

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.Nos.15406 and 15407 of 2015
and
M.P.Nos.1 and 1 of 2015

A.Mohammed Ayub Khan .. Petitioner in
Crl.O.P.No.15406/2015/Accused

Kannammal ... Petitioner in
Crl.O.P.No.15407/2015/Accused

.. Vs ..

Assistant Inspector of Labour/Inspector of
Legal Metrology,
IIIrd Circle, Chennai,
18/35, 2nd Floor, Thanga Salai Street,
Sowcarpet, Chennai - 600 079. .. Respondent in both
Crl.O.Ps./Complainant

Prayer in Crl.O.P.15406/2015.:- Criminal Original Petition
filed under Section 482 of the Code of Criminal Procedure,
praying to call for the records in C.C.No.129 of 2015 on the
file of the learned XVI Metropolitan Magistrate, George Town,
Chennai, and to quash the same.

Prayer in Crl.O.P.15407/2015.:- Criminal Original Petition
filed under Section 482 of the Code of Criminal Procedure,
praying to call for the records in C.C.No.127 of 2015 on the
file of the learned XVI Metropolitan Magistrate, George Town,
Chennai, and to quash the same.

In both Crl.O.Ps.

For Petitioners: Mr.Thomas T Jacob
For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

COMMON ORDER

The petitioners in both the petitions have come forward
with these petitions seeking to quash the proceedings in
C.C.Nos.129 and 127 of 2015 respectively pending on the file
of the learned XVI Metropolitan Magistrate, George Town,
Chennai.

2. Learned counsel for the petitioners submitted that the petitioners are facing criminal proceedings for the offences punishable under Sections 18 (1) of the Legal Metrology Act, 2009 along with Rule 6 (1) (e) read with 18 (1) of the Legal Metrology (Packaged Commodities) Rules, 2011. The case of the prosecution is that the respondent had conducted inspection in the petitioners' shop and during the inspection, they found that one packet in both the shops, totalling two packets, containing Ramraj Cotton Dhotis, were not packed with a label, which is contravening Section 18(1) of the Legal Metrology Act, 2009 (hereinafter referred to as The Act) and hence, the respondent had issued show cause notices to the petitioners. In the show cause notices, it was stated that without waiting for sixty days for compounding the offences, complaint has been preferred within 49 days and no final order has been passed. The learned counsel for the petitioners further submitted that as per Section 50 of the Act, the petitioners are entitled to prefer an appeal and since no final order has been passed, their right of appeal has been curtailed and hence, the petitioners seek to quash the proceedings in C.C.Nos.129 and 127 of 2015 respectively pending on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai.

3. Learned Additional Public Prosecutor submitted that immediately after the goods have been seized from the shops of the petitioners, copies of the seizure mahazar have been furnished to the shop owners and show cause notices have been issued to them. The petitioners were not ready and willing to compound the offences. Once the petitioners/accused opt for compounding the offences, then only the matter has to be placed before the Deputy Controller of Legal Metrology, who will decide the matter and impose fine in accordance with law. Against which, appeal has to be preferred within 60 days. But, in this case, the petitioners were not willing to compound the offences. Therefore, Section 50 of the Act is not applicable to the facts of the present case and hence, he prays for dismissal of the petitions.

4. This Court has considered the rival submissions made on both sides and perused the typed set of papers.

5. On a perusal of typed set of papers, it is seen that on 25.08.2014, at 4.45 p.m., the respondent has inspected the shop of the petitioner in CrI.O.P.No.15406 of 2015 and on 22.08.2014, at 4.30 p.m., the respondent has inspected the shop of the petitioner in CrI.O.P.No.15407 of 2015 and during the inspection, the respondent found that one packet in each of the shops, totalling two packets, containing Ramraj Cotton Dhotis, were not packed with a label, which is in contravention of Section 18(1) of the Act and hence, the respondent had issued show cause notices to the petitioners in both the petitions dated 26.08.2014 and 25.08.2014 respectively. But the petitioners have sent letters to the

respondent dated 30.08.2014 and 16.09.2014 respectively and sought for the inspection reports and mahazars. On a perusal of records show that the copies of recovery mahazar have been furnished at the time of seizing the two packets, containing Ramraj Cotton Dhotis. So the argument advanced by the learned counsel for the petitioners that they have not furnished the inspection reports and mahazars does not merit acceptance.

6. Now, it is appropriate to consider whether Section 50 of the Act is applicable to the facts of the present case. It is relevant to extract Section 50 of the Legal Metrology Act, 2009, which reads as follows:-

"50. Appeals.- (1) Subject to the provisions of sub-section (2), an appeal shall lie,-

(a) from every decision or order under sections 15 to 20, section 22, section 25, sections 27 to 39, section 41 or any rule made under sub-section (3) of section 52 by the legal metrology officer appointed under section 13, to the Director,

(b) from every decision or order made by the Director of Legal Metrology under sections 15 to 20, section 22, section 25, sections 27 to 39, section 41 or any rule made under sub-section (3) of section 52, to the Central Government or any officer specially authorised in this behalf by that Government;

(c) from every decision given by the Controller of Legal Metrology under delegated powers of Director Legal Metrology to the Central Government;

(d) from every decision given or order made under Sections 15 to 18, Sections 23 to 25, Sections 27 to 37, Sections 45 to 47 or any rule made under sub-section (3) of section 52 by any legal metrology officer appointed under section 14, to the Controller; and

(e) from every decision given or order made by the Controller under sections 15 to 18, sections 23 to 25, sections 27 to 37, sections 45 to 47 or any rule made under sub-section (3) of section 52 not being an order made in appeal under clause (d), to the State Government or any officer specially authorised in this behalf by that Government.

(2) Every such appeal shall be preferred within sixty days from the date on which the impugned order was made:

Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, permit the appellant to prefer the appeal within a further period of sixty days.

(3) On receipt of any such appeal, the appellate authority shall, after giving the parties to the appeal, a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying or reversing the decision or order appealed against or may send back the case with such direction as it may think fit for a fresh decision or order after taking additional evidence, if necessary.

(4) Every appeal shall be preferred on payment of such fees, as may be prescribed.

(5) The Central Government or the State Government, as the case may be, may on its own motion or otherwise, call for and examine the record of any proceeding including a proceeding in appeal in which any decision or order has been made, for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such orders thereon as it may think fit:

Provided that no decision or order shall be varied under this sub-section so as to prejudicially affect any person unless such person has been given a reasonable opportunity of showing cause against the proposed action."

7. On a reading of the above, in Section 50 (1) (d) of the Act, it is clearly stated that from every decision given or order made under Sections 15 to 18, Sections 23 to 25, Sections 27 to 37, Sections 45 to 47 or any rule made under sub-section (3) of section 52 by any legal metrology officer appointed under section 14, appeal has to be preferred to the Controller.

8. At this juncture, it would be appropriate to consider Section 48 of the Act, which reads as follows:

"48. Compounding of offences - (1) ...

(2) The Director or the legal metrology officer as may be specifically authorised by him in this behalf, may compound offences punishable under section 25, sections 27 to 39, or any rule made under sub-section (3) of section 52.

(3) The Controller or legal metrology officer specially authorised by him, may compound offences punishable under section 25, sections 27 to 31, sections 33 to 37, sections 45 to 47, and any rule made under sub-section (3) of section 52:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded."

9. As per section 50 of the Act which deals with 'Appeals', an appeal is liable only against the order passed by the legal metrology officer appointed under section 13 of the Act. Furthermore, even after the initiation of the prosecution and pending prosecution, the offences can be compounded.

10. So, if any order is passed by Deputy Controller of Legal Metrology, an appeal has to be preferred within 60 days from the date of the said order under Section 50 of the Act. In this case, since the petitioners were not willing to compound the offences, the respondent/complainant, after obtaining authorization from the Deputy Controller of Legal Metrology, had preferred the complaint before the competent Magistrate's Court. Once the complaint has been preferred, the petitioners have to face the criminal case. Hence, the argument advanced by the learned counsel for the petitioners that the petitioners are deprived of the right to file an appeal, since the complaint has been filed within 49 days, does not merit acceptance.

11. Hence, I am of the view that it is not a fit case to quash the proceedings pending against the petitioners in C.C.Nos.129 and 127 of 2015 respectively on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai. Hence, both the Original Petitions are dismissed as devoid of merits.

12. The learned XVI Metropolitan Magistrate, George Town, Chennai, is directed to consider the petitions for dispensing with the personal appearance of the petitioners, if necessary. The learned XVI Metropolitan Magistrate, George Town, Chennai, is also directed to dispose of the case in C.C.Nos.129 and 127 of 2015, within a period of two months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

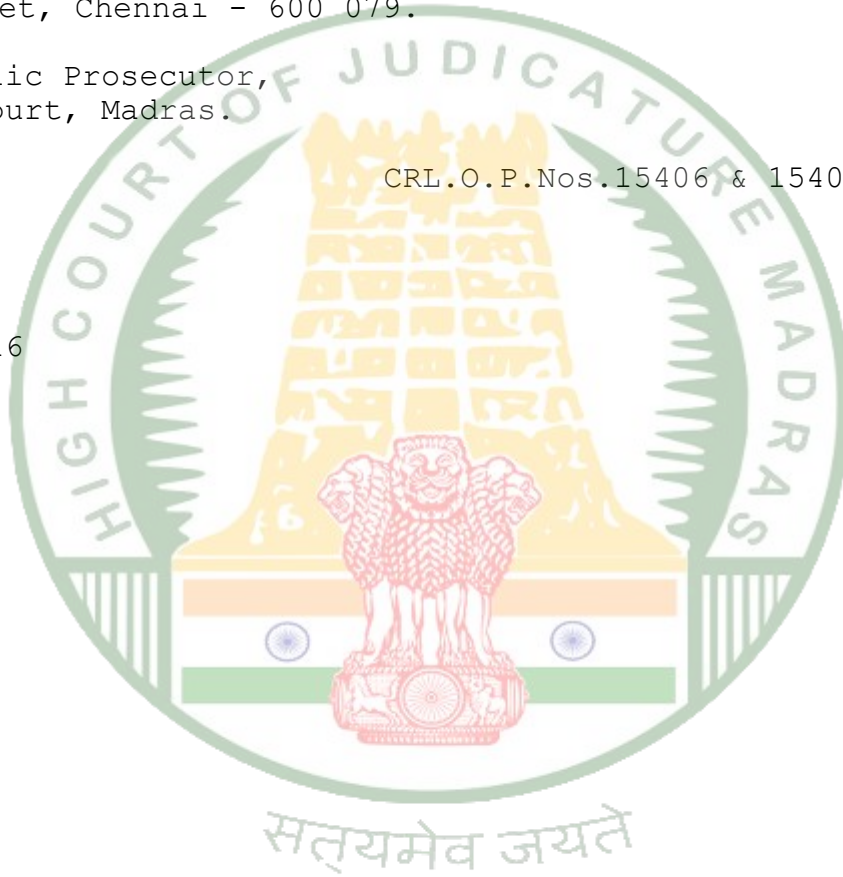
1.The XVith Metropolitan Magistrate,
George Town, Chennai.

2.The Assistant Inspector of Labour/Inspector of
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3.The Public Prosecutor,
High Court, Madras.

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