

CASE NO.:  
Appeal (crl.) 559 of 2008

PETITIONER:  
M/s Parakh Foods Ltd

RESPONDENT:  
State of A.P. & Anr

DATE OF JUDGMENT: 27/03/2008

BENCH:  
P.P. NAOLEKAR & LOKESHWAR SINGH PANTA

JUDGMENT:  
J U D G M E N T  
REPORTABLE

CRIMINAL APPEAL NO 559 OF 2008  
[arising out of Special Leave Petition (Crl.) No.5972 of 2007]

P.P. NAOLEKAR, J.

1. Leave granted.

2. This appeal arises from the judgment and order of the Andhra Pradesh High Court whereby the High Court has held that from the evidence on record the article of food in question, is soyabean oil. The label contains pictures of vegetables like cabbage, carrot, brinjal, capsicum, cauliflower, tomato and onions which are in no way connected with soyabean oil. Although the prosecution of the appellant is quashed, a clear case of misbranding is made out.

3. The relevant facts of the case are that the appellant M/s Parakh Foods Ltd. (now Cargill Foods India Limited) is a company registered under the Companies Act, 1956. The appellant is engaged in manufacture and sale of "Shaktimaan Refined Soyabean Oil", a food product covered under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") and it sells and markets the said product throughout the country. On 23.12.2003, respondent No.2, the Food Inspector, District Mahboob Nagar, Andhra Pradesh visited the shop of M/s Md. Dilawar General & Oil Shop No.2-10-4, Old Gunj, Mahboob Nagar, being accused No.1 \026 vendor in the complaint. Respondent No.2 found a carton containing 20 packets of "Shaktimaan Refined Soyabean Oil" kept for sale for human consumption. Respondent No.2 suspected the quality of oil to be adulterated and purchased three packets each containing 1litre oil and obtained cash receipt from the vendor. Thereafter, the packets were sent to the Public Analyst, State Food Laboratory, Nacharam, Hyderabad. The Public Analyst furnished his report on 31.01.2004 and opined that the label contains pictures of vegetables like cabbage, carrot, brinjal, capsicum, cauliflower, tomato and onions, which are in no way connected with soyabean oil and said that the pictures of vegetables on the label is an exaggeration of the quality of the product and hence violates Rule 37 D of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the "PFA Rules") and, therefore, is misbranded.

4. Accordingly, the Food Inspector filed a complaint under the provisions of the Act before the Magistrate. A case was registered under Section 16(1)(a)(i) of the Act for alleged contravention of Section 2(ix)(k) and under Section 7(ii) of the Act read with Rule 37 D of the PFA Rules.

5. The prosecution initiated against the appellant was challenged by filing a petition under Section 482 of the Code of Criminal Procedure, 1973. The High Court decided the criminal proceedings on 20.07.2007. The High Court came to the conclusion that the vendor did not produce any warranty, thus the manufacturer or the dealer cannot be prosecuted. When there is no allegation in the complaint alleging that the vendor produced any warranty or bill with regard to the purchase of the food item in question from accused No.2, that is the appellant herein, merely basing on the label declaration the

appellant cannot be prosecuted. However, the order of quashing will not preclude the concerned Magistrate in arraying the appellant as an accused during the trial, if there is any offence.

6. The High Court has also observed that it is clear that the article of food in question was misbranded since none of the pictures contained on the label has nothing to do with the article of food in question. Therefore, it is held to be a clear case of violation of Rule 37 D of the PFA Rules. Aggrieved by these findings, the present appeal is filed.

7. It is contended by Shri Ashok H. Desai, learned senior counsel for the appellant that the article of food can be considered to be misbranded only when false claims are made with respect to such article of food upon the label or otherwise and there is no statutory prohibition under the Act in printing pictures of vegetables on the label of article of food on which the said article of food may be used in the preparation / cooking of such vegetables. Whereas it is submitted by the learned counsel for the State that the pictures on the brand does not relate to the article which the appellant manufactures and sells and, therefore, it would fall within the violation of Rule 37 D of the PFA Rules as misbranded. The relevant provision reads as under :-

RULE 37D - "Labelling of edible oils and fats \026 The package, label or the advertisement of edible oils and fats shall not use the expressions "Super-Refined", "Extra-Refined", "Micro-Refined", "Double-Refined", "Ultra-Refined", "Anti-Cholesterol", "Cholesterol-Fighter", "Soothing to Heart", "Cholesterol-Friendly", "Saturated Fat Free" or such other expressions which are an exaggeration of the quality of the product."

8. The provision for labeling of edible oils and fats is under Rule 37 D of the PFA Rules which specifies labeling of edible oils and fats. The Rule clearly states that package / labeling or advertisement of edible oils and fats shall not use the expressions such as (i) super-refined; (ii) extra-refined; (iii) micro-refined; (iv) double-refined; (v) ultra-refined; (vi) anti-cholesterol; (vii) cholesterol fighter; (viii) soothing to heart; (ix) cholesterol friendly; (x) saturated fat free, etc. It would be pertinent to say that all these expressions from (i) to (x) are prohibited because if they are mentioned on the labeling of the product they will tend to exaggerate the quality of the product. The Rule further states that all such other expression are also prohibited which tend to exaggerate the quality of the product. For the purposes of interpretation of this Rule the principle of ejusdem generis can be applied; ejusdem generis is a latin expression which means "of the same kind", for example where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. In other words, it means words of similar class. According to Black's Law Dictionary (8th Edn. 2004), the principle of ejusdem generis is where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. It is a cannon of statutory

construction that where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.

9. Keeping the above principle in mind, the words "such other" as used in Rule 37 D is to be read along with the subject matter in which they have been used. The residuary clause of the rule has to be read in light of the ten prohibited expressions, and it becomes clear that what is prohibited are only the expressions which are an exaggeration of the quality of the product.

10. In the present case, it is true that the appellant has used pictures of vegetables on the label of the product which is refined soyabean oil, which according to the appellant is to depict the purpose for which the oil can be used, viz., preparation of the vegetables depicted thereon. Unless the picture depicted on a label of edible oils and fats exaggerates the quality of the product, it would not fall within the mischief of Rule 37 D. In the present case, the vegetables shown on the label of soyabean oil does not in any way indicate that the quality of soyabean oil is 'super-refined', 'extra-refined', 'micro-refined', 'double-refined', 'ultra-refined', 'anti-cholesterol', 'cholesterol fighter', 'soothing to heart', 'cholesterol friendly', 'saturated fat free' etc., nor it indicates the exaggeration towards the quality of the product to come within the mischief of Rule 37D of the PFA Rules. In our opinion the High Court has committed a serious error in arriving at a finding that the article of food (soyabean oil) was misbranded since the picture contained on the label has nothing to do with the article of food in question, completely ignoring the fact that the article of food can be used for cooking the vegetables shown in the picture which cannot be said to be exaggerating the quality of the food in question.

11. For the aforesaid reasons, the appeal is allowed and the impugned finding of the High Court as regards misbranding and violation of Rule 37D of the PFA Rules is set aside.