

Association for Consumer Action on Safety and Health V/s Nestle India Ltd.

01.12.2011

Present: Ld. APP for the State.
Dr. Arun Kumar Gupta AR of the complainant.
Sh. Jitender Anand Ld. Proxy Counsel for the accused company.
AR of the accused company is absent.

Ld. Proxy Counsel for the accused company has moved an application seeking exemption from personal appearance of the AR of the accused company. Heard and allowed for today only.

File perused.

The matter is fixed for order on charge.

Arguments on the point of charge already heard.

The present complaint was preferred by Voluntary organization namely Association for Consumer Action on safety and health against the accused company, Nestle India Ltd alleging violation of the provisions of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (hereinafter called IMS Act). In brief the the case of the complainant is that on 19.10.1994 Dr. Arun Kumar Gupta purchased one cardboard container containing 400 gms of infant food manufactured and marketed by the accused company under the brand name of Ceralac and one tin container containing 500 gms of infant milk substitute manufactured and marketed by the accused company under the brand name of Lactogen from M/s. New Goldy Medicos, Pitampura. Dr. Arun Kumar Gupta also purchased magazines Sarita, Greha Shobha, Women's era and Meri

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Saheli and found that the accused company has violated the mandatory provisions of the IMS Act.

During pre charge evidence the complainant examined Dr. Arun Kumar Gupta as CW-1 and thereafter closed pre charge evidence. Thereafter the matter was fixed for arguments on charge.

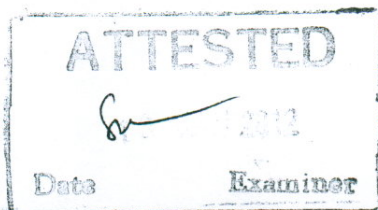
During arguments it is submitted by the Ld. Counsel for the Nestle India Ltd., the accused company that when before the IMS Act came in force, Prevention of Food Adulteration Act, 1954 (hereinafter called PFA Act) was in force and it was dilemma for the accused company whether to follow the IMS Act or the PFA Act as certain provisions of the former were inconsistent with that of latter. It was contended that since the violation of PFA Act entailed more severe punishment, the accused company followed the PFA Act. Further It was contended that since the label has to be designed well in advance therefore, time was taken by the accused Company to change the same. Further he has submitted that the matter is also pending in the Hon'ble High Court and the judgment has been reserved wherein the points of contention are:-

- 1) Whether there are inconsistencies in the two acts i.e. PFA and IMS Act?
- 2) Whether administrative directions are binding?
- 3) Whether the trial court should be directed to refer the matter U/s 395 Cr.P.C for reference to the Hon'ble High Court of Delhi?

He has submitted that judicial discipline demands that the matter be stayed till the out come of the judgment of the Hon'ble Delhi High Court.

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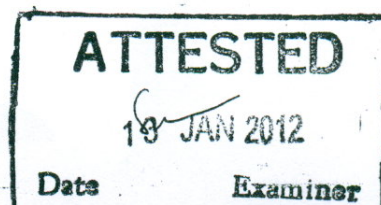




On the other hand Ld. Counsel for the complainant has submitted that the Hon'ble High Court of Delhi though has reserved the judgment but has not stayed or restrained the trial court to proceed with the matter. He has further submitted that the domain of both the acts i.e. PFA and IMS Acts are different. The accused company by not following the provisions of IMS Act had concealed the scientific and mandatory information from the Mothers regarding importance of Breast Feeding and were made to believe the superiority of formula based products by the accused company. It was further submitted that IMS Act 1992 is a special statute which was enacted specifically to promote and protect breast feeding by mothers and to regulate the aggressive marketing of formula based baby foods. Once the IMS Act and IMS Rules came into force in 1993, this became the specific statute to deal with the subject matter of promotion and protection of breast feedings by mothers. He further argued that PFA Rules being subordinate legislation cannot supersede IMS Act and in the event of any conflict the later special statute must prevail and the earlier general statute must give way.

Further as regarding contentions of Ld. Counsel for the accused company that they had approached the administrative officials pointing out the inconsistencies in the two acts and for further directions as to which act has to be followed, Ld. Counsel for the complainant has submitted that it is devoid of any merits since they must be in consonance with the laws made by the legislature.

It is not disputed that the Hon'ble High Court of Delhi has not ordered that present matter be stayed pending outcome of the proceedings before it. I have heard the arguments advanced by both the sides and have gone through the judgments relied upon by Ld. Counsels and have perused the material on record, in particular the testimony of Dr. Arun Gupta who has been





examined as CW-1.

In view of the rival arguments advanced and material on record, I am of the opinion that there is sufficient material on record to proceed against the accused company and the veracity of the witnesses and evidence on record has to be tested during trial.

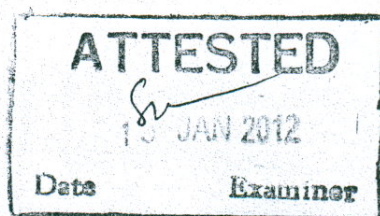
It has been held in a catena of judgments that at the stage of consideration of charge, no fishing or roving inquiries is warranted and the material collected by the investigating agency cannot be sieved through the finest gauze to test its veracity as held by Hon'ble Supreme Court of India.

Yogesh @ Sachin Jagdish Joshi v. State Of Maharashtra AIR 2008 SC 2991

It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. The test to determine a *prima facie* case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. [See : **State of Bihar v.**

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Ramesh Singh, (1977)4 SCC 39 and Prafulla Kumar Samal (supra),

Further that if upon consideration, the court is satisfied that a prima facie case is made out against the accused, the judge must proceed to frame charge. Only in case where it is shown that the evidence which prosecution proposes to adduce to prove the guilt of accused, even if fully accepted before it is challenged in cross examination or rebutted by defense, if any, cannot show that the accused committed the crime, then and then alone court can discharge the accused.

It is well settled that at the time of framing of charge the court is not to see whether there is sufficient ground for conviction of the accused but a strong suspicion pointing out guilt of the accused is sufficient.

In view of above, on the perusal of the complaint, testimonies of CW-1 and other material on record Prima facie case of violation of sec 3, 6(i)(a), 6 (l) (b), 6(i)(c) and 7 (l) of IMS Act is made out against the accused company. Now to come up on 9/01/2012 for framing of charge.

BHUPINDER SINGH
MM - 01
Rohini Courts/Delhi
01.12.2011

Office of the Distt. & Sessions Judge
Delhi
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