

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

CrI.MC.No. 6297 of 2015 ()

**ST.NO. 498/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I,
PERINTHALMANNA**

PETITIONERS/ACCUSED 1 TO 4 :

- 1. P.K.VAIDYARS VAIDHYA RATNA PRABHA VAIDYASALA PVT. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, VALIYAKUNNU
VALANCHERY, MALAPPURAM DISTRICT.**
- 2. KUNHAMMED VAIDYAR
S/O. SAITHALIKUTTY, AGED 87 YEARS
PERINTATTUTHODI HOUSE, IRIMBILIYAM
MALAPPURAM DISTRICT.**
- 3. AMEER ALI
S/O.SAITHALIKUTTY, AGED 68 YEARS
PERINTATTUTHODI HOUSE, IRIMBILIYAM
MALAPPURAM DISTRICT.**
- 4. MOHAMMED SHAFI
S/O. MOHAMMEDALI, AGED 38 YEARS
PERINTATTUTHODI HOUSE, IRIMBILIYAM
MALAPPURAM DISTRICT.**

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS/STATE & COMPLAINANT :

- 1. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI-682 031.**
- 2. INSPECTOR
LEGAL METROLOGY, PERINTHALMANNA-679322
MALAPPURAM DISTRICT.**

R1 & R2 BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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...2/-

Crl.MC.No. 6297 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE A1- TRUE COPY OF THE MAHAZAR PREPARED BY THE 2ND
RESPONDENT AT THE TIME OF ALLEGED SEIZURE AND DATED
18-8-2014.**
- ANNEXURE A2- TRUE COPY OF SHOW CAUSE NOTICE NO. 62/2014 DATED
16-12-2014 ISSUED BY THE 2ND RESPONDENT TO THE 1ST
PETITIONER.**
- ANNEXURE A3- TRUE COPY OF COMPLAINT DATED 18-2-2015 SUBMITTED BY
THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS
MAGISTRATE'S COURT-I, PRINTHALMANNA AND NUMBERED
AS S.T.NO. 498/2015.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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B. KEMAL PASHA, J.

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Crl.M.C. No.6297 of 2015 G
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Dated this the 30th day of September, 2015

ORDER

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Petitioners are the accused in ST No.498/2015 of the Judicial First Class Magistrate's Court-I, Perinthalmanna for the offences alleged under Section 18 of the Legal Metrology Act, 2009 read with Rules 4 and 6(2) of the Legal Metrology (Packaged Commodities) Rules, 2011, punishable under Section 36 of the Act.

2. The complaint against the petitioners is that on a search of the business premises of the petitioners, it could be found that in the pre-packed commodity, which were manufactured, distributed, sold and kept offered and exposed for sales, the customer care number for inviting complaints, if any, with regard to the commodity was not shown in the label. Other details have already been shown on the label. Even though the only shortcoming that was

found in the label is the absence of customer care number or telephone number, the complainant has chosen to incorporate the offence under Section 36 of the Act.

3. On going through Section 36 of the Act, it can be seen that such an offence can be invited only in a case wherein the commodity inside the package is not in conformity with the label declaration. Here, in this particular case, apart from complaining that the customer care number was not shown in the label, there is no case that the commodity inside the package was different from the one shown in the label declaration. Therefore, an offence under Section 36 of the Act cannot be attracted in the present case.

4. At the same time, as per Rule 6(2) of the Legal Metrology (Packaged Commodities) Rules, 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.

When the label does not contain the customer care number or the telephone number for enabling the customer to prefer such complaints, if any, it is a violation of Rule 6(2). As per Rule 32(2) of the Rules, when there is no specific penalty is expressly provided for any such violation, it will fall under Rule 32(2).

In the result, this CrI.M.C. is allowed to the extent of declaring that the offences alleged against the petitioners other than the violation under Rule 6(2) are not legally sustainable. The court below shall proceed with the offence under Rule 32(2) of the Rules instead of proceeding against the petitioners for the offence under Section 36 of the Act.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/30/09

// True Copy //

PA to Judge