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

+ **CRL.M.C.3678/2010 & CrI.M.A.17810/2010**

% Judgment delivered on:10th October, 2011

MARS INTERNATIONAL INDIA PVT LTD Petitioner
Through:Mr.C.D. Mulherkar, Adv.

versus

STATE OF NCT OF DELHI Respondent
Through:Ms.Rajdipa Behura, APP
for State

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J. (Oral)

1. Vide the instant petition, the petitioner has prayed as
under:-

*"a) Call for the records of the trial court,
and after perusal of the same be pleased to
quash the undated complaint case No.NCT/
DELHI/W&M/SWZ/724-28 also having
number 514/2009, titled 'Inspector of Legal
Metrology Vs.M/s Spencer's Daily' presently*

pending in the Court of Shri Pulastya Pramachala, Metropolitan Magistrate, Evening Court No.4, Karkardooma, Delhi, in so far as it pertains to Mars International India Private Limited, alongwith proceedings there under: and
b) Quash the so-called summoning order dated 14 July 2009 passed by the learned Special Metropolitan Magistrate in the said case”.

2. After considering the challan vide order dated 14.07.2009, learned Metropolitan Magistrate passed the summoning order and issued summons against the petitioner vide following under:-

*“C. No.514/09
u/S 33/51 W & M Act
Fresh challan received.
It be checked and registered.
Issue fresh summon to the accused for
16.10.09.”*

3. Learned counsel for the petitioner submits that the product in question in the present matter i.e. ‘Bounty’ chocolate being imported by Mars India. At the relevant

time, the Bounty packets contain the postal address and phone number of the manufacture, who can be contacted for any consumer complaint. Additionally, the email address of the manufacturer also given. Therefore, there was due compliance of requirements by mentioning of phone number. Thus, Mars India has complied with the requirement of having consumer complaint number.

4. The facts in brief are that; on 25.11.2008 a Inspector of Legal Metrology, Government of NCT of Delhi allegedly visited a shop by name of 'M/s Spencer's Daily' at Tilak Nagar, New Delhi and purchased a packet of Bounty Chocolate imported by Mars India Private Limited and certain other food articles (which do not relate to Mars India Limited, therefore, no relevant to the petitioner). A notice dated 10.12.2008 was allegedly issued to the petitioner from the office of controller of Legal Metrology, Govt of NCT of Delhi alleging that the petitioner has committed breach of Section 33 of the Standards of Weights and Measures (Enforcement) Act, 1985 and was therefore, guilty of an offence under Section 51 of the said Act.

5. Further submits that the notice was issued because of violation of Standard of Weights and Measures (Packaged Commodity) Rules, 1977 by the petitioner as the packet of 'Bounty' did not bear the consumer care number. Thereafter, the department of Weights and Measures, Govt. of NCT of Delhi in mechanical manner filed an undated complaint under Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 and Section 72 of the Standards of Weights and Measures Act, 1976 before learned Metropolitan Magistrate.

6. Learned counsel for petitioner has raised a legal plea that the complaint was apparently filed much after the expiry of the statutory period of limitation. The complaint is undated and it has not been examined as to whether SWME Act and consequently, SWM Rules does not apply to the said packet, since no notification applicable to SWM Act to the chocolate have been issued.

7. Further submits that learned Metropolitan Magistrate issued the summons in the complaint even without passing any order taking cognizance therein and without

appreciating that the complaint was time barred. Admittedly, no application seeking condonation of delay has been filed by the department.

8. On the other hand, Ms.Rajdipa Behura, learned APP for State submits that against the violation notice dated 10.12.2008 was issued, wherein it is clearly mentioned that the petitioner has committed the breach of Section 33 of the Standards of Weights and Measures (Enforcement) Act, 1985 and therefore, guilty of offence under Section 51 of the said Act. However, Section 65 of the said Act provides for compounding of the offences on payment for the credit of Government the amount as may be specified by the Controller/Assistant Controller/Legal Controller/Metrology Inspector.

9. Thereafter, another notice dated 10.01.2009 was issued to the petitioner in spite of that, the petitioner did not come forward for compounding the offence.

10. Learned APP has referred to the Section 468(2) of Criminal Procedure Code wherein the period of limitation provided is only six months if the offence is punishable with

fine only. Further submits that the instance case, petitioner has committed offence for the first time, therefore, the offence is punishable with fine only.

11. Further referred to Section 473 of the Criminal Procedure Code which is reproduced as under:-

“473. Extension of period of limitation in certain cases.-- Notwithstanding anything contained in the foregoing provisions of this Chapter, any court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

12. Learned APP further submits that if it is necessary, in the interest of justice, the delay could be condoned. She has relied upon **Abubaker Vs. State of Kerala 2001 (2) Crimes 212** decided by the Kerala High Court wherein the final report was filed in the Court after three years from the date of occurrence. The Magistrate before whom the final report was filed, beyond the period of limitation, has power

to consider the question whether there was sufficient reasons for condonation of delay, in giving the final report. The Court has held that the Magistrate has powers to condone the delay in deserving cases.

13. She has further relied upon the judgment of Supreme Court in **Vanka Radhamanohari Vs. Vanka Venkata Reddy (1993) 2 Crimes (SC) 275** wherein it was held that in view of Section 473 Cr. P.C. Court can take cognizance of the offence only when it is satisfied that in the facts and circumstances of the case, the delay has been properly explained, but even in the absence of proper explanation, if the Court is satisfied that it is necessary to do so, in the interest of justice. The said Section 473 has non-obstante clause which means that the said section has overriding effect on Section 468, if the Court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interest of justice.

13. In para No.8 of ***Vanka Radhamanohari (supra)*** there is also a reference of **Bhagirath Kanora Vs. State of M.P.**

(1984) 4 SCC 222 wherein it has been held as under:-

"That section is in the nature of an overriding provision according to which notwithstanding anything contained in the provisions of chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. We believe that in cases of this nature, Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contained in S.473 of the Code."

14. At the last, learned APP submits that though, no application for condonation of delay has been moved, even

then the Court on its own can condone the delay in the interest of justice.

15. Law is settled, as held in **Abubaker (supra)** no doubt, the Magistrate has power to condone the delay, where there is sufficient reasons being given for condonation of delay. However, while, condoning the delay either on application or on *suo motto* the concerned Magistrate has to explain the reasons while passing order.

16. As also has been held in **Vanka Radhamanohari (supra)** by the Apex Court that there cannot be any dispute that in view of the allegations regarding the second marriage by the respondent during the continuance of the first marriage, prima facie, offence under Section 494 Indian Penal Code, 1860 has been disclosed in the complaint, there was no question of Section 468 of the Code being applicable to the offence under Section 494 Indian Penal Code, 1860. In view of Section 473 Cr. P.C. undoubtedly, the Court can take cognizance of the offence not only when it is specifically and properly explained, but in the absence of proper explanation too.

17. I note that the complaint is undated; second the order passed by learned Metropolitan Magistrate is without application of mind as the summoning order is a stereotyped one. I further note, only the case number, offence under Section, the date of order and next date of hearing is hand written, remaining part is printed one.

18. Learned Magistrate has not even took pain to have a glance over the form of complaint, where number of columns are blank. No orders has been passed while condoning the delay. Even otherwise, on the seized packet only missing phrase is “or call at (phone Number)” whereas in seized packet, it is printed as under:-

“Imported and distributed by Mars International India Pvt Ltd, 3rd Floor, Gandharva Mahavidyalaya, 212, Deen Dayal Upadhyay Marg, New Delhi – 110002 India. For consumer complaint /feedback, write to Mars.india.chocolates@effen.com MRP Rs.30 (inclusive of all taxes and duties)”

19. In my view, sufficient information are there on the

seized packet, to lodge the complaint regarding any defect in the product.

20. In the present case, even otherwise, the prescribed limitation period is six months and maximum extendable fine is ₹5,000/- being the first time offence. Petitioner has suffered a lot due to pendency of present case for the last three years. No purpose would be served by extending the limitation period while condoning the delay. Therefore, in the interest of justice, I set aside the summoning order dated 14.07.2009 passed by learned Magistrate.

21. Accordingly, Criminal M.C.No.3678/2010 stands allowed and disposed of in above terms.

22. Consequently, Criminal M.A.No.17810/2010 renders infructuous and disposed of as such.

23. No order as to costs.

SURESH KAIT, J

October 10th 2011

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