

Reserved on 12.05.2025

Delivered on 19.05.2025

Neutral Citation No. - 2025:AHC:83091

Court No. - 74

Case :- APPLICATION U/S 528 BNSS No. - 12141 of 2025

Applicant :- Poonam Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Yash Padia

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Yash Padia, learned counsel for applicant and learned AGA for State.

Prayer

2. Present application has been preferred with the following prayers:-

"...to stay the effect and operation of charge sheet no. 152091404 dated 02.07.2020 as well as cognizance and summoning order dated 20.10.2020 passed by learned A.C.J.M.-I, Ballia in Criminal Case no. 1059 of 2020 (State vs. Poonam Singh and another) arising out of Case Crime no. 201 of 2018 under Section 36 of Weight & Measurement Act, 1958 and Section 3/7 of Essential Commodities Act, 1955, PS- Bairiya, District- Ballia along with all sub-sequential orders against the applicant, during pendency of present application.

...to stay the effect and operation of order dated 21.12.2020 passed by learned A.C.J.M.-I, Ballia in Criminal Case no. 1059 of 2020 (State vs. Poonam Singh and another) arising out of Case Crime no. 201 of 2018 u/s 36 of Weight & Measurement Act, 1958 and Section 3/7 of Essential Commodities Act, 1955, PS- Bairiya, District- Ballia against the applicant, during the pendency of present application.

...to stay the further proceeding in Criminal Case no. 1059 of 2020 (State vs. Poonam Singh and another) arising out of Case Crime no. 201 of 2018 u/s 36 of Weight & Measurement Act, 1958 and Section 3/7 of Essential Commodities Act, 1955, PS- Bairiya, District- Ballia pending in court of A.C.J.M.-I, Ballia.

...quash/set aside the charge sheet no. 152091404 dated 02.07.2020 as well as cognizance and summoning order dated 20.10.2020 passed by learned A.C.J.M.-I, Ballia in Criminal Case no. 1059 of 2020 (State vs. Poonam Singh and another) arising out of Case Crime no. 201 of 2018, u/s 36 of Weight & Measurement Act, 1958 and Section 3/7 of Essential Commodities Act, 1955, PS- Bairiya, District- Ballia along with all sub-sequential orders against the applicant pending in court of A.C.J.M.-I, Ballia.

...to quash/set aside the order dated 21.12.2020 passed by learned A.C.J.M.-I, Ballia in Criminal Case no. 1059 of 2020 (State

vs. Poonam Singh and another) arising out of Case Crime no. 201 of 2018, u/s 36 of Weight & Measurement Act, 1958 and Section 3/7 of Essential Commodities Act, 1955, PS- A.C.J.M.-I, Ballia."

Brief Facts

3. Learned counsel for applicant submitted that opposite party no. 2 (Supply Officer, Bairiya, District Ballia) has lodged the FIR dated 08.12.2018 under Section 3/7 of Essential Commodities Act, 1955 and under Section 36(2) of Weight & Measurement Act, 1958 at PS- Bairiya, District- Ballia in C.C. No. 220 of 2018. In the FIR, it has been alleged by the opposite party no. 2 that in pursuance of order of Sub-Divisional Magistrate when he and other members of his team raided the Parmarth Indane Service, Raniganj, Ballia on 04.12.2018 two customers of the said distributorship have informed them that the gas cylinder taken by them from the distributorship are less than the weight prescribed. It is further alleged that upon their complaint when the cylinders were weighted, the weight of the cylinders are found 28.630 Kg & 28.30 Kg respectively whereas the prescribed weight as mentioned in the cylinder is 29.90 Kg. It has been further alleged in the FIR that when the empty cylinders were checked then total 7 cylinders in the go down and 13 cylinder in the campus of distributorship were found to be filled with LPG, but without any seal. In pursuance of aforesaid FIR, the officials of Indian Oil Corporation Limited have also inspected the premises of the applicant's distributorship in presence of the S.D.M/Tehsildar and submitted the report dated 12.12.2018.

4. After the inspection of officials of Indian Oil Corporation Limited, the District Magistrate, Ballia wrote a letter dated 14.12.2018 to the Chief Area Manager, IOCL, Gorakhpur directing him to enquire the entire matter after considering the technicalities as well as documents submitted by the applicant. In the meantime, on 09.10.2019, the Indian Oil Corporation Limited has also passed a penalty order dated 09.10.2019, under the provision of Marketing Discipline Guidelines against the applicant and imposed penalty of Rs. 1,76,172/- for the same incident. In reply to letter dated 14.12.2018, written by the District Magistrate, Ballia to Indian Oil Corporation Limited, the Indian Oil Corporation Limited wrote a letter dated 04.12.2019 stating that the distributor has not followed the per-delivery checks (PDC) as per norms, however, the distributor has been suggested/directed by the Indian Oil Corporation Limited to follow the procedure as per norms in future. During investigation, the Investigating Officer also recorded the statements of officials of Indian Oil Corporation Limited and opposite party no. 2 under Section 161 of Cr.P.C and after

conclusion of investigation, submitted charge sheet dated 02.07.2020 whereupon cognizance has been taken up by learned court concerned vide order dated 20.10.2020. Meanwhile, the aforesaid two persons on whose complaint the FIR was lodged, have submitted their affidavits before the Investigating Officer wherein they have stated that they have no grievance against the applicant's distributorship. When the new facts of the case came to the knowledge of the Investigating Officer, the Investigating Officer has filed an application dated 03.11.2020 before Superintendent of Police for further investigation and vide order dated 06.11.2020, Superintendent of Police, Ballia has granted permission for further investigation. The Investigating Officer has also submitted an application before the learned court concerned seeking permission for further investigation and vide order dated 21.12.2020 passed by learned Additional Chief Judicial Magistrate-I, Ballia the same has been rejected which has been challenged through instant application along with charge sheet and cognizance order.

Legal Arguments raised by learned counsel for applicant

5. Learned counsel for applicant raised the following legal arguments in support of his case:

A. Repeal of the Weights and Measures Act, 1958 : The FIR dated 08.12.2018 as well as the charge sheet dated 02.07.2020 have been registered under Section 36(2) of the Weights and Measures Act, 1958 and Section 3/7 of the Essential Commodities Act, 1955. It is respectfully submitted that the Weights and Measures Act, 1958 had already been repealed and replaced by the Legal Metrology Act, 2009 which was in force on the date of registration of the FIR. Therefore, initiation of criminal proceedings under a repealed statute is manifestly illegal and liable to be quashed.

B. Bar against Registration of FIR under Legal Metrology Act, 2009 : As per the Legal Metrology Act, 2009, no direct FIR can be registered for violations under the said Act. Section 51 of the Legal Metrology Act explicitly bars the application of the Indian Penal Code and the Code of Criminal Procedure, 1973 in relation of investigation and prosecution for offences under the Act, unless expressly provided. In the instant case, the mandatory procedure under the Legal Metrology Act, 2009 has not been followed and thus, the FIR, charge sheet, and subsequent summoning order are without jurisdiction and unsustainable in law.

C. Prosecution under a Repealed Law is Non-Est and Void: The settled principle of law is that prosecution cannot be sustained under a repealed enactment. In the present case, both

the charge sheet dated 02.07.2020 and the summoning order dated 20.10.2020 have been issued under the Weights and Measures Act, 1958, which stood repealed on the date of the alleged offence as well as on the date of cognizance. Thus, the entire proceedings are rendered void ab initio and are liable to be quashed.

D. Double Jeopardy and Penalty Already Imposed by IOCL: It is further submitted that pursuant to the direction of the District Magistrate, Ballia, the IOCL has already imposed a Critical Penalty amount to Rs. 1,76,172/- on the applicant under the Marketing Dispensing Guidelines (MDG) for alleged irregularities on the date of inspection i.e., 04.12.2018. The imposition of a monetary penalty for the same alleged act precludes subsequent criminal prosecution, as it would amount to double jeopardy, which is prohibited under Article 20(2) of the Constitution of India.

E. Subsequent Development and Further Investigation Ignored: Despite the Investigating Officer seeking permission for further investigation and the same being granted by the S.S.P, Ballia, the learned Magistrate erroneously proceeded to confirm the summoning order dated 20.10.2020 without considering the fresh facts and circumstances. This non-application of mind further vitiates the impugned orders.

F. Offence under Essential Commodities Act not maintainable after enactment of Legal Metrology Act, 2009: It is respectfully submitted that the Legal Metrology Act, 2009 comprehensively consolidates and covers the field relating to standards of weights and measures, and the regulation of trade and commerce in weights, measures and other goods. Upon its commencement, the Legal Metrology Act, 2009 repealed and replaced the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985, and simultaneously took over the regulatory functions previously attributed under different laws, including in part the Essential Commodities Act, 1955 to the extent dealing with weights and measures.

Thus, after the enforcement of the Legal Metrology Act, 2009:

- * Offences relating to weights and measures are governed exclusively under the Legal Metrology Act, 2009.
- * The Essential Commodities Act, 1955 no longer regulates offences relating to weights and measures unless specifically preserved by a notified order under Section 3 of the Essential Commodities Act.

* No specific Control Order issued under Section 3 of the Essential Commodities Act, 1955 has been cited in the FIR or charge sheet which would independently criminalize the alleged irregularities in weights and measures.

6. Lastly it is submitted that in absence of any independent Control Order issued under the Essential Commodities Act, the invocation of Section 3/7 of Essential Commodities Act, 1955 in relation to weights and measures becomes unsustainable, and the prosecution is without jurisdiction. Therefore, continuation of the proceedings under the Essential Commodities Act, 1955 based on alleged violations of weights and measures regulations after the enforcement of the Legal Metrology Act, 2009 is patently illegal and liable to be quashed.

7. For substantiating his arguments, learned counsel for applicant relied upon following judgments rendered by Hon'ble Apex Court:

i) Sai Seed Agriculture Farms, Metpalli vs. State of A.P. reported in 1997 0 Supreme(AP) 593

ii) State of U.P. vs. Anil Mittal and another reported in (2019) SCR 1180

Judgment rendered by Hon'ble Patna High Court :

iii) Subodh Kumar Purbey vs. State of Bihar through District Magistrate, Madhepura and others in Criminal Writ Jurisdiction Case no. 2083 of 2017

Judgments rendered by this Court:

iv) Krishna Seed Pvt. Ltd. And 3 others vs. State of U.P. and another in Application u/s 482 no. 10546 of 2017

v) Naval Dey Bharti vs. State of U.P. and another in Application u/s 482 no. 16228 of 2019

vi) Rizwan vs. State of U.P. and another in Application u/s 482 no. 17750 of 2023

Submission on behalf of State

8. Learned AGA vehemently opposed the prayer sought through instant application and argued that impugned charge sheet as well as cognizance and summoning order are fully justified and the application u/s 528 BNSS lacks merit and liable to be dismissed.

Observation and Conclusion

9. After hearing rival submissions extended by learned counsels for the parties this Court finds that the instant application has been preferred for seeking quashing of the charge-sheet dated

2.7.2020, cognizance and summoning order dated 20.10.2020 as well as order dated 21.12.2020 passed by learned Additional Chief Judicial Magistrate, Ist, Ballia in Criminal Case no. 1059 of 2020. It is apparent from the narration of the FIR that one Shambhunath who recorded his statement, came for refilling of domestic gas cylinder/LPG gas cylinder and after receiving the same it was less in quantum in respect of weight of LPG gas in the cylinder received by him.

10. After conducting detailed investigation although charge-sheet has been preferred on dated 2.7.2020 whereupon cognizance of offence has been taken up by learned concerned Court on dated 20.10.2020 but later on certain facts have been brought to the notice of the Investigating Officer in shape of affidavit preferred by the same Shambhunath whose statement has been recorded by the then Investigating Officer and the affidavit was contrary to the statement recorded under Section 161 Cr.P.C.

11. Upon receiving new facts, concerned Investigating Officer preferred application before learned concerned court for seeking direction for further investigation under Section 173(8) of Cr.P.C. but the same was denied on the ground that accused are having no right for seeking prayer for further investigation but the finding recorded by learned Additional Chief Judicial Magistrate, Ist, Ballia is perverse and contrary to the facts which is apparent from the pleadings advanced by the applicant through which it is crystal clear that no application has ever been preferred by the applicant rather the affidavits preferred by the same person upon whose statement the proceeding has been initiated against the applicant.

12. The arguments raised by learned counsel for the applicant is quite convincing that after imposing penalty of Rs. 1,76,172/- upon the applicant by Indian Oil Corporation Limited itself and the same has been submitted by the applicant, no criminal prosecution for the same incident can be instituted against the applicant which amount to double jeopardy, moreover no case can be instituted in shape of lodging FIR in respect of any offence carried out under Weighing and Measurement Act, 1958.

13. There is a specific provision under Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985, for preferring complaint against person who has been found for carrying out violation of the Weight and Measurement Act, 1958 and so far as attraction of Section 3/7 of Essential Commodities Act, 1955 is concerned, it is the Indian Oil Corporation who replied letter dated 14.12.2018 by letter dated

04.12.2019 that although distributor has not followed the pre-delivery checks (PDC) as per norms but the distributor has been suggested/adjudicated by the Indian Oil Corporation to follow the procedure as per norms in future and as such the mandatory compliance of attraction of Section 3/7 of Essential Commodities Act, is also missing for implicating the applicant.

14. In view of aforementioned facts and circumstances, entire proceedings initiated against the applicant in shape of lodging FIR, preferring charge-sheet on 02.07.2020 and taking cognizance of offence vide order dated 20.10.2020 in Case Crime no. 201 of 2018 is highly bad in law. The latest order which also impugned the present application i.e. order dated 21.12.2020 through which it has been determined by learned court of Additional Chief Judicial Magistrate-I, Ballia, that accused is having no right for seeking prayer for further investigation is also perverse in respect of the finding recorded by learned court concerned since there is hardly any application preferred at the behest of the applicant for seeking further investigation rather it is the application preferred at the behest of Investigating Officer only upon arrival of the new facts in shape of affidavits preferred by the same person who is the base informant for lodging FIR against the applicant and as such entire proceeding arising out of Case Crime no. 201 of 2018 u/s 36 of Weight & Measurement Act, 1958 and Section 3/7 of Essential Commodities Act, 1955, PS- Bairiya, District Ballia is hereby quashed and set aside.

15. The instant application stands **allowed** accordingly.

Order Date :- 19.5.2025

Shaswat

(Saurabh Srivastava,J.)