

**IN THE COURT OF SAMAR VISHAL,
Additional Chief Metropolitan Magistrate – II (New Delhi),
Patiala House Courts, New Delhi**

CC No. 41296/2016

Date of Institution : 09.05.2005
Date of reserving judgment : 14.12.2017
Date of pronouncement : 18.12.2017

In re:

Delhi Administration / Food Inspector

Department of PFA,
Govt. of NCT of Delhi
A-20, Lawrence Road Industrial Area,
Delhi-110035

... Complainant

versus

A-1) Sh Jitender Kumar

S/o Sh Vishwa Nath Batra
M/s Chefair The Pastry Shop, 13,
Bengalow Road, Kamala Nagar,
Delhi -7

R/o 1951, Outern Line, Kingsway Camp,
Delhi-9

A-2) Sh Vishwa Nath Batra

S/o Late Sh Sant Ram Batra,
M/s Chefair The Pastry Shop, 13,
Bengalow Road, Kamala Nagar,
Delhi -7

R/o 1951, Outern Line, Kingsway Camp,
Delhi-9

A-3) Sh. Manoj Kumar Chawla

S/o Sh. Bansi Lal Chawla

M/s Shree Triputi Agencies,
1498, Subzi Mandi Clock Tower, Delhi – 7

R/o 1498, Punjabi Mohalla,
Subzi Mandi, Clock Tower, Delhi – 7

A-4) Sh.Vineet Jain

S/o Sh. S.K. Jain

M/s Solar Sales (India)

Khasra No. 902/290, Gali No. 4,

Village Shalamar, Delhi - 88

Office : 3540, Qutab Road, Delhi – 6

R/o 44 B/UA, Jawahar Nagar,
Delhi – 7

... **Accused persons**

JUDGMENT:

1. The present is a complaint filed under section 16 of the Prevention of Food Adulteration Act, 1954 (PFA Act), alleging that the accused persons have violated the provisions of the PFA Act and Rules.

2. As per the complaint, on 27.01.2005 at about 5L00 PM Food Inspector (herein after referred as FI) Sh Gain Chand purchased a sample of 'Strawberry Rush-Mast Mocktail (Zone-Party Cheers)' a food article for analysis from the accused No. 1 Sh.Jitender Kumar at M/s Chefair The Pastry Shop, 13 E, Bengalow Road, Kamala Nagar, Delhi-7 where the said food article was found stored for sale and where accused No.1 Jitender Kumar was found conducting the business of the said food article at the time of sampling. The sample consisted of 06 original sealed bottles of Strawberry Rush-Mast Mocktail (Zone-Party

Cheers) of 330 ml each having identical label declaration. The sample was taken under the supervision/direction of Sh.S.L. Batra, SDM/LHA. The sample of Strawberry Rush-Mast Mocktail (Zone-Party Cheers) was taken as six originally sealed bottles. The FI divided the sample into three parts then and there by putting two bottles together. Each counter part containing two sealed bottle of Strawberry Rush-Mast Mocktail (Zone-Party Cheers) was separately packed, fasten and sealed according to PFA Act and Rules. The vendor's signatures were obtained on the LHA slip and the wrapper of the sample counter parts. Notice was given to accused No. 1 Jitender Kumar and the price of the sample was also given to him vide vendor receipt dated 27.01.2005, the vendor had issued a cash memo No. 1720 dated 17.01.2005 for the sale of sample commodity. Panchnama was prepared at the spot. All the documents prepared by F.I. were signed by accused Jitender Kumar and the other witness Sh.J.P. Bhardwaj, FA. Before starting sample proceedings efforts were made to join public witnesses but none came forward, as such Sh J.P. Bhardwaj, FA was joined as witness.

3. It is further stated that one counter-part of the sample bearing LHA Code No. 41/LHA/10255 was also sent to Public Analyst, Delhi in intact condition and two counter-parts were deposited with the LHA in intact condition. Public Analyst analysed the sample and found the sample to be misbranded. The report of the Public Analyst is as follows :

“The sample is misbranded because its name is misleading. Its name is strawberry Rush, but it does not given strawberry as one of ingredients. It also does not use word synthetic in case it is not fruit product”

4. It is the case of the complainant that accused No. 1 Jitender Kumar was the vendor of M/s Chefair The Pastry Shop, 13 E, Bengalow Road, Kamala Nagar, Delhi at the time of sampling and accused No. 2 Vishwa Nath Batra was the proprietor of M/s Chefair The Pastry Shop as such both the vendor and proprietor are incharge of and responsible for day to day conduct of the business of the said shop. M/s Chefair The Pastry Shop purchased the sample commodity from M/s Shree Triputi Agencies, 1498, Subzi Mandi Clock Tower, Delhi – 7 is proprietorship concern and accused No. 3 Manoj Kumar Chawla was the proprietor of the said concern and also responsible for day to day conduct of the business of the said concern. It is further stated that M/s Shree Triputi Agencies purchased the sample commodity from manufacturing concern M/s Solar Sales (India), Khasra No. 902/290, Gali No. 4, Village Shalamar, Delhi – 88 which is a proprietorship concern and accused NO. 4 Vineet Jain is the proprietor, who is responsible for day to day conduct of the business of the said concern. The correspondence office of M/s Solar Sales (India) is 3540, Qutab Road, Delhi – 6.

5. It is further stated that after conclusion of the investigation the entire case file including the statutory documents and PA's report and the FI's report were sent to the Director, PFA, Govt. of Delhi who had accorded Consent under section 20 of the PFA Act for instituting the case. After obtaining the Consent of Director PFA, the present case was filed before the Court on 09.05.2005 alleging violation of section 2(ix)(g) (j) (k) of PFA Act and Rule 40(2) of of PFA Rules, 1955 as punishable section 7/16 of PFA Act.

6. As the complaint was filed in writing by a public servant, recording of pre-summoning evidence was dispensed with and the accused persons were summoned vide order dated 09.05.2005. Based on the PA report, notice of accusation under Section 251 CrPC was framed against accused persons for commission of the offence punishable under section 7/16 PFA Act, being violation of 2(ix)(g)(j) (k) of PFA Act and Rule 40(2) of PFA Rules, to which the accused persons pleaded not guilty and claimed trial. During the trial proceedings against accused No. 1 Jitender Kumar were abated vide order dated 29.1.2017.

7. At the trial, the prosecution examined three witness in support of its case. PW-1 SDM/LHA S.L. Batra, PW-2 FI Gian Chand and PW-3 FA J.P. Bhardwaj deposed about the proceedings conducted by them on 27.01.2005 and narrated the steps undertaken by him during the sample proceedings, including disclosing their identity, expressing intention to purchase sample for analysis, lifting the sample of 6x330 ml of Strawberry Rush-Mast Mocktail (Zone-Party Cheers) in original sealed condition, dividing it in three parts by considering two packets as one counterpart, fastening, sealing, marking the sample bottles, and obtaining signatures of vendor and witness. They also proved the necessary documents including the vendor's receipt Ex. PW-1/A, cash memo issued by vendor Ex.PW1/A1, Notice in Form VI Ex. PW-1/B, Panchnama Ex. PW-1/C, on the next day i.e. 28.01.2005 counter parts of sample deposited vide receipt Ex.PW1/E & PA Receipt Ex. PW-1/F. & PA report Ex. PW-2/A. Thereafter the investigation was carried out by PW-2. PW-2 sent letter Ex.PW2/B to vendor and received its reply Ex.PW2/C alongwith document Mark -Y1 to Y-3. He sent letter Ex.PW2/D to STO Ward No. 68 to disclose the constitution of M/s

Chefair The Pastry Shop and received its reply at portion A. He also sent letter Ex.PW2/E to M/s Shree Triputi Agencies and received its reply Ex.PW2/F whereby they conformed the sale to the vendor and informed that they purchased the sample commodity from Solar Sales India and also furnished bill of sale and other document mark Z-1 to Z-3. He also sent letter Ex.PW2/G to STO Ward No. 40 to disclose the constitution of M/s Triputi Agencies and received its reply at portion A wherein it was disclosed that accused Manoj Kumar was the proprietor of the said firm. He also sent letter Ex.PW2/H to STO Ward No. 37 to disclose the constitution of Solar Sales India and received its reply stating that no firm was found registered with the Sales Tax. He also sent letter Ex.PW2/I to Solar Sales and received its reply Ex.PW2/I1 stating that the sample commodity was manufactured by them alongwith some document mark Z-4 to Z-6.

8. After completion of investigation, sanction Ex. PW-2/K was taken from the Director PFA and on the complaint Ex. PW-2/L was filed in the Court by PW-2. A copy of PA report with intimation letter Ex.PW1/M was sent to the accused persons vide registration receipt Ex.PW2/N.

9. Statements of the accused under section 313 CrPC was recorded on 01.1.2013 wherein they denied the allegations and pleaded innocence. They chose to lead evidence in their defence.

10. In their defence, accused No. 4 Vineet Jain examined himself as DW-4. Thereafter, vide order dated 23.08.2014 the defence evidence was closed and the matter was fixed for final arguments.

11. I have heard the arguments advanced by Ld. Counsel for the complainant and Ld. Defence Counsel for the accused persons and have carefully perused the material available on record.

12. In a criminal case, the burden is only on the prosecution to prove its case against the accused beyond reasonable doubt by leading positive evidence. This burden cannot be shifted to the accused and it has to be necessary discharged by the prosecution itself.

13. The case against the accused is that of misbranding. It is the case of the complainant that the accused No. 1 was selling a product called Strawberry Rush-Mast Mocktail in sealed bottles. The product is stated to be misbranded alleging that its name is misleading because its name is Strawberry Rush but it does not give strawberry as one of its ingredients. The notice was framed against the accused for violation of Rule 40 (2) ad Section 2 (ix) (g) (j) & (k) of PFA Act.

14. It is the case of the defence that the product in question was not a food drink and although the name of Strawberry Rush-Mast Mocktail (Zone-Party Cheers) but there was neither the intention to mislead any customer nor to sell the product showing Strawberry as an ingredient. The accused No. 4 who is the manufacturer of the product has examined himself as a defence witness and proved this. He deposed that he was the manufacturer of the product in question i.e. "Party Cheers". He further deposed that the production in question was marketed under the brand name of ZONE and the name of the product "Party Cheers". Under the declaration of the ingredients, it was categorically stated that the product contains carbonated water, sugar, citric acid, contains class-II preservatives, contains permitted food

colours and added flavours. He further deposed that it is clearly mentioned on the label itself that the product “contains no fruit juice or fruit pulp” hence there is no question of mis-declaration. The above two declarations together make it absolutely clear that this product does not contain any fruit juice or fruit pulp. This product is not consumed by public directly but it is used in Restaurant/Bars for preparation of mocktails etc by mixing two or more drinks. He further deposed that the words “ZONE and “Party Cheers” was printed on the label in size of more than 1 inch and the word strawberry rush Mast Mocktail was mentioned in very small letters below “Party Cheers”. This word referred to the flavour of the drink and not to its contents. The label declaration is in compliance with the Rules. No label has been filed by the department and there are number of similar drinks being sold in the market.

15. The violation in the present case is Rule 40 (2) of PFA Rules. This Rules provides that any fruit syrup, fruit juice, fruit squash, fruit beverages, cordial, crush or any other fruit products standardised under Appendix B of these rules, which does not contain the prescribed amount of fruit juice/fruit pulp/fruit content shall not be described as fruit syrup, fruit juice, fruit squash, fruit beverages, cordial, crush or any other fruit product as the case may be and such products, shall be described as non-fruit product. Further, every non-fruit product shall be mentioned in clear, conspicuous and easily readable manner, marked on the label as “NON-FRUIT PRODUCT” and container containing such product shall not have pictures of fruits or word fruit whether attached thereto or printed on the wrapper of such container or otherwise, which may lead the consumer into believing that it is a fruit product. Further any food product which contains only fruit flavours whether natural

flavours and natural flavouring substances or nature identical flavouring substances or artificial flavouring substance as single or in combination, shall not be described as a fruit product and the word "FRUIT" shall not be used in describing such a product and such product shall not be sold with a label which carries the picture or word of any fruit. However, the product may contain a declaration as "contains(name of the fruit) flavour". Further, any food product in which fruit has not been used as ingredient, the word "FRUIT" shall not be used in describing such a product and such product shall not be sold with a label which carries the picture or word of any fruit. Further, carbonated water containing no fruit juice or fruit pulp shall not have a label which may lead the consumer into believing that it is a fruit product.

16. Now in the present case, the drink which the accused were selling did not mention the word fruit on its label to mislead the customers that it was some fruit drink. On the contrary, the label reproduced by the Food Inspector Ex.PW1/B specifically mentions that the product does not contain any fruit juice or fruit pulp. Since, it has been specifically informed on the label that the product does not contain any fruit juice or fruit pulp, therefore, there does not seem to be any violation of Rule 42 (2) of PFA Rule. Furthermore, the ingredient of the drink were also mentioned on the label. In none of the ingredient it is mentioned that the drink either contains strawberry or any fruit. Therefore, the label cannot be said to be misleading in any manner as far as the presence of any fruit in it is concerned. Merely making a name of the product in the name of a fruit will not make a person liable for misbranding. It is not a case of adulteration or any other violation. The defence has further relied upon the judgement titled as **State vs Virubatchi & Ors** 1985 (1)

FAC 153, **Recon Oil Industries & Ors vs State of NCT of Delhi** 201(4) Crimes 116 (Del), **Prakash Food Ltd vs State of AP & Anr** 2008 II AD (Cr)(SC) 519, **Bal Kishan Thaper vs MCD, Pepsi Food P Ltd vs State** Cr.MC 1070/2005 & 1104/2005, **R.Nagarajan Vs The F.I** CrI OP No. 737/2009 (Madras), **Subramani vs State** CrI.O.P. (MD) No. 10742/2010, **S.S. Gokul Krishnan & Ors vs State** 2009 (1) JCC 675, **Gupta Tea Traders vs State, M/s Bunge India P Ltd & Anr vs State** 201(4) Crimes 112 (Del), **Achamma vs UOI** 2004 FAJ 539 and **V.P. Abubacker vs F.I. And Anr. CrI. MC No. 1132/2013.**

17. Therefore on the basis of aforesaid discussion, the accused persons in the present case are acquitted as no case of misbranding is made out against them.

**Announced in the open court
this 18th day of December 2017**

**SAMAR VISHAL
ACMM-II (New Delhi), PHC**