no such warning was issued, and since the present case concerns only a first-time violation relating to labelling, the continuation of the prosecution against the petitioners for the said violations would be contrary to the notified policy.

29. As regards Rule 50(7) of the PFA Rules, the said provision relates to a separate requirement concerning the display of a notice board containing separate lists of articles cooked in ghee, edible oil, vanaspati and other fats, for the information of intending purchasers. The allegation concerning Rule 50(7), as noticed in the complaint, pertains to the concerned restaurant, and accused nos. 1 and 2. The said provision has not been invoked against the present petitioners.

30. Accordingly, the complaint and the consequential proceedings are quashed insofar as they relate to the alleged violation of Rule 32(e) of the PFA Rules and Section 5 of the PFA Act.

31. However, the proceedings relating to the alleged violation of Rule 50(7) of the PFA Rules by accused nos. 1 and 2 shall continue in accordance with law.

32. Consequently, the present petition is allowed to the aforesaid



extent.

33. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

**SEPTEMBER 14, 2026/
T.D./T.S.**