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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve:, 15th July, 2010
Date of Order: July 20th, 2010

+Crl. M.C 380 of 2010

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Pataka Industries Pvt. Ltd. & Ors.
Through: Ms. Shirish Khajuria, Advocate

20.07.2010
...Petitioners

Versus

**Society For Voice of Human Rights & Justice
& Ors.**
Through: Mr. Navin Bhargav, Advocate for R-1

...Respondents

AND

+Crl. M.C 381 of 2010

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Mussadi Lal-Ram Swaroop
Through: Ms. Shirish Khajuria, Advocate

...Petitioner

Versus

**Society For Voice of Human Rights & Justice
& Anr.**
Through: Mr. Navin Bhargav, Advocate for R-1

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By these two petitions under Section 482 Cr.P.C the petitioners have sought quashing of Complaint No.1429/1/09 filed before the Metropolitan Magistrate, Delhi under Section 20 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement & Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 for violation of Sections 8, 9 and 10 of the said Act (hereinafter referred to as "the said Act") by the petitioners and for setting aside order of summoning dated 29th

August 2009 passed in the complaints.

2. The sole ground urged by the petitioners before this Court for quashing the order is that the complainant allegedly purchased cigarettes/bidies packets from the shop of the petitioners in April, 2009 whereas the Gazette Notification enforcing the Rules under the said Act came into force on 31st May, 2009. Thus, on the date when the products were purchased by the complainant, the Rules under the said Act had not come into force and the offence cognizance of which was taken by the learned MM was not committed.

3. The said Act was enacted in 2003 and Section 8 of the Act provided that every packet/package of cigarette/ bidies or any other tobacco products shall have a specified warning on the package displayed in a legible and conspicuous manner. Sub Section 2 provided that the manner of putting warning on the products shall be such as may be specified in the Rules framed under the Act. Though the Act was passed in 2003, the Rules regarding packaging and labeling were framed in 2008 and were published vide GSR-182(E) dated 18th March, 2008 in Gazette of India Part-II. Rule (1) provided that these Rules shall come into force on the date as Central Government may by notification in Gazette appoint. Thus, the rules specifying how warning was to be displayed did not come into force immediately on publication of the Rules. The nature of warning and the mode of warning were specified in the Schedule of the Rules. It was provided that the size of the warning shall be such that it occupies 40% of the principal display area of the package.

4. The petitioners have placed on record notification of 3rd May, 2009 issued under Tobacco Packaging and Labeling Rules, 2008 which prescribed that the Rules shall come into force on 31st May, 2009. In the Notification itself it is stated that the principal

Rules were published on 15th March, 2008 and they were amended on 29th September 2008 and the Rules came into force on 31st May, 2009.

5. As per the complaint filed by the complainant before the learned MM, the products were purchased by the complainant from the shop of the petitioners on 20th March, 2009. It is thus clear that on the date when the products were purchased, the Rules for putting statutory warning on the packaging had not come into force. The Rules came into force on 30th May, 2009. Thus, no offence was made out for label not having warning on the date when products were purchased by the complainant. I, therefore, consider that these petitions are to be allowed. It is ordered accordingly. The complaint number 1429/1/09 and summoning order dated 29th August 2009 passed by learned MM is hereby quashed.

6. Both petitions stand disposed of in terms of above order.

July 20, 2010
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SHIV NARAYAN DHINGRA J.