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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 271/2018 & I.A. 23635/2014**

SOCIETE DES PRODUITS NESTLE, S.A & ANR. Plaintiffs

Through: Mr. Manish Kumar Mishra & Ms.
Akansha Singh, Advocates (M-
9438804704)

versus

MOHD ZAHID AND SONS & ORS. Defendants

Through: Mr. Bharat Chadha, Advocate for D-
65, 66, 67 & 106 (M-7217631424)
Mr. Sunil Dutt Dixit, Advocate for D-
76 (M-9312832910)
Mr. Satish Kumar, Advocate for D-
111 (M-9899545623)
Mr. Devesh Singh, ASC GNCTD
(Civil) with Ms. Sukriti Ghai (M-
9810644355)
Mr. Prateek Gupta, Advocate for
FSSAI along with Mr. Ajay Kumar,
D.O (Bihar) (M-9999986972)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

ORDER

% 19.08.2019

1. Mr. Ajay Kumar, the Designated Officer of the Food and Safety Department, Bihar is present and has presented a report stating that no seizure of counterfeit products of NESCAFE were made by the Local Police and the Food and Safety Department. A perusal of the report of the Local Commissioner – Mr. Harsit Khurana shows that he had conducted a search



and seizure pursuant to the orders passed in this case, on 28th November, 2014 and 5th February, 2015. The Local Commissioner had visited the Defendants premises at Dal Mandi, Sadar Bazar, Meerut, Uttar Pradesh and had submitted a report. As per the said report, the Local Commissioner had found a small unit adjacent to a house which falls in Bhagwat Nagar Colony, Musar Toli, Patna, Bihar. Two persons were arrested for manufacturing coffee under the mark 'NESCAFE' and a large number of finished counterfeit 'NESCAFE' products were seized along with various raw materials. The identity of the said persons was also disclosed. The relevant part of the Local Commissioner's report is extracted below:

"4) The undersigned found the said premises to be a small unit adjacent to a house and at the corner of the land and was surrounded with dirty water. The unit has no address mentioned therein. The undersigned inquired from the investigator who informed that the area falls in the Bhagat Nagar Colony, Musar Toli.

5) The Local Police had found and arrested two persons engaged in manufacturing of coffee and packaging under the trademark NESCAFE. There were large number of finished counterfeit NESCAFE coffee packed in small jars of 25 grams. Apart from the finished products there were large number of empty jars, cups, packaging materials, loose coffee, chemicals, colour, essence and huge amount of coffee packed in four gunny bags. The photographs of the same were taken by the undersigned and annexed along with the report. One finished product of 25 gm counterfeit NESCAFE coffee and sample packaging material is filed along with this report. The details of the goods seized by the Police can be obtained from the Local Police Station.

6) On preliminary inquiry by the Police the above mentioned two persons disclosed their indemnity as under:-



a) Mohd. Sonu, S/o Mohd. Kalam, R/o Duli Ghat Police Station Mal Salami, District Patna.

b) Mohd. Shanket, S/o Mohd. Kamal, R/o Village Lodi Katra, Police Station Khaje Kala, Dist. Patna.

Mohd. Sonu also disclosed that he is the manager and working for one Mr. Raju Chaudhary, R/o Mohalla Chik Toli, Police Station Khaje Kala, District Patna, and he also disclosed that the premises is owned by Mr. Raju Chaudhary.

7) At this stage, the undersigned tried to explain the order passed by this Hon'ble Court to Mohd. Sonu, but before the undersigned could serve the order to Mohd. Sonu or to Mohd. Shanket, they both were taken into Police Custody by the Local Police, therefore the undersigned could not serve the order to them."

2. From a perusal of the said report, it is clear that the two persons identified as being involved in the manufacturing of counterfeit NESCAFE products were in fact arrested by the Police. The status report submitted today is thus clearly contrary to the records of the Court. The officer is present and is unable to answer any of the queries of the Court and neither has any counsel been engaged by the Food and Safety Department, Bihar. Under these circumstances, it is directed that the Nodal Officer – Mr. Kaushal Kishore shall be present on the next date with an updated status report as to the case which was registered against the two persons, namely, Mohd. Sonu and Mohd. Shauket, as also the status report of the case which was lodged at the Duli Ghat Police Station at Patna. The said report shall also contain the details of the further proceedings in the cases filed against the two individuals mentioned above and what are the steps taken to curb counterfeiting, in his area.

3. Mr. Kaushal Kishore shall also obtain the details of any case



registered at the Duli Ghat Police Station, Mal Salami, District Patna or at any other police station, in respect of the NESCAFE counterfeit products. A responsible official of the said Police Station shall cooperate with the Nodal Officer in order to enable him to prepare the status report.

4. A copy of the Local Commissioner's report be made available to the officer appearing today from the Food and Safety Department, Bihar.

5. As per the last order, Mr. Vishal Gupta and Mr. Anuj Singhal were to be present in Court today. An adjournment was sought by their counsel – Mr. Puneet Saini. However, none appears on their behalf and they are also not present in Court despite specific orders. Let bailable warrants be issued against Mr. Vishal Gupta and Mr. Anuj Singhal for a sum of Rs.10,000/-. The contact details of the said two persons shall be obtained from their counsel – Mr. Puneet Saini (M: 8810633505).

6. A perusal of the records of this case and the developments with various Food and Safety Departments shows that despite FSSAI claiming to be the apex body regulating food safety, counterfeiting of food products is being treated as a trademark dispute and an intellectual property rights violation and not from the perspective of consumer interest and safety of customers. There is a need to therefore formulate a policy at the central level in order to ensure that such counterfeiting is dealt with in a stern manner. It also appears that the FSSAI's guidelines are not being strictly adhered to and there is no compliance. Ld. Counsel for FSSAI submits that guidelines are issued from time to time but the local State departments have to take action if there is violation of guidelines.

7. Accordingly, it is directed that the Secretary of Ministry of Health and Family Welfare shall hold a meeting with the Food Safety Departments of



the State Governments along with the FSSAI and submit a report on the manner in which counterfeiting of food products can be tracked, recorded and curbed in an effective manner. Let a meeting be held within a period of four weeks. An affidavit be filed on record before the next date. A copy of this order be communicated to the Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi 110011.

8. List on 7th November, 2019.
9. Interim orders to continue.

PRATHIBA M. SINGH, J.

AUGUST 19, 2019
Rahul