

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Crl.MC.No. 2429 of 2013 ()

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AGAINST THE JUDGMENT IN ST 4116/2011 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-II,NEDUMANGAD
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PETITIONER(S)/ACCUSED:

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- 1. SHANTANU KHOSLE (MANUFACTURER)
THE MANAGING DIRECTOR AND CEO
PROCTER AND GAMBLE & HOME PRODUCTS LIMITED
P AN G PLAZA, CARDINAL GRACIAS ROAD, CHAKALA
ANDHERI (EAST), MUMBAI-400099.**
 - 2. BHARAT PATEL
NON-EXECUTIVE CHAIRMAN
PROCTER AND GAMBLE & HOME PRODUCTS LIMITED
P AN G PLAZA, CARDINAL GRACIAS ROAD, CHAKALA
ANDHERI (EAST), MUMBAI-400099.**
 - 3. M/S.PROCTER AND GAMBLE & HOME PRODUCTS LIMITED
P AND G PLAZA, CARDINAL GRACIAS ROAD, CHAKALA
ANDHERI (EAST), MUMBAI-400099.**

**BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.S.K.AJAY KUMAR
SRI.P.M.RAFIQ**

RESPONDENT(S)/COMPLAINANT AND STATE:

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- 1. INSPECTOR
LEGAL METROLOGY, NEDUMANGAD
THIRUVANANTHAPURAM DISTRICT, PIN 695541.**
 - 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN 682031.**

BY ADV.SRI.RAJESH VIJAYAN, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A: CERTIFIED COPY OF THE COMPLAINT IN S.T.NO.4116 OF 2011 ON THE FILE OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II, NEDUMANGAD.

ANNEXURE-B: TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY AT RESPONDENT DATED 03.03.2011.

ANNEXURE-C: TRUE COPY OF THE REPLY NOTICE DATED 22.03.2011.

ANNEXURE-D: TRUE COPY OF THE NOTICE OF 1ST RESPONDENT DATED 07.06.2011.

ANNEXURE-E: TRUE COPY OF THE REPLY NOTICE ISSUED TO 1ST RESPONDENT DATED 20.06.2011.

ANNEXURE-F: PHOTOGRAPH OF 460 GRAMS PACK OF TIDE NATURALS WASHING POWDER CONTAINING THE DETAILS AND WHICH IS ISSUED ON THE SEIZED PACKET.

ANNEXURE-G: TRUE COPY OF THE MAHASSAR PREPARED BY 1ST RESPONDENT DATED 11.02.2011.

RESPONDENT'S EXHIBITS:- **NIL**

R.AV

//TRUE COPY//

PA TO JUDGE

'CR'

K.RAMAKRISHNAN, J

**-----
CRL.M.C.NO.2429 OF 2013
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Dated this the 19th day of March, 2015

ORDER

Accused Nos.1 to 3 in ST.No.4116/2011 on the file of the Judicial First Class Magistrate Court-II, Nedumangad, have filed this application to quash the proceedings as against them under section 482 of the Code of Criminal Procedure (hereinafter called the Code).

2. The case was taken on file on the basis of a private complaint filed by the first respondent, Inspector, Legal Metrology, Nedumangad, against the petitioners alleging commission of offence under section 39 of Standards of Weights and Measures Act, 1976 and Section 33 of Standards of Weights and Measures (Enforcement) Act, 1985 read with Rule 6 and 6(1) (1-A) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 on the ground that it did not contain the necessary declaration to be made on the packet as required under the rules.

3. It is alleged in the complaint that on 11.02.2011, at about 3.15 p.m, the first respondent inspected the trade premises of Nazim Traders at Valicode, Nedumangad,

functioning in the building with No.NMC 14/25-2 of Nemangad Municipality under the ownership of Rahim, Najeema Manzil, Thumpode, Chellamcode, Nedumangad and found the washing powder with trade name Tide Naturals, manufactured by the third petitioner company did not contain the required declaration under Rule 6(1) (1-A) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and thereby they have committed the offence punishable under section 39 of Standards of Weights and Measures Act, 1976 and Section 33 of Standards of Weights and Measures (Enforcement) Act, 1985 read with section 63 of the Act 1976 and 51 of the Act 1985. The petitioners alleged that the necessary details required under Rule 6 (1) (1-A) are available in the packet and that has not been properly noted by the first respondent and as such no offence against them has been made out. They have no other remedy except to approach this court seeking the following relief:-

"to allow this Criminal Miscellaneous Case, and to quash Annexure A complaint and all further proceedings pursuant thereto in S.T.No.4116 of 2011 on the file of the court of Judicial First Class Magistrate-II, Nedumangad against the petitioners/accused, so as to secure the ends of justice".

4. Heard Sri.Vijayabhanu, senior counsel appearing for the petitioners and Smt.Jasmine, Public Prosecutor appearing for the respondents.

5. Sir.Vijayabhanu, senior counsel appearing for the petitioners submitted that the person to whom the complaint has to be made with telephone number and e-mail address have been furnished in the packet in case of any complaint by the consumers, which is required under the Rule 6(1) (1-A) of the above said rules and thereby there is no violation and this has been mentioned in their reply as well but that has not been properly appreciated and the complaint was filed.

6. On the other hand, Smt.Jasmine, the learned Public Prosecutor submitted that it is a social welfare legislation and there must be strict compliance of the rules and it is intended for the consumers to know the person to whom a complaint will have to be made in case of any defect in the manufacture that has not been complied with in this case. Whether the details are sufficient or not is a matter for evidence and it is not a fit case to quash the proceedings invoking Section 482 of the Code.

7. It is an admitted fact that third petitioner is the manufacturer of the washing powder with trade name 'Tide Naturals' and it is a company registered under the company's Act as well. The fact that first respondent inspected the shop and found the alleged defect in the declaration on the packet is not in dispute. The fact that Annexure-B show cause notice was issued before launching the prosecution and Annexure-D notice

was issued and Annexure-C and E replies were sent to the same etc are not in dispute. It is thereafter that Annexure-A complaint has been filed. In Annexure-A complaint what is mentioned is that the declaration required under Rule 6(1) (1-A) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 has not been complied with and thereby they have committed the offences punishable under section 39 of Standards of Weights and Measures Act, 1976 and Section 33 of Standards of Weights and Measures (Enforcement) Act, 1985 read with Rule 6 and 6(1) (1-A) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

8. Section 39 of Standards of Weights and Measures Act, 1976 reads as follows:-

Section 39:- Quantities and origin of commodities in packaged form to be declared.-(1) No person shall,-
(a) make, manufacture, pack, sell, or cause to be packed or sold; or
(b) distribute, deliver, or cause to be distributed or delivered; or
(c) offer, expose or possess for sale,
any commodity in packaged form to which this Part applies unless such package bears thereon or on a label securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of-
(i) the identity of the commodity in the package,
(ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;
(iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;
(iv) the unit sale price of the commodity in the package; and
(v) the sale price of the package.

Explanation.- In this sub-section, the expression "unit sale price" means the price according to such unit or weight, measure or number as may be prescribed.

(2) Every package to which this Part applies shall bear thereon the name of the manufacturer and also of the packer or distributor.

(3) Where the package of a commodity to which this Part applies or the label thereon bears a representation as to

the number of servings, of the commodity contained therein, such package or label shall also bear a statement as to the net quantity (in terms of weight, measure or number) of each such serving.

(4) The statement on package or label as to the net weight, measure or number of the contents thereon shall not include any expression which tends to qualify such weight, measure or number;

Provided that the Central Government may, by rules, specify the commodities, the weight or measure of which is likely to increase or decrease beyond the prescribed tolerance limits by reason of climatic variations; and it shall be lawful for the manufacturer or packer of the commodity so specified to qualify the statement as to the net content of such commodity by the use of the words "when packed".

Explanation.- The words "when packed" shall not be used in any case except a case to which the proviso to sub-section (4) applies.

(5) Where the Central Government has reason to believe that there is undue proliferation of weight, measure or number in which any commodity is, or reasonably comparable commodities are, being packed for sale, distribution or delivery and such undue proliferation impairs in the opinion of that Government, the reasonable ability of the consumer to make a comparative assessment of the prices after considering the net quantity or number of such commodity, that Government may direct the manufacturers and also the packers or distributors to sell, distribute or deliver such commodity in such standard quantities or number as may be prescribed.

(6) Wherever the retail price of a commodity in packaged form to which this Chapter applies is stated in any advertisement, there shall be included in the advertisement, a conspicuous declaration as to the net quantity or number of the commodity contained in the package and retail unit sale price thereof.

(7) No person shall sell, distribute or deliver for sale a package containing a commodity which is filled less than the prescribed capacity of such package except where it is proved by such person that the package was so filled with a view to-

(a) giving protection to the contents of such package, or

(b) meeting the requirements of machines used for enclosing the contents of such package.

(8) The Central Government may, by rules, specify such reasonable variations in the net contents of the commodity in a package as may be caused by the method of packing or the ordinary exposure which may be undergone by such commodity after it has been introduced in trade or commerce.

(9) The Central Government may, by rules, specify the classes of commodities or packages in relation to which all or any of the provisions of this section shall not apply or shall apply with such exceptions or modifications as may be specified therein,

9. Section 33 of Standards of Weights and Measures (Enforcement) Act, 1985 which reads as

follows:-

Section 33. Provisions of the Standard Act and the rules made thereunder relating to commodities in packaged form to apply to commodities in packaged form sold or distributed within the State.-(1) The provisions of the Standards Act and the rules made thereunder, as in force immediately before the commencement of this Act, with regard to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State as if the provisions aforesaid were exacted by, or made under, this Act subject to the modification that any reference therein to the "Central Government", "Standards Act" and the "Director" shall be construed as references respectively, to the "State Government", this Act" and the "Controller".

(2) The State Government may make rules, not inconsistent with the Standards Act or any rule made thereunder, to regulate the packaging of any commodity intended to be sold or distributed, within the State in packaged form, or to regulate the sale or distribution, within the State, of any commodity in packaged form.

Explanation.- For the purposes of this section, "commodity in packaged form" shall have the meaning assigned to it in the Standards Act and shall include a pre-packed commodity.

10. Rule 39 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 which reads as follows:-

39. Penalty for contravention of Rules.- (1) If any person contravenes the provisions of rule 6, or tampers with, obliterates or alters any declaration made on a package in accordance with these rules, he shall be punishable with fine, which may extend to two thousand rupees.

(2) Whoever contravenes any provision of these rules, for the contravention of which no punishment has been separately provided either in the Act or in these rules, he shall be punished with fine which may extend to two thousand rupees.

11. Rule 6 of the said rules reads as follows:-

Rule 6. Declarations to be made on every package.

(1) Every package shall bear thereon or on a label securely affixed thereto a definite, plain and conspicuous declaration, made in accordance with the provisions of this Chapter as to-

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer.

Explanation I-If any name and address of a company is declared on the label without any qualifying words "manufactured by" or "packed by", it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly.

Explanation II.- If the brand name and address of the brand owner appear on the label as a marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

Explanation-In respect of packages containing food articles, the provisions of this clause shall not apply and instead the requirement of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made thereunder shall apply;]

(b) the common or generic names of the commodity contained in the package [and in case of packages with more than one product, the name and number or quantity of each product shall be specified on the package].

Explanation.-Generic name in relation to a commodity means the name of the genus of the commodity, for example, in the case of common salt, sodium chloride is the generic name.

(c) the net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package;

(d) the month and year in which the commodity is manufacturer or pre-packed [or imported]:

[Provided that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made thereunder shall apply:]

[Provided further that nothing in this clause shall apply in case of packages containing seeds which are labelled and certified under the provisions of the Seeds Act, 1966 (54 of 1966) and the rules made thereunder:]

[Provided also that a manufacturer may indicate the month and year using a rubber stamp without overwriting:]

[Provided also that for packages containing cosmetic products the provisions of the Drugs and Cosmetics Rules, 1954 shall apply.]

(f) the [retail sale price] of the package:

[Provided that for packages containing alcoholic beverages or spirituous liquor, the State excise, Laws and the rules made thereunder shall be applicable within the State in which it is manufactured and where the State excise laws and rules made thereunder do not provide for declaration of retail sale price, the provisions of these rules shall apply]

(g) where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different piece;

(h) such other matters as are specified in these

rules:**Provided that-**

(A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on-

[(vi) any package containing bidis or incense sticks;]

[(vii) any domestic liquefied petroleum gas cylinder of 14.2kg or 5kg, bottled and marketed by a public sector undertaking]

(B) where any packaging material bearing thereon the month in which any commodity was expected to have been pre-packed is not exhausted during that month, such packaging material may be used for pre-packing the concerned commodity produced or manufactured during the next succeeding month and not thereafter, but the Central Government may, if it is satisfied that such packaging material could not be exhausted during the period aforesaid by reason of any circumstance beyond the control of the manufacturer or packer, as the case may be extend the time during which such packaging material may be used, and, where any such packaging material is exhausted before the expiry of the month indicated thereon, the packaging material intended to be used during the next succeeding month may be used for pre-packing the concerned commodity.

[Provided that the said provision shall not apply to the packages containing food products, where the 'Best before or Use before' period is ninety days or less from the date of manufacture or packing]

(C) no declaration as to the [retail sale price] shall be required to be made on-

[(vii) any package containing bidis;]

[(viii) any domestic liquefied petroleum gas cylinder of which the price is covered under the Administered Price Mechanism of the Government]

Explanation I- The month and the year in which the commodity is pre-packed may be expressed either in words, or by numerals indicating the month and the year, or by both.

Explanation II-Liquid milk does not include condensed milk.

[(1A) Every package shall bear the name, address, telephone number, E-mail address, if available, of the person who can be or the office which can be, contacted, in case of consumer complaints]

[(1B) It shall not be permissible to affix individual stickers [labels] on the packages for altering or making declaration required under these rules;

Provided that for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same should not cover the MRP declaration made by the manufacturer or the packer as the case may be, on the label of the package.]

[(1C) It shall be permissible to use stickers for making any declaration other than the declaration required to be made under these rules]

[(2) Where a commodity consists of a number of components and these components are packed in two or more units, for sale as a single commodity, the declaration required to be made under sub-rule (1) shall appear on the main package and such main package shall also carry information about the other accompanying packages [or such declaration

may be given on individual packages and intimation to that effect may be given on the main package and if the components are sold as spare parts, all declaration shall be given on each package]]

12. The allegation against the petitioners was that the package does not confirm Rule 6(1) (1-A) of the above said rules which says that every package shall bear the name, address, telephone number and e-mail address if available of the person who can be or the office which can be contacted in case of consumer complaints. This was intended for the consumer to approach the manufacturer in case of any defect in the manufacture to get redressal of their grievances.

13. I have pursued the label declaration seen on the packet where the manufacturer address is given as "Tide is the trade mark of the Procter and Gamble company and licensed to Procter and Gamble Home Products Limited-Mumbai-400 099" and under the caption consumer comments "consumer relations telephone 022-24942113, email:brandinfo@in.pg.consumers.com" and bar code also was exhibited in the packet. Neither in the mahazar nor in the complaint presence of these descriptions were mentioned. The allegation was that no declaration or particulars as required under Rule 6(1) (1-A) was found on the packet and not that what is seen is not sufficient compliance of the rule. If the particulars mentioned are sufficient for the consumer to contact, the purpose of the rule has been complied

with and that was intended by the legislature as well. So under the circumstances the allegation in the complaint that the Rule 6 (1) (1-A) of the above said rules has been violated appears to be not correct as the allegation was not that the particulars given are not sufficient but there is total lack of compliance of Rule 6(1) (1-A) which appears to be not correct. So, under the circumstances, this court feels that the allegation in the complaint that there is violation of the rules and thereby they have committed the offences mentioned is unsustainable in law and the same is liable to be quashed. No purpose will be served by proceeding with the case and proceeding with the case will amount of abuse of process of court and it is a fit case where the power under section 482 of the Code of Criminal Procedure has to be invoked to quash the proceedings. So the application is allowed and further proceedings in ST.No.4116/2011 on the file of Judicial First Class Magistrate Court-II, Nedumangad as against the petitioners is hereby quashed.

Office is directed to communicate this order to the concerned court immediately.

sd/-

K.RAMAKRISHNAN, JUDGE

R.AV

//True Copy//

PA to Judge