

**FOOD SAFETY APPELLATE TRIBUNAL
JAIPUR, RAJASTHAN**

APPEAL NO.FA/0016/2017

Gopal Sharma S/o Shri Prahlad Sharma M/s Indibals Pvt. Ltd.,
G-26, Sitapura Industrial Area, Tonk Road, Jaipur

--APPELLANT

Versus

1. State of Rajasthan, through Food Safety Officer, Ashok Kumar Gupta, Office of Chief Medical and Health Officer, Udaipur
--CONTESTING RESPONDENT
2. Dinesh Punjabi S/o Sh. Chela Ram Punjabi- Seller M/s Mahesh Kirana Store, Bank Tiraha, Delhi Gage, Udaipur Permanent address 138-B, Shakti Nagar, Gali No.3, Udaipur.
3. Shri Shankar Lal Punjabi S/o late Shri Bhagwandas Punjabi- Owner, M/s Mahesh Kirana Store, Bank Tiraha, Delhi Gage, Udaipur, Permanent Address- 138 B, Shakti Nagar, Gali No. 3, Udaipur.
4. Shri Bharat Jain s/o Shri Shanti Lal Jain, Partner, M/s Royal Agencies, 17 Meenapada, Behind Dhanmandi School, Udaipur, Permanent Address 39, Krishna Colony, Bedra Road, behind Khan Complex, Udaipur.
5. Smt. Gulab Jain W/o Shri Shanti Lal, Partner M/s Royal Agencies, 17 Meenapada, Behind Dhanmandi School, Udaipur, Permanent Address 39, Krishna Colony, Bedra Road, behind Khan Complex, Udaipur.
6. Sh. Rajkumar S/o Shri Pukhraj Solanki, M/s Royal Agencies, 17 Meenapada, Behind Dhanmandi School, Udaipur, Permanent Address 40, Krishna Colony, Bedra Road, behind Khan Complex, Udaipur.
7. M/s Royal Agencies, 17 Meenapada, Behind Dhanmandi School, Udaipur.
8. Shri Manibhadra Jain S/o Sh. Samantbhadra- Partner M/s Shri Chemicals and Home products, 1905, Shree Sadan, Haldiyan Ka Rasta, Jaipur, Permanent Address D-17, Gokul Watika, J.L.N. Ward No. 37 Jaipur (Raj.)
9. Shri Subhadra Papdiwal s/o Shri Samandbhadra- Partner M/s Shri Chemicals and Home Producers, 1905, Shree Sadan, Haldiyan Ka Rasta, Jaipur, Permanent Address – D-16, Behind Power House, Gokul Watika, Jawahar Circle, Jaipur (Raj.)
10. Sh. Pradeep Bhatt, s/o Sh. Rajendra Bhatt M/s Shri Chemicals and Home Products, 1905, Shree Sadan, Haldiyan Ka Rasta, Jaipur, Permanent Address –55, Bhatt Rajaji Ki Haveli, Sirahdyodi Bazar, Opposite Townhall (Vidhansabha) Jaipur (Raj.)
11. M/s Shri Chemicals and Home Products, 1905, Shree Sadan, Haldiyan Ka Rasta, Jaipur (Raj.)

12. M/s Indibals Pvt. Ltd. G-26, Sitapura Industrial Area, Tonk Road, Jaipur-302022.

--PRO FORMA RESPONDENTS

Present :-

Shri Mayank Gupta, Advocate for Appellant
Shri V.D. Gathala, Advocate for Respondent no.1

JUDGMENT

Date - 01.02.2018

This appeal is preferred by the appellant under Section 70 of the Food Safety and Standards Act 2006 (hereinafter will be referred as 'Act of 2006') against the order dated 13.02.2017 passed by Shri Chhogaram Devasi, Adjudicating Officer/ Additional District Magistrate, Udaipur, Rajasthan in Case No.01/2016 in exercise of powers under Section 68 (2) of the Act of 2006 whereby a penalty of Rs.10,000/- was imposed against appellant. (Though, penalty of various amounts was also imposed against pro-forma respondent no.2 to 12. They have not preferred any appeal against the impugned order) for violation of provisions contained in Regulation 2.3.1(5) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 (hereinafter will be referred as 'Regulation of 2011') and under Section 3(1)(zf)(i)(a) of the Act of 2006.

2. In record of the proceeding dated 01.08.2017, it is clearly mentioned
"Since appeal is preferred by one appellant, therefore, fee paid is sufficient. Appeal will confine only to one appellant; there will be no order for pro-forma respondents."
3. Since, appellant is nominee of pro-forma respondent no.12, therefore, in essence, it shall be deemed to be an appeal by pro-forma respondent no.12.
4. On 22.05.2015, Food Safety Officer, Udaipur took a sample of Rose Syrup (Shri) from Mahesh Kirana Store Udaipur run by Dinesh Punjabi, pro-forma respondent no.2.
5. The sample was found misbranded. After completion of statutory formalities, a complaint was filed before the learned Adjudicating Officer Udaipur against appellant and pro-forma respondent no.2 to 12.
6. The learned Adjudicating Officer Udaipur vide impugned order dated 13.02.2017 has imposed penalties of various amounts against appellant and pro-forma respondent no.2 to 12.

7. Since appeal is preferred by the manufacturer of the food product i.e. pro-forma respondent no.12 through its nominee (appellant), appreciation will confine only to the grounds taken in respect to the manufacturer of the product.
8. It is stated that sample of food product manufactured by appellant was declared misbranded by the Food Analyst under Regulation 2.3.1(5) of Regulation of 2011; because, label of the product contain picture of Rose, whereas product is synthetic. Finding of the Food Analyst is erroneous; because, on the label ingredients of the products are clearly mentioned and it is specifically mentioned that product i.e. Gulab Sharbat contains 10% Gulabjal and the Gulabjal can only be made by Rose, therefore, it cannot be said that there is absolute misbranding. Product contains 10% rosewater, therefore picture of Rose on the label is justified.
9. It is further stated that objection raised by the appellant against the finding of Food Analyst was not appreciated properly.
10. The Designated officer could have issued a direction under Section 32 of the Act of 2006 to the appellant and pro-forma respondent no.12.
11. In reply, it is stated that impugned order has been passed after consideration of the objections taken by the appellant.
12. Other pro-forma respondents have not preferred any appeal therefore this appeal is not maintainable.
13. Arguments heard. Record of the case thoroughly scanned; meticulously analysed the relevant provisions of law.
14. Shri Mayank Gupta, learned counsel for appellant would reiterate the grounds taken in appeal.
15. Shri V.D. Gathala, learned counsel for respondent no.1 supported the impugned order.
16. **Point for determination**
Whether, learned Adjudicating Officer Udaipur committed an error of law and fact in holding appellant and pro-forma respondent no.12 guilty of violation of Regulation 2.3.1(5) of The Food Safety and Standards (Packaging and Labelling) Regulations 2011?
17. **Decision**
Decided against the appellant and pro-forma respondent no.12

Reasons for decision

18. Regulation 2.3.1(5) of Regulation 2011 provides that ...
- “2.3 Manner of Declaration
2.3.1(1) ...
2.3.1(2)...
2.3.1(3)...
2.3.1(4)...
2.3.1(5) Labels not to contain false or misleading statements: A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive or value or in relation to the place of origin of the said food: Provided that this regulation shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets, such as, barley, sugar, bull’s eye, cream cracker or in respect of aerated waters, such as, Ginger Beer or Gold-Spot or any other name in existence in international trade practice. ”
19. Misbranded food has been defined vide Section 3(1)(zf) of the Act of 2006. Relevant provision for this appeal is defined in 3(1)(zf)(A)(i)(a), which reads as under:-
- “(zf) misbranded food means an article of food-
(A) if it is purported, or is represented to be, or is being-
(i) offered or promoted for sale with false, misleading or deceptive claims either;
(a) upon the label of the package, or”
20. It is astonishing to note that on the label of a food product, picture of Rose is depicted because as per the assertion of manufacturer, product contains only 10% of distillate of Rose.
21. Product is sold as syrup of Rose (Gulab ka Sharbat). It does not appeal to reason that a product having only 10% of distillate of Rose can be branded as Gulab ka Sharbat with picture of Rose of the label.
22. Picture of Rose on the label of the product has the tendency to deceit the consumer. Depiction of picture of Rose along with name Gulab ka Sharbat suggests to the consumer that product contains Rose in substantial quantity; whereas, admittedly, it only contains 10% distillate of Rose.
23. There is no force in the argument of learned counsel for appellant that ingredients are specifically mentioned on the label and it is also mentioned that product contains 10% of distillate of Rose, therefore, it is not false claim or misleading claim or a deceptive claim.
24. Any pictorial representation upon the label attracts the attention of the consumer (purchaser). Trade name of the product also draws attention of the consumer.

25. In case in hand, admittedly, label contains a picture of Rose along with the Trade name Gulab ka Sharbat.
26. Prominent information displayed on the label is a picture of Rose and name of the product i.e. Gulab ka Sharbat. It affects the decision of the consumer to purchase the product. It cannot be said that a product having only 10% of distillate of Rose can use picture of Rose along with a name i.e. Gulab ka Sharbat. It is sheer cheating with the consumers. Their decision to purchase the product is being influenced by the false, misleading and deceptive claim represented through the picture of the Rose on the label of the product along with the name Gulab ka Sharbat.
27. Not only this, label also contains following hymn on the label –
तरुणी शिशिरा हृद्या शुक्ला स्त्रंसिनो मनोक
त्रिदोष शर्मनो वर्ण्या दाहपित्तास्त्रनाशिनो
28. This description also influences the decision of the consumer but since it has not been mentioned as a ground of misbranding, therefore, this Tribunal refrains to appreciate this aspect.
29. Shri Mayank Gupta, learned counsel for appellant would argue that instead of filing complaint against the appellant, Designated Officer should have resorted to provisions of Section 32 of the Act of 2006.
30. Though there is no force in this argument, but nobody prevented appellant to correct the label as per required regulation after receiving notice of complaint. Appellant could have filed this appeal with fairness that now he has complied with the relevant provisions of the Regulation of 2011, therefore, a lenient view may be taken against him. On the contrary, it was vehemently argued that appellant is perfectly justified in depiction of picture of Rose on the label and it does not amount to absolute misbranding as stated in the ground (a) & (b) of appeal.
31. This Tribunal is unable to comprehend the correct import of "absolute misbranding".
32. So far as quantum of penalty is concerned, it is not possible to quantify the amount of gain or unfair advantage by the appellant as a result of contravention of Regulation of 2011; therefore, provisions of Section 49 of the Act of 2006 are inapplicable in this case.
33. Learned Adjudicating Officer has been too liberal in awarding penalty against appellant and pro-forma respondent no.12.
34. No other argument was advanced before me except the arguments discussed hereinabove.

35. From the aforesaid discussion, it is crystal clear that appeal filed by the appellant and pro-forma respondent no.12 is devoid of merit, deserves to be dismissed, hence dismissed.
36. This appeal could have been dismissed on the technical ground that appeal was not preferred by manufacturer i.e. pro-forma respondent no.12 and appeal by the nominee of the manufacturer is not maintainable. But in the interest of justice, it was deemed proper to consider the appeal on behalf of manufacturer i.e. pro-forma respondent no.12.

ORDER

37. Appeal against the order of learned Adjudicating Officer Udaipur dated 13.02.2017 passed in their Case No.01/2016, titled State Vs. Dinesh Punjabi & Others, preferred by appellant and pro-forma respondent no.12 is dismissed. Impugned order passed by the learned Adjudicating Officer Udaipur is affirmed.
38. Appellant and pro forma respondent no.12, are directed to comply with the impugned order forthwith.
39. Provide certified copy of the order to the appellant without any cost.
40. Pronounced on 01.02.2018.

(Umesh Kumar Sharma)
Presiding Officer

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