

PEPSICO INDIA HOLDINGS PVT. LTD.

v.

FOOD INSPECTOR AND ANR.
(Criminal Appeal No. 836 of 2010)

NOVEMBER 18, 2010

[ALTAMAS KABIR, CYRIAC JOSEPH AND DEEPAK
VERMA, JJ.]

Code of Criminal Procedure, 1908: s.482 – Quashing of proceedings – Allegation of food adulteration – Report of Public analyst that ‘sweetened carbonated water’ manufactured by appellant-company contained pesticide residue Carbofuran, to the extent of 0.001mg per litre and, therefore, was adulterated within the meaning of r.65 of Prevention of Food Adulteration Rules, 1955 and s.2(ia)(h) of Prevention of Food Adulteration Act, 1954 – Criminal proceedings against the appellant-company and its Directors – Petition for quashing the proceedings, dismissed by High Court – On appeal, held: Criminal proceedings liable to be quashed – Although, carbonated water was not included in the original Table appended to Rule 65 of the 1955 Rules, it was introduced in Item 23 of the Table under the heading “Chlorpyrifos” with effect from 17th June, 2009, and the tolerance limit of the presence of insecticide residue was prescribed as 0.001 mg/litre, which, in fact, was the amount of insecticide residue found by the Public Analyst – High Court had itself observed that mere presence of insecticide residue to any extent did not justify an allegation that the article of food was adulterated, but contrary to such observation, it went on to hold that the product was adulterated – Both the questions regarding the failure of the Central Government to frame Rules to define the Laboratories, where samples of food could be analysed by the Public Analyst, or to define the validated methods of analysis were of great

- A *importance for the purpose of bringing home a charge against the accused, but were not considered by High Court – High Court also overlooked the fact that the percentage of pesticides found by the Public Analyst was within the tolerance limits subsequently prescribed in respect of such product –*
- B *The order of the High Court is set aside – Prevention of Food Adulteration Rules, 1955 – r.65; Part XIV; Item 23 in Table appended to Part XIV – Prevention of Food Adulteration Act, 1954 – ss.2(ia)(h), 2(m)*
- C *Prevention of Food Adulteration Act, 1954: s.17 – Vicarious liability of Directors of a Company – Held: In a complaint against a Company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in-charge of or responsible to the Company for its day-to-day management,*
- D *or whether they were responsible to the Company for the conduct of its business – A mere bald statement that a person was a Director of the Company against which certain allegations were made is not sufficient to make such Director liable in the absence of any specific allegations regarding his*
- E *role in the management of the Company – In the instant case, since Manager, Quality Control was nominated u/s.17(2) to be in-charge and responsible to the Company for the conduct of its business, the appellant-company and its Directors could not be held liable for the adulteration of food*
- F *– Prevention of Food Adulteration Rules, 1955 – r.65 – Insecticide Act, 1968 – s.33.*

The appellants were the manufacturer of Pepsi, a sweetened carbonated water. On 25th October, 2006, the Food Inspector of Vigilance Department purchased three bottles of Pepsi. The bottles were sealed. On the next day, one part of the sample was forwarded to the Public Analyst. On 28th October, 2006, the Public Analyst submitted his report stating that upon analysis of the sample of Pepsi using the Directorate General of Health

Services (DGHS) method, pesticide residue Carbofuran, to the extent of 0.001mg per litre was detected therein and, therefore, the sample was adulterated within the meaning of Rule 65 of the Prevention of Food Adulteration Rules, 1955 and Section 2(ia)(h) of the Prevention of Food Adulteration Act, 1954. Based upon the report of the Public Analyst, the Magistrate took cognizance of the offence and issued process against the appellants.

The appellants filed a petition under Section 482 Cr.P.C. for quashing of the order of the magistrate. The Single Judge of the High court dismissed the said application and directed the prosecution to continue with the case. The appellant-company and its Directors filed the instant appeals.

Allowing the appeals, the Court

HELD: 1.1. Although, carbonated water was not included in the original Table appended to Rule 65 of the Prevention of Food Adulteration Rules, 1955, it was introduced in Item 23 of the Table under the heading "Chlorpyrifos" with effect from 17th June, 2009, and the tolerance limit of the presence of insecticide residue was prescribed as 0.001 mg/litre, which, in fact, was the amount of insecticide residue found by the Public Analyst in the sample of Pepsi submitted for such analysis. Ordinarily, since the level of insecticide residue was within the limits of tolerance prescribed for carbonated water with effect from 17th June, 2009, the same would not attract the provisions of Section 2(m) of the 1954 Act or the consequences thereof, but the finding of the Public Analyst was rendered in the year 2006, at the time when sweetened carbonated water was not included in the Table appended to Rule 65(2). After the tolerance limit was prescribed, the sample of Pepsi could not be said

A to be adulterated being within the prescribed tolerance limit. [Paras 30, 31] [1014-C-G]

1.2. The High Court erred in not considering the reasons given on behalf of the appellants for not sending the company's sample to the Forensic Laboratory that since neither any validated method of analysis was prescribed under Section 23(1-A)(ee) and (hh) of the Prevention of Food Adulteration Act, 1954, nor any Laboratory had been particularly specified for such examination, such an exercise would have been futile. Therefore, since a defined tolerance limit of the presence of the pesticides was not available in regard to sweetened carbonated water during the relevant time, no useful purpose could have been served by sending the second sample to the Forensic Laboratory. The High Court had itself observed that mere presence of insecticide residue to any extent could not justify an allegation that the article of food was adulterated, but contrary to such observation, the High Court went on to hold that the sweetened carbonated water manufactured by the appellants was adulterated within the meaning of Section 2(ia)(h) of the 1954 Act. Both the questions regarding the failure of the Central Government to frame Rules to define the Laboratories, where samples of food could be analysed by the Public Analyst, or to define the validated methods of analysis and the liability of the Directors-appellants were of great importance for the purpose of bringing home a charge against the accused for violation of the provisions of Rule 65 of the 1955 Rules and Section 2(ia)(h) of the 1954 Act and for holding that the sweetened carbonated water manufactured by the appellants was adulterated in terms of the said Rules. Since the range indicated as to the limits of tolerance of the presence of pesticides in different articles of food, including sweetened carbonated water, which was included in the Table appended to Rule 65(2) with effect

from 17th June, 2009, provided very little or practically no margin for error, the selection of Laboratories and the prescription of tolerance limits for different articles of food acquired great significance. The High Court did not appear to have considered the implications of the failure of the Central Government to frame Rules for the said purpose. Even the view taken by the High Court that the report of the Public analyst was not final and same could be challenged under Section 13(2) was not very satisfactory, as the mere presence of pesticide residue would not *ipso facto* render the article of food adulterated. The tolerance limits were prescribed in the Table for this very purpose and the subsequent inclusion of sweetened carbonated water seemed to indicate so and leaned more in favour of the appellants. The High Court also appeared to have overlooked the fact that the percentage of pesticides found by the Public Analyst in the sweetened carbonated water manufactured by the appellants was within the tolerance limits subsequently prescribed in respect of such product. [Paras 36, 38] [1016-D-G; 1017-C-H; 1018-A-B]

Prem Ballab & Anr. v. State (Delhi Admn.) (1977) 1 SCC 173 – referred to.

2.1. On the question of liability of the Directors of the Company with respect to an offence alleged to have been committed by the Company, the High Court went beyond the ratio of the decision of this Court in **S.M.S. Pharmaceuticals Ltd.'s* case upon holding that the principles set out in the said decision could not be understood in any mechanical or rigid manner. Instead, the High Court based its judgment on the decision of this Court in ***N. Rangachari v. Bharat Sanchar Nigam Ltd.* which was a case where the complaint clearly and categorically alleged that the named Directors were in-charge of and responsible to the Company for the

A conduct of its business. It is in such circumstances that the prayer for quashing of the proceedings was rejected. [Para 37] [1016-H; 1017-A-C]

B ****N. Rangachari v. Bharat Sanchar Nigam Ltd. (2007) 5 SCC 108 – distinguished.**

C ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr. 2005 (8) SCC 89; Hindustan Lever Limited v. Food Inspector & Anr. (2004) 13 SCC 83; Municipal Corpn. of Delhi v. Ram Kishan Rohtagi (1983) 1 SCC 1; Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi & Ors. (2007) 5 SCC 54; Municipal Corporation of Delhi v. Purshotam dass Jhunjunwala & Ors. (1983) 1 SCC 9 – referred to.**

D **2.2. It is now well established that in a complaint against a Company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in-charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the**
 E **Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations were made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the**
 F **management of the Company. Having considered the matter in its totality and also having regard to the fact that one Somesh Dahale was nominated under Sub-section (2) of Section 17 of the 1954 Act to be a person in-charge of and responsible to the Company for the conduct of its business, the judgment and the order of the Single Judge**
 G **impugned in these proceedings is set aside and the prosecution of the appellants is quashed in respect of the various complaints challenged before the High Court in its inherent jurisdiction. [Paras 39-41] [1018-C-H]**

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PEPSICO INDIA HOLDINGS PVT. LTD. v. FOOD INSPECTOR AND ANR. 999

Case Law Reference:

2005 (8) SCC 89	referred to	Paras, 1, 16, 18, 37, 39	A
(2004) 13 SCC 83	referred to	Para 12	
(1983) 1 SCC 1	referred to	Para 16, 25	B
(2007) 5 SCC 54	referred to	Para 18, 20	
(1977) 1 SCC 173	referred to	Para 23, 28	
(1983) 1 SCC 9	referred to	Para 26	C
(2007) 5 SCC 108	referred to	Para 37, 39	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 836 of 2010.

From the Judgment & Order dated 19.2.2009 of the High Court of Kerala at Ernakulam in Criminal Miscellaneous Case No. 1814 of 2007.

WITH

Crl. A.Nos. 837, 838-840, 841, 842, 843, 845, 844 of 2010.

Iqbal Chagla, Maninder Singh, Rajeev Virmani, Indu Malhotra, Jaideep Gupta, K.N. Bhat, Amar Gupta, Riyaz Chagla, Rajesh Batra, Rajiv Talashekhar, Dheeraj Nair, Chetan Chopra, G. Prakash, Beena Prakash, V. Senthil, Jayant K. Sud, Atul Sahi, M.P. Vinod, Ajay K. Jain, Vimlesh Kumar, Manu Nair, Saanjh N. Purohit (for Suresh A. Shroff & Co.), Ashok Bhan, Sunita Sharma, R.K. Rahotre, D.S. Mahra, Sushma Suri for the appearing parties.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. All these appeals are directed against the judgment dated 19th February, 2009, passed by a

A learned Single Judge of the Kerala High Court dismissing the several petitions filed by the Appellants under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the several prosecutions commenced against them. The Appellants in Criminal Appeal No.836 of 2010, Pepsico India Holdings Pvt. Ltd., is the manufacturer of Sweetened Carbonated Water and is being prosecuted for the presence of Carbofuran in its product. These appeals throw up certain questions relating to the maintainability of the criminal prosecutions launched against the Appellants, namely :

- C (1) In the absence of any prescribed and validated method of analysis under Section 23(1-A)(hh) of the Prevention of Food Adulteration Act, 1954, hereinafter referred to as "the 1954 Act", could a prosecution have been launched against the Appellants based on a report submitted by the Public Analyst using the method of the Directorate General of Health Services (D.G.H.S.) ?
- D
- E (2) Could a prosecution have been launched against the Appellants in the absence of any validated method of analysis to ascertain the percentage of pesticide residue present in a Carbonated beverage, which renders the report of the Public Analyst unreliable, particularly when it does not indicate that such percentage of the pesticide residue is injurious to health and, therefore, adulterated within the meaning of Section 2(ia)(h) of the aforesaid Act?
- F
- G (3) What is the effect of non-specification of the level of tolerance in respect of the presence of pesticide residue in Sweetened Carbonated Water in the Table appended to Rule 65(2) of the Prevention of Food Adulteration Rules, 1955, hereinafter referred to as "the 1955 Rules"? and
- H

- (4) What is the liability of the Directors of a company which is said to have committed defaults within the meaning of Section 17 of the 1954 Act, in the light of the decision of this Court in *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.* [2005 (8) SCC 89], when they were neither in charge of nor responsible for the conduct of the business of the Company? A B

2. On 25th October, 2006, the Food Inspector of Mobile Vigilance, Kozhikode, inspected the premises of Star Marketing, Ashoka Puram, Door No.5/1589, under Kozhikode Municipal Corporation and purchased three two-litre bottles of Pepsi on payment of the price. The said bottles were sealed and subsequently, on 26th October, 2006, one part of the sample was forwarded to the Public Analyst, Kozhikode. On 28th November, 2006, the Public Analyst submitted his report stating that upon analysis of the sample of Pepsi Sweetened Carbonated Water, using the Directorate General of Health Services (DGHS) method, pesticide residue-Carbofuran, to the extent of 0.001 mg per litre was detected therein. The said sample was, therefore, adulterated within the meaning of Rule 65 of the 1955 Rules and Section 2(ia)(h) of the 1954 Act. C D E

3. Based upon the report of the Public Analyst, the Chief Judicial Magistrate, Kozhikode, took cognizance of the offence and issued process against the Appellants. F

4. The Appellants moved the Kerala High Court under Section 482 Cr.P.C. for quashing of the aforesaid order of the Chief Judicial Magistrate, Kozhikode. The learned Single Judge by his order dated 19th February, 2009, dismissed the said application and directed the prosecution to continue with the case. Aggrieved by the order of the learned Single Judge, the Appellant-Company, M/s. Pepsico India Holdings Pvt. Ltd., and its Directors have filed these appeals challenging the cognizance taken by the learned Magistrate on various grounds. G H

A 5. Mr. Iqbal Chagla, learned Senior Advocate, appearing
for the Appellants questioned the cognizance taken against the
Appellants and urged that in the absence of any prescribed
method of analysis under Section 23(1-A)(hh) of the 1954 Act
by the Central Government, the Public Analyst had not been
B following any uniform method of analysis, but resorted to
whatever method was convenient. It was submitted that the said
approach was entirely wrong and the result of the analysis could
not be accepted as valid. Furthermore, there being no validated
method of analysis to ascertain the percentage of pesticide
C residue present in a carbonated beverage, the report of the
Public Analyst could not be relied upon for launching
prosecutions against the Appellants under the provisions of the
1954 Act, especially when such report did not even indicate that
the presence of the amount of pesticide residue detected is
D injurious to health and that the sample of Pepsi submitted for
analysis would, therefore, have to be considered as adulterated
under Section 2(ia)(h) of the 1954 Act.

6. It was strenuously urged that even if it be assumed that
the Public Analyst had detected the presence of pesticide
E residue, his opinion that the presence of the pesticide residue
at such levels rendered the articles injurious to health under
Section 2(ia)(h) of the 1954 Act, cannot be accepted in the
absence of a validated method of analysis. Mr. Chagla
submitted that whether an article of food is adulterated or not
F has to be determined under the Rules framed by the Central
Government under Section 23 of the 1954 Act. Under Section
23(1A) the Central Government is empowered to make rules,
inter alia, for defining the standards of quality and fixing the
tolerance limits of pesticide permissible in any article of food.
G The Rule-making authority, in consultation with the Central
Committee and the Central Government has defined the
standards of quality and has also fixed the limits of pesticide
residue permissible for various articles of food, including
carbonated water, within which entry the product of the
H Appellants is also included. It is also universally accepted that

even the water which is used for manufacturing carbonated water, has to comply with the standards of packaged drinking water. Rule 65 is found in Part XIV of the 1955 Rules under the heading "Insecticides and Pesticides". Rule 65(2) makes it mandatory that the level of insecticide presence, mentioned in the Table in respect of various articles of food, shall not exceed the tolerance limit prescribed against that article of food. At the relevant point of time, when disputes arose, "Carbonated Water or Sweetened Carbonated Water" was not included in Rule 65 and, hence, no tolerance limit was prescribed for carbonated water thereunder. Furthermore, it was urged by Mr. Chagla that Rule 65 essentially applies to raw agricultural products moving in commerce, which will be evident from Explanation (b)(ii) at the end of the Table appended to Rule 65(2). Accordingly, as far as finished products are concerned, prior to June 17, 2009, no tolerance limits were prescribed under the Act and/or Rules, except for a few milk products.

7. Mr. Chagla submitted that the standard prescribed for "Mineral Water" was that the pesticide residue should be below detectable limits. However, for the first time, with effect from 1st April, 2004, a standard was included which mandated that the total pesticide residue in "packaged drinking water" was not to exceed 0.0005 mg/litre. No such standard was, however, laid down in respect of "Carbonated Water", but with effect from 15th October, 2004, the water used in the manufacture of carbonated beverage was required to conform to the standards prescribed for packaged drinking water. While the carbonated water could contain sugar, water, liquid glucose, honey, natural flavours, fruit and vegetable extracts, the water to be used would have to conform to the standards prescribed for packaged drinking water, but no separate standard of pesticide residue was prescribed.

8. Mr. Chagla submitted that the water used by the manufacturer in the process of manufacturing its carbonated

- A drink, conforms to the standards prescribed for packaged drinking water and no one has contended to the contrary, nor is the Appellants being prosecuted for violating such standard. He contended that the complaint is based exclusively on the Public Analyst's report, which, in fact, stood vitiated for various reasons. It was urged that to the extent the report indicates that the product manufactured by the Appellants is adulterated as per Rule 65 and A.01.01, the same was misconceived since neither Rule 65 nor A.01.01, at the relevant point had prescribed a tolerance limit for carbonated water. It was contended that the High Court has, in fact, recorded that the prosecution proceeded on the sole allegation that the samples of carbonated beverages purchased by the Food Inspectors are adulterated under Section 2(ia)(h) of the Act. Based on the said submissions, the High Court confined the allegations only to violation of the aforesaid provision of the Act and the same is also reflected in the impugned judgment of the High Court.

9. As will appear from the report of the Public Analyst filed in connection with Criminal Appeal No.836 of 2010, a pesticide residue of Carbofuran amounting to 0.001 mg/litre was detected in the sample of sweetened carbonated water manufactured by the Appellant, by employing the "DGHS Method".

10. Mr. Chagla contended that in 2007, in an affidavit filed before the Kerala High Court, it had been indicated by the Union of India that the standards for pesticide residue for sweetened carbonated water have not been prescribed in any country of the world and that a manual of analysis for testing of pesticide residue was under preparation of the Ministry of Health and Family Welfare. The same sentiments regarding the absence of validated methods for detection of pesticides were also discussed by the Central Committee for Food Standards on 16th April, 2007, and the Minutes of the meeting recorded that validated methods for detection of pesticides were not available. Apart from the above, Mr. Chagla also submitted that

the opinion of the Public Analyst that the carbonated water contained an ingredient which was injurious to health, was not supported by any standard and the finding was based merely on account of the presence of Carbofuran therein. In fact, the Court also observed that the mere presence of insecticide residue could not ipso facto justify a conclusion that the article had become injurious to health. What the Public Analyst indicated was that since Rule 65 and A.01.01 did not prescribe any tolerance limit for pesticide residue in carbonated water, it pre-supposes that the carbonated water would have to be totally free from pesticide. Mr. Chagla submitted that having observed that the mere presence of insecticide residue could not ipso facto justify the conclusion that the manufactured articles were injurious to health, the High Court ought not to have relied on the report of the Public Analyst to arrive at a prima facie finding that the sample of sweetened carbonated water was adulterated.

11. Mr. Chagla pointed out that when the tolerance limit of Carbofuran in infant milk has been set at 0.05 mg/litre, the presence of 0.001 mg/litre of Carbofuran in the carbonated water manufactured by the Appellants, could certainly not have been more injurious to public health than infant milk.

12. In support of his submissions, Mr. Chagla referred to the decision of this Court in *Hindustan Lever Limited Vs. Food Inspector & Anr.* [(2004) 13 SCC 83], wherein, this Court was considering the judgment of the Kerala High Court rejecting petitions filed by the Appellants therein for quashing the proceedings pending before the Judicial Magistrate, First Class, Alwaye. The proceedings had been initiated on the complaint filed by the Food Inspector, Edapally Circle, Ernakulam District, under Sections 2(ia)(a) and (m), 7(1) and 16(1)(a)(i) and Section 17(1) of the Prevention of Food Adulteration Act, 1954 read with Rule 5 of the Prevention of Food Adulteration Rules, 1955, which were ultimately quashed, inter alia, on the ground that no prosecution would be

A maintainable where no standard is prescribed under the Rules. It was urged that the report not having disclosed any material to support the opinion, stood clearly vitiated and ought not to have been relied upon.

B 13. On the question of maintaining an appeal under
C Section 13(2) of the P.F.A. Act, 1954, Mr. Chagla contended
D that the courts below had erred in holding that the Appellant
ought to have challenged the report by filing an appeal to the
Central Food Laboratory and not having done so, was not
entitled to such relief. Learned counsel submitted that the Court
did not appreciate the futility of preferring an appeal under
Section 13(2) of the 1954 Act, since admittedly, no validated
method of analysis exists for detecting the presence of
pesticide residue in carbonated water. Learned counsel also
submitted that since the report of the Public Analyst does not
disclose any violation of the provisions of the 1954 Act, there
was no reason for the Appellants to approach the Central Food
Laboratory under Section 13(2) of the 1954 Act.

E 14. On the question of the liability of the Directors of the
Appellant-Company on account of the alleged violation of the
provisions of the 1954 Act, Mr. Chagla submitted that except
for a bald statement that Accused No.3 to Accused No.9 were
the Directors of the Company and that Shri Rajeev Bakshi was
the Chairman and Managing Director of the Company, nothing
else had been stated in the complaint as to how they were liable
for the offences complained of. Mr. Chagla referred to Sub-
Sections (1) and (2) of Section 17 of the 1954 Act, which deals
with the offences committed by a Company and provides as
follows :

G “17. *Offences by companies.*-(1) Where an offence under
this Act has been committed by a company—

H (a)(i) the person, if any, who has been nominated
under sub-section (2) to be in charge of, and
responsible to, the company for the conduct of the

business of the company (hereafter in this section referred to as the person responsible), or A

(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and B

(b) the company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: C

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence. D

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated. E F

Explanation.- Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit G H

A shall be deemed to be the person responsible in respect of such establishment, branch or unit."

B 15. It was firstly submitted that one Somesh Dahale, Manager, Quality Control, of the Company, had been nominated under Sub-section (2) of Section 17 to be in-charge and responsible for the conduct of the business of the Company and was, therefore, the person responsible within the meaning of Sub-section (1).

C 16. In addition to the above, Mr. Chagla submitted that since no allegation had been made in the complaint against the Directors of the Company as to whether they were either in charge or responsible to the Company for its day-to-day management, the liability of the offence alleged to have been committed by the Company, could not be extended to them.

D Reference was made to the decision of this Court in *S.M.S. Pharmaceuticals Ltd.*'s case (*supra*), wherein the question of vicarious liability in criminal jurisprudence had been considered and it was held that a Director cannot ipso facto be deemed to be in charge of and responsible to the Company for the

E conduct of its business. Such fact has to be specifically averred in the complaint. Mr. Chagla submitted that the High Court did not also appreciate the fact that the decision in *S.M.S. Pharmaceuticals Ltd.*'s case (*supra*) was based on the judgment of this Court in *Municipal Corpn. of Delhi Vs. Ram Kishan Rohtagi* [(1983) 1 SCC 1] which was a decision in the

F context of the 1954 Act.

G 17. Mr. Chagla submitted that it had perhaps been presumed that the Appellant-Company had not nominated an officer under Section 17(2) of the 1954 Act and consequently the entire Board of Directors were responsible for the offence.

H 18. Mr. Chagla lastly submitted that as far as Mr. Rajeev Bakshi, Chairman of the Company, is concerned, he too cannot be made liable merely on account of the fact that he was the Chairman of the Company. It was submitted that the said view

had been expressed by this Court in *Everest Advertising (P) Ltd. Vs. State, Govt. of NCT of Delhi & Ors.* [(2007) 5 SCC 54], which followed the earlier judgment of this Court in *S.M.S. Pharmaceuticals Ltd.'s case* (supra).

19. Mr. Chagla submitted that, the allegations made against the Company, its Directors and its employees were not maintainable under the provisions of the Prevention of Food Adulteration Act, 1954, not only on the ground of absence of any standard of validated method for the detection of pesticide residue in carbonated water but also on account of the fact that even the quantity of pesticide residue detected by the Public Analyst in the product of the Appellant-Company on the basis of the DGHS method, was within the tolerance limits as was prescribed under the amended provisions of Rule 65 of the 1955 Rules, with effect from 17.6.2009. Mr. Chagla submitted that after such amendment sweetened carbonated water was included in the Table appended to Rule 65(2) under the heading of "Chlorpyrifos" at Serial No.23, wherein the tolerance limits of the presence of insecticide residue in carbonated water was shown as 0.001 mg/litre. Mr. Chagla submitted that the several prosecutions commenced against the Appellants and its Directors and employees for alleged violation of the provisions of Section 16(1)(a)(i) read with Section 2(ia)(a), 2(ia)(h), 7(1) of the 1954 Act and Rule 65 of the 1955 Rules, were, therefore, liable to be quashed.

20. Ms. Indu Malhotra, learned Senior Advocate, appearing for Pepsico India Holdings Pvt. Ltd. in Criminal Appeal No.842 of 2010 (arising out of SLP(Crl.)No.5818/2009), while adopting Mr. Chagla's submissions re-emphasised the decision of this Court in *Everest Advertising (P) Ltd.'s case* (supra) with regard to the question of vicarious liability of the Directors of a Company in regard to offences which may have been committed without their knowledge or consent. Ms. Malhotra submitted that it was well-established through judicial precedent that while the Managing Director or Deputy

A Managing Director of a Company would be deemed to be aware of actual transactions in a given situation, the Chairman of a large company or a Director of a Company may not be so aware, as in the instant case.

B 21. In this regard, Ms. Malhotra also referred to the provisions of the Insecticide Act, 1968, which by virtue of the Explanation to Rule 65 has been made applicable to the said Rule regarding usage of the expression "insecticide", and, in particular, Section 33 thereof, which relates to offences so committed by a company. Section 33 provides that in regard
C to offences by companies a person connected with the Company's affairs could not be made liable if he proved that the offence was committed without his knowledge or that he exercised all due diligence to prevent such offence. Ms.
D Malhotra submitted that from the facts as revealed in the instant case, no liability could be foisted on the Directors of the Company when Somesh Dahale had been nominated under Sub-Section (2) of Section 17 of the 1954 Act to be the person in-charge of and responsible to the Company for the conduct of its business.

E 22. Mr. K.N. Bhat, learned Senior Advocate, who appeared for the State of Kerala in these appeals, firstly contended that Section 23 of the 1954 Act empowers the Central Government to make rules to inter alia define the laboratories where
F samples of articles of food may be analyzed by Public Analysts under the Act and also to define the method of analysis under Sub-section (1-A)(ee)(hh). It was submitted that such a power was discretionary and it was for the Central Government to act on the basis thereof. Accordingly, the Prevention of Food
G Adulteration Rules, 1955, were framed under Section 23 to give effect to the provisions of the 1954 Act. Mr. Bhat submitted that Rule 65 of the aforesaid Rules specifically provide for restriction on the use of insecticide and a Table was appended to Sub-section (2) which indicates the names of the
H insecticides, the articles of food and the tolerance limit of the

existence of such insecticides in such food items. Mr. Bhat submitted that while in the Table, which had been initially appended to Sub-Rule (2) of Rule 65, carbonated water had not been included, the said item was included in the said Table under Item No.23 dealing with Chlorpyrifos by G.S.R. 427(E) dated 17.6.2009. It was submitted that it was the intention of the Legislature that sweetened carbonated water should not have any insecticide residue in it at all, but a specific tolerance limit was included in order to provide a margin on account of the use of various agents in the manufacture of sweetened carbonated water. Mr. Bhat urged that the submissions made on behalf of the Appellants in this regard that in the absence of any Rules framed under Section 23(1-A)(ee) and (hh), the methods of analysis resorted to by the Public Analyst, could not be relied upon, was considered at length by the High Court. Considering the provisions of Section 23(1-A) (ee)(hh) of the 1954 Act, the High Court held that in the event the argument advanced on behalf of the Appellants was to be accepted, it would lead to an anomalous situation. On the other hand, the High Court was of the view that the said provisions would be applicable in respect of certain tests which could not be conducted and permitted to be conducted in every laboratory. The non-formulation of Rules under Section 23(1-A)(ee)(hh) for analysis of carbonated beverages, could not, therefore, be construed as being fatal to the prosecution.

23. Mr. Bhat then submitted that Rule 4 of the 1955 Rules, provides for analysis of food samples and under Sub-rule (9) provides that the "Manual of Method of Analysis" brought out by the Ministry of Health and Family Welfare, is to be adopted for analysing the samples of food articles. However, in case no parameter is available in the manuals for the methods of analysis, the other methods of analysis indicated therein are to be adopted. Accordingly, in the absence of any standard prescribed under the existing Rules, it was open to the Public Analyst to resort to the DGHS method for analysing the sample which had been forwarded and the adoption of such a method

- A was valid and had been rightly relied upon by the courts below. In support of his submissions, Mr. Bhat referred to the decision of this Court in *Prem Ballab & Anr. Vs. State (Delhi Admn.)* [(1977) 1 SCC 173], wherein this Court was called upon, inter alia, to examine the question as to whether an article of food could be found to be adulterated under more than one clauses of Section 2(i) of the 1954 Act in the context of colouring matter being used in articles of food. This Court held that when no colouring matter is permitted to be used in respect of an article of food, and what is prescribed in respect of the said article is "nil colouring matter", it would be a case of adulteration within the meaning of Section 2(j) of the 1954 Act, if the article contains any colouring matter.

24. Mr. Bhat submitted that the question as to whether the insecticide residue found in the product of the Appellants amounted to adulteration or not, is a question which would depend to a large extent on the evidence to be adduced during trial having regard to the report of the Public Analyst that 0.001 mg per litre of insecticide residue had been detected in the sweetened carbonated water manufactured by the Appellant-Company. Learned counsel submitted that a prima facie case had been made out on behalf of the prosecution against the Appellants to go to trial and the same did not merit interference in this case under Article 136 of the Constitution.

25. On the question of vicarious liability of the Directors of the Company, in relation to the evidence alleged to have been committed by the Company, Mr. Bhat submitted that although it had been held in *Ram Kishan Rohtagi's* case (supra) that the complaint being vague as regards the Directors and no offence having been revealed against them, the High Court had not only quashed the proceedings against the Directors, it had also considered the question of vicarious liability, but had found that such liability did not extend to the Directors of the Company, who were not responsible to the Company for its day-to-day business.

26. Mr. Bhat also relied upon another decision of this Court in *Municipal Corporation of Delhi Vs. Purshotam dass Jhunjunwala & Ors.* [(1983) 1 SCC 9], in which the Chairman, Managing Director and Director of the Mill were found to be in-charge of and responsible for the conduct of its business at the time of commission of offence and, accordingly, their prayer for quashing the complaint was rejected. A B

27. Mr. Jaideep Gupta, learned Senior Advocate, who appeared for State of Kerala in Criminal Appeal No.837 of 2010, adopted Mr. Bhat's submissions. C

28. In reply to Mr. Bhat's submissions, Mr. Chagla while reiterating his earlier submissions, contended that the submissions with regard to Rule 65 of the 1955 Rules had been given up by the State of Kerala before the High Court, though such submission was disputed by Mr. Bhat. He also added that Rule 65 deals with raw products and not finished products and the decision in *Prem Ballab & Anr.'s case* (supra) dealt with the addition of colour to a food article which has no relevance as far as the facts of these Appeals are concerned, since it is not the case of the prosecution that any insecticide had been directly introduced in sweetened carbonated water manufactured by the Company. D E

29. From the submissions made on behalf of the respective parties, it is apparent that the width of the dispute to be settled in these Appeals is not very wide. We are only required to consider as to whether the presence of 0.001 mg of Carbofuran per litre found in the sweetened carbonated water, manufactured by the Appellant-Company, can be said to be adulterated as per Rule 65 of the 1955 Rules and under Section 2(ia)(h) of the 1954 Act, particularly in the absence of any validated standard of analysis provided for under the 1954 Act or 1955 Rules. F G

30. The Public Analyst found the sample of Pepsi to be covered by the definition of non-alcoholic beverages defined H

- A in Appendix-B, as prescribed under Rule 5 of the 1955 Rules. Item A.01 deals with non-alcoholic beverages and Item A.01.01 defines carbonated water to mean water conforming to the standards prescribed for Packaged Drinking Water under the Prevention of Food Adulteration Rules, 1955, impregnated with
- B carbon dioxide under pressure which may contain any of the agents mentioned thereunder singly or in combination. Having found the sample of Pepsi to fall within the definition of non-alcoholic beverages, the Public Analyst by using the DGHS method found traces of 0.001 mg of Carbofuran per litre in the
- C said sample of Pepsi and in the absence of any given standard, was of the opinion that the same was adulterated in terms of Rule 65 of the 1955 Rules and Section 2(ia)(h) of the 1954 Act. Although, carbonated water was not included in the original Table appended to Rule 65 of the 1955 Rules, as stated
- D hereinbefore, it was introduced in Item 23 of the Table under the heading "Chlorpyrifos" with effect from 17th June, 2009, and the tolerance limit of the presence of insecticide residue was prescribed as 0.001 mg/litre, which, in fact, was the amount of insecticide residue found by the Public Analyst in the sample of Pepsi submitted for such analysis.

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31. Ordinarily, since the level of insecticide residue was within the limits of tolerance prescribed for carbonated water with effect from 17th June, 2009, the same would not attract the provisions of Section 2(m) of the 1954 Act or the
- F consequences thereof, but the finding of the Public Analyst was rendered in the year 2006, at a time when sweetened carbonated water was not included in the Table appended to Rule 65(2). After the tolerance limit was prescribed, the sample of Pepsi could not be said to be adulterated being within the
- G prescribed tolerance limit.

32. The entire controversy arises out of the fact that no specific tolerance limit had been prescribed for sweetened carbonated water under Rule 65 and it was, therefore, presumed that trace of any insecticide would amount to
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adulteration of the final product. In fact, the High Court, while considering the matter, seems to have misconstrued the submissions made on behalf of the Appellants that the mere presence of insecticide residue does not render the article of food as being adulterated. The presence of insecticides within the limits prescribed in the Table to Rule 65 cannot, therefore, be said to have caused adulteration of the article of food in question. In fact, in paragraph 21 of its judgment, the learned Single Judge of the High Court observed that he was inclined to agree with the learned counsel for the Petitioners that the mere presence of insecticide residue could not ipso facto justify the conclusion that the article of food has become injurious to health.

33. The High Court summarised its view into several grounds of challenge. Grounds 1 and 2 relate to the non-framing of Rules under Section 23(1-A) (ee) and (hh) of the 1954 Act. Grounds 3, 4 and 5 deal with the challenge thrown on behalf of the Appellants to the submissions that the report of the Public Analyst was not final and that the same could be challenged under Section 13(2) of the said Act. Ground 6 deals with the criminal liability of the Directors of the Company on account of the allegations against the Company.

34. As far as Grounds 1 and 2 are concerned, the High Court was not convinced with the submission made on behalf of the appellants that in the absence of any prescribed and validated method of analysis under Section 23(1-A)(ee) and (hh) of the 1954 Act, the report of the Public Analyst, who had used the DGHS method, could not be relied upon, especially when even the Laboratories, where the test for detection of insecticides and pesticides in an article of food could be undertaken, had not been specified. The observation of the Single Judge of the High Court that if the submissions made on behalf of the Appellants herein were to be accepted, the mechanism of the Act and the Rules framed thereunder would come to a grinding halt, is not acceptable to us, since the same

A could lead to a pick and choose method to suit the prosecution. However, in any event, the percentage of Carbofuran detected in the sample of Pepsico which was sent for examination to the Forensic Laboratory is within the tolerance limits prescribed for Sweetened Carbonated Water with effect from 17th June, 2009.

B 35. The High Court also misconstrued the provisions of Section 23(1-A)(ee) and (hh) in holding that the same were basically enabling provisions and were not mandatory and could, in any event, be solved by the Central Government by framing Rules thereunder, by which specified tests to be held
C in designated Laboratories could be spelt out. Consequently, the High Court also erred in holding that the non-formulation of Rules under the aforesaid provisions of the 1954 Act could not be said to be fatal for the prosecution.

D 36. As far as Grounds 3, 4 and 5 are concerned, the High Court failed to consider the reasons given on behalf of the Appellants for not sending the Company's sample to the Forensic Laboratory, to the effect that, since neither any validated method of analysis had been prescribed under
E Section 23(1-A)(ee) and (hh) of the 1954 Act, nor had any Laboratory been particularly specified for such examination, such an exercise would have been futile. In our view, no useful purpose could have been served by sending the second sample to the Forensic Laboratory, unless a defined tolerance limit of
F the presence of the pesticides was available in regard to Sweetened Carbonated Water. It may be noted that the High Court had itself observed that mere presence of insecticide residue to any extent could not justify an allegation that the article of food was adulterated, but contrary to such observation, the High Court went on to hold that the Sweetened Carbonated
G Water manufactured by the Appellants was adulterated within the meaning of Section 2(ia)(h) of the 1954 Act.

37. On the question of liability of the Directors of the Company with respect to an offence alleged to have been
H committed by the Company, the High Court went beyond the

ratio of the decision of this Court in *S.M.S. Pharmaceuticals Ltd.*'s case (supra) upon holding that the principles set out in the said decision could not be understood in any mechanical or rigid manner. Instead, the High Court based its judgment on the decision of this Court in *N. Rangachari Vs. Bharat Sanchar Nigam Ltd.* [(2007) 5 SCC 108], which was a case where the complaint clearly and categorically alleged that the named Directors were in charge of and responsible to the Company for the conduct of its business. It is in such circumstances that the prayer for quashing of the proceedings was rejected.

38. Both the questions regarding the failure of the Central Government to frame Rules to define the Laboratories, where samples of food could be analysed by the Public Analyst, or to define the validated methods of analysis and the liability of the Directors, who are the Appellants before us, are of great importance for the purpose of bringing home a charge against the accused for violation of the provisions of Rule 65 of the 1955 Rules and Section 2(ia)(h) of the 1954 Act and for holding that the Sweetened Carbonated Water manufactured by the Appellants was adulterated in terms of the said Rules. Since the range indicated as to the limits of tolerance of the presence of pesticides in different articles of food, including Sweetened Carbonated Water, which was included in the Table appended to Rule 65(2) with effect from 17th June, 2009, provides very little or practically no margin for error, the selection of Laboratories and the prescription of tolerance limits for different articles of food acquires great significance. The High Court does not appear to have considered the implications of the failure of the Central Government to frame Rules for the aforesaid purpose. Even the view taken by the High Court with regard to Grounds 3, 4 and 5 is not very satisfactory, as the mere presence of pesticide residue does not ipso facto render the article of food adulterated. Tolerance limits have been prescribed in the Table for this very purpose and the subsequent inclusion of Sweetened Carbonated Water seems

- A to indicate so and leans more in favour of the Appellants. The High Court also appears to have overlooked the fact that the percentage of pesticides found by the Public Analyst in the Sweetened Carbonated Water manufactured by the Appellants was within the tolerance limits subsequently prescribed in respect of such product.
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39. As mentioned hereinbefore, the High Court erred in giving its own interpretation to the decision of this Court in *S.M.S. Pharmaceuticals Ltd.'s* case (supra), which was reiterated subsequently in several judgments, some of which have been indicated hereinabove, and relying instead on the decision of *Rangachari's* case (supra), the facts of which were entirely different from the facts of this case. It is now well established that in a complaint against a Company and its Directors, the Complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company.
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40. It has to be kept in mind that although an argument was advanced with regard to the restrictions imposed on the use of insecticides under Rule 65 of the 1955 Rules, it is apparent from the order of the learned Single Judge that such a ground was given up by the respondents and the arguments were confined only with regard to the alleged violation of Section 2(ia)(h) of the 1954 Act.
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41. Having considered the matter in its totality and also having regard to the fact that Somesh Dahale had been nominated under Sub-section (2) of Section 17 of the 1954 Act
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to be a person in charge of and responsible to the Company A
for the conduct of its business, we are of the view that the
Appeals have to be allowed.

42. We, accordingly, allow the appeals and set aside the B
judgment and order of the learned Single Judge impugned in
these proceedings and quash the prosecution of the Appellants
in respect of the various complaints challenged before the High
Court in its inherent jurisdiction.

D.G.

Appeals allowed.