IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

Crl.MC.No. 4424 of 2013

CRIME NO. 964/2012 OF KONDOTTY POLICE STATION, MALAPPURAM

PETITIONER(S)/ACCUSED:

C.P.MOHAMMEDKUTTY, AGED 64 YEARS
S/O.ALI MOYIN, CEE PEES FUEL, HPC DEALER
KONDOTTY, MALAPPURAM DISTICT.

BY ADV. SRI.P.VENUGOPAL (1086/92)

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM-682 031.(REPRESENTING THE SUB INSPECTOR OF POLICE KONDOTTY).

BY PUBLIC PROSECUTOR SMT.M.MADHUBEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 16-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 4424 of 2013

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A.TRUE COPY OF THE REPORT DATED 27/09/2012 SUBMITTED BY THE DY.S.P. CBCID, (EOW-III) KOZHIKODE TO THE STATION HOUSE OFFICER, KONDOTTY POLICE STATION.

ANNEXURE-B.TRUE COPY OF THE FIRST INFORMATION REPORT REGISTERED IN CRIME NO.964/2012 OF KONDOTTY POLICE STATION.

ANNEXURE-C.TRUE COPY OF THE INSPECTION RERPORT PREPARED BY THE OFFICIALS OF HINDUSTAN PETROLEUM CORPORATION DATED 28/09/2012.

ANNEXURE-D.TRUE COPY OF THE RELEVANT PAGES OF MARKETING DISCIPLINE GUIDELINES (MDG)-2012.

TRUE COPY

P.S TO JUDGE

RAJA VIJAYARAGHAVAN.V. J

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Crl.M.C. 4424 of 2013

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Dated 16th July, 2015

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ORDER

“CR”

1. Under challenge in this Criminal Miscellaneous Case preferred u/s 482 of the Code of Criminal Procedure is the legality and sustainability of the prosecution initiated against the petitioner under S. 420 of the IPC in crime No.964 of 2012 registered on 27.9.2012 by the Sub Inspector of Police , Kondotty police station, Malappuram District.

2. The essential facts are as follows :-

The petitioner is the authorized dealer of Hindustan Petroleum Corporation Limited and he operates a retail outlet by name “CEE PEE FUELS” at Kondotty. On 27.9.2012 , the Deputy Superintendent of Police, CBCID, (EOW-III), Kozhikode, carried out an inspection of the retail outlet at the behest of the Superintendent of Police CBCID (EOW -III). The officers of the Legal Metrology Department, were present when the inspection was conducted. Inspection revealed that there was short delivery of fuel from the dispensing units. In other words fuel dispensed from the units were of lesser quantity than what was to be actually delivered. Annexure A report was prepared on 27.9.2012 in which it is seen stated that the customers were being cheated by the petitioner by dispensing lesser quantity of fuel. The said report was forwarded to the Sub Inspector of police, Kondotty police station and on its receipt the said officer has registered the said crime under S.420 of the IPC.

3. Sri. P. Venugopal, the learned counsel for the appellant, placing reliance on various provisions of the Legal Metrology Act, 2009, has submitted that the Act and the Rules framed there under was enacted to enforce the sale of goods which are sold or distributed by weight, measure or number. According to him, the Act is self contained and S. 51 of the Act 1 of 2009 makes it amply clear that provisions of the Indian Penal Code and S 153 of the Code of Criminal Procedure in so far as such

provisions relate to weights or measures , shall not apply to any offense punishable under the Act. He targeted Annexure B FIR with all the fusillades in his armoury and submitted that the registration of the FIR is against law as substantial provisions are engrafted in the special Act to specifically deal with incidence of violations.

4. Per contra, Smt. M. Madhuben, learned Public Prosecutor has submitted that inspection was carried out by the Deputy Superintendent of Police based on information and he was accompanied by the Officers of the Legal Metrology Department. Inviting the attention of the Court to Annexure-A, it was pointed out that the measurement was taken by the Superintendent of police with the assistance of officers of the Legal Metrology Department with appropriate measuring vessels and as it was found that the petitioner was dispensing fuel of a lesser quantity, the offence u/s 420 was squarely attracted. There is no reason for invoking extraordinary powers u/s 482 to interfere with the matter and to quash

the proceedings, is the essence of the submission.

5. Admittedly, inspection was conducted by the Deputy Superintendent of police and it was the said officer who had carried out the measurement of fuel from the dispensing unit. Though the officers attached to the legal Metrology Department were present along with the said officer, they have not carried out the inspection in compliance with the procedure prescribed under the Act and Rules. As is revealed from Annexure-II FIR, the inspecting officer furnished a report to the Sub Inspector directing initiation of appropriate action and it is on its basis that the crime was registered.

6. Question is whether the same can be sustained. To appreciate the rival contentions, it will be apposite to take a glance at the relevant Act and its provisions.

7. S. 153 of the Code empowers an officer in charge of a police station to enter any place without a warrant

within his station limits for the purpose of inspecting or searching for any weights or measures or instruments for weighing , used or kept therein , whenever he has reason to believe that there are in such place weights measures or instruments for weighing which are false. The said officer is bound to report such seizure to the jurisdictional Magistrate forthwith.

8. On the other hand , Act 1 of 2010 was enacted to enforce the standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight , measure or number and for matters connected therewith or incidental thereto. The said Act replaces the Standard of Weights and Measures Act, 1976 and the Standards of weights and Measures (Enforcement) Act, 1985. The said Act has come into force on 01.04.2011 .

9. S.51 of the Act reads as follows :

> *[51] "**The provisions of Indian Penal Code and the Code of Criminal Procedure not to apply -** The provisions of the Indian Penal Code(45 of 1860) and section 153 of the Code of Criminal Procedure, 1973(2 of 1974) in so far as such provisions relate to offenses with regard to weight or measure, shall not apply to any offence which is punishable under this Act.*

10. There is therefore, an express exclusion of the provisions of the Indian Penal Code as well as S. 153 of the Code of Criminal Procedure *in so far as such provisions relate to offenses with regard to weight or measure which is punishable under* Act 1 of 2010. It will also be relevant to advert to S. 4 of the Code at this juncture .

> *[**4]. Trial of offences under the Indian Penal Code and other laws-***
> *(1). All offences under the Indian Penal code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with*

> *according to the provisions hereinafter contained.*
> *(2). All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.*

11. Sub-s.(2) of S.4 of the Code of Criminal Procedure states that all offenses under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offenses. It is trite that when the special Act provides for a special procedure, it is that procedure that must be followed and not the one prescribed under the Code. The procedure prescribed under the Code is abrogated and superceded expressly by Act 1 of 2010.

12. S. 5 of the Code of Criminal Procedure is also relevant in this context. Where a special law provides an exclusive procedure for dealing with the offences under the said law, the application of the Code is, to the extent, so provided in the special law excluded. When the Parliament by providing a special procedure excluded the application of the Indian Penal Code and S.153 of the Code in respect of matters dealt with under Act 1 of 2010, the proceedings leading to Annexure-B FIR cannot be said to be legal.

13. There is a rationale behind divesting the powers from the Police and excluding the provisions of the Indian Penal Code as well as S. 153 of the Code. Extremely detailed procedure is prescribed in Part IV of Eighth Schedule of the The Legal Metrology (General) Rules, 2011. As per the rules, verification procedure is a very detailed and scientific process involving precise equipment. The preparation and test procedure are also

very meticulous and scientific which cannot be and has not been complied with by the detecting officer in this case. The testing procedure as per the rules can only be undertaken by an expert specially trained for this purpose. This is exactly the rationale behind the inclusion of S 51 in the Act. The procedure adopted by the Deputy Superintendent of Police as evidenced by Annexure-A report is primitive and illegal. He had absolutely no business to carry out those procedures when Act 1 of 2010 does not permit him to carry out such a hopeless activity. In other words, a police officer cannot take up the mantle of ascertaining whether there has been a violation of the provisions of the Legal Metrology Act or the Rules framed thereunder, if it *relates to offenses with regard to weight or measure which is punishable under* Act 1 of 2010.

14. The petitioner has produced Annexure-C report which reveals that the Hindustan Petroleum Corporation has conducted the verification of the dispensing units by

the process of comparing, checking, testing and adjusting the same prior to and after the inspection by the Deputy Superintendent and it was found that it conformed to the standard.

15. There is yet another aspect of the matter. S. 30 of Act 1 of 2010 deals the penalty for transactions in contravention of standard weight or measure. It reads as follows :-

> *[30] - Penalty for transactions in contravention of standard weight or measure*
> *Whoever--*
> *(a). in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or*
> *(b) in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or*

> *(c). in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or*
>
> *(d). in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for,shall be punished with fine which may extend to ten thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both.*

16. As per S. 48 of the Act, any offence punishable under section 25, sections 27 to 39, sections 45 to 47, or any rule made under sub-section (3) of section 52 may, either before or after the institution of the prosecution, be compounded, at various stages as enumerated therein by the Director or legal metrology officer as may be specially authorized by him or in some other cases by the Controller or legal metrology officer specially authorized by him subject to certain conditions. When the special

statute prescribe offences, its punishment and compounding procedure, and specifically excludes the provisions of the Indian Penal Code and S. 153 of the Code , it was nothing but illegal on the part of the Officer to carry out the surprise inspection and issue report directing necessary action by his subordinate officer resulting in registration of a crime under S 420 of the IPC . Therefore, it appears that the attempt of the investigating agency in by-passing the provisions of the Act was to prevent the petitioner from exhausting the remedies provided for under law.

17. In State of **Haryana and Others v. C.h Bhajan Lal and Others (AIR 1992 SC 604),** the Apex Court has laid down that where there is an express legal bar engrafted in any of the provisions of the Code or of the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious

redress for the grievance of the aggrieved party, a High Court in exercise of powers u/s 482 will be justified in quashing the proceedings. In the instant case, Annexure-B would reveal that the criminal proceeding has been initiated on the basis of an illegal procedure which would vitiate the trial itself. If the proceeding is permitted to continue it would amount to abuse of process of the Court resulting in great hardship and injustice to the accused. So, exercise of powers under S.482 of the Code, to quash Annexure-B FIR would indeed secure the ends of justice.

18. In the result, Crl.M.C is allowed. Annexure-A report and Annexure-B FIR in Crime No.964 of 2012 of Kondotty police station and all further proceedings pursuant thereto are quashed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

Mrcs

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