

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISC. APPLICATION (MAIN) NO. 214 OF 2016

State
Through the Inspector,
Legal Metrology
Sanguem, Goa H. Q. ... Appellant

Versus

Rajesh Dessai (owner / Proprietor)
M/s. Malikarjun Electronics,
Collem, Sanguem- Goa- 403 410. ... Respondent

Mr. S. R. Rivankar, Public Prosecutor for the appellant.

Mr. Amey Fadte, Advocate for the respondent.

CORAM :- NUTAN D. SARDESSAI,J

**Reserved on : 7th April, 2017.
Pronounced on: 22nd June,2017**

ORDER :

This is an application for leave to appeal under Section 378(4) of Cr.P.C.,1973 moved on behalf of the State through the Inspector Legal Metrology, Sanguem, Goa seeking to challenge the Judgment and Order dated 21/05/2016 passed by the Court of the Judicial Magistrate First Class at Sanguem, Goa.

2. Shri S.R. Rivankar, learned Public Prosecutor came to be heard on behalf of the appellant who submitted that several items were seized under Section 18 of the Legal Metrology Act, 2009 ("the Act",

for short hereinafter) by the Inspector Legal Metrology, Sanguem, who had thereafter filed a Criminal Case bearing no.44/LM/AOA/2015 against the respondents. The offence alleged against the respondents was not only under Section 18(1) of the Act but also Rule 6(1) (a), (b), (c), (d), (e) of the Legal Metrology (Packed Commodities) Rules 2011 ("the Rules", for short hereinafter). The Inspector of the appellant had conducted a surprise visit to the premises of M/s. Malikaarjun Electronics, Panchayat Building, Collem, Sanguem, Goa for the purpose of inspection and during such time found various articles/ packages kept for sale/ distribution in violation of the Act and the Rules. The packages as found did not bear the name of the manufacturer, the month and year of manufacture, the maximum retail price etc. which was in violation of Section 18(1) of the Act.

3. A memorandum was issued dated 29/01/2015 on the respondent since the offence was compoundable under Section 48 of the Act who acknowledged the memorandum but failed to compound the offence by not paying the compounding fees. The Controller, Legal Metrology by the Order dated 22/04/2015 had authorised the Inspector to file the complaint before the J.M.F.C. against the accused punishable under Section 36 r/w Rule 32(2) of the Rules. The learned J.M.F.C. however, on a conclusion of the trial

and upon hearing the State and the respondent acquitted the respondent on the ground that there was unexplained entry in the memorandum as regard the visit at Canacona and besides no liability had been fixed on the manufacturer and the packer apart from holding that the complainant had not prosecuted his case whole heartedly.

4. Shri S.R. Rivankar, learned Public Prosecutor submitted that the memorandum was not the main document as recorded by the learned J.M.F.C. in the impugned order and therefore to that extent the finding of the learned J.M.F.C. was erroneous. He further conceded in fairness that the appellant had not joined the manufacturer as a party to the proceedings and in the present case the manufacturer of some seized goods was from China. He therefore prayed for the grant of leave to prefer the appeal.

5. Shri A. Fadte, learned Advocate for the respondent at the outset submitted that the manufacturer ought to have been joined as a party and as all the items were not from China and the manufacturer who was locally available had to be joined as a party. He next questioned the memorandum issued to the respondent which did not bear any initials or seal even though a criminal prosecution was initiated against the respondent. The appellant

was very much aware of the identity of the manufacturer but had not arrayed them as witnesses. No corrigendum was issued to the memorandum and therefore there was a serious doubt in the case against him. He adverted to the impugned order and submitted that no interference was called with the same and therefore no leave had to be granted to prefer an appeal assailing the impugned Judgment and order.

6. I have heard Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State and Shri A. Phadte, learned Advocate for the respondent no.1 and besides considered Section 18 (1) of the Act which reads thus :

“No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be described.”

Sub-section (2) reads as :

“ Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.”

In other words, the requirements of Section 18 is mandatory

qua the declarations on the pre-packaged commodities and there is no escape for the applicant from its strict interpretation. Accepting the version of the applicant that their Inspector had visited the establishment of the respondent, a cursory reading of the memorandum would show to the contrary. It reads that "On 02/12/2014, Shri S.J. D'Costa, Inspector Legal Metrology, **Canacona**, Goa, paid a surprise visit to **M/s. Blazer Garments of Shri Narinder Soni, Opp. SBI, Chaudi, Canacona, Goa - 403702** for the purpose of inspection of the packaged commodities kept for retail sale. The place of visit was cut but there was no initial or seal in respect of the said establishment. However, the said memorandum further reads that during the time of inspection the said Inspector found that the respondent/owner of the said electric shop was present and he was having in his possession various items in the nature of electrical goods bearing the details of the manufacturers most of them being manufactured in India and only one item being manufactured in China.

7. Shri Rivonkar, learned Public Prosecutor yet adverted to this memorandum to buttress his plea that the Inspector had found that it did not bear the mandatory declaration in terms of Section 18 of the Act and therefore the respondent/owner of M/s. Malikaarjun Electronics, Panchayat Bldg., Collem, Sanguem, Goa- 403 410 had

committed the offence under Section 18(1) of the Act and the Rules of 2011 and called upon him to make the payment alongwith the compounding letter, in the Office of the Controller, Legal Metrology within the defined time in terms of Section 48 of the Act. In other words, a bare reading of the memorandum which is a material document of the prosecution is fraught with doubt inasmuch as the surprise inspection was conducted at **M/s. Blazer Garments at Chaudi, Canacona, Goa** which entry had been cancelled without any initials creating serious doubt in the case of the applicant. The memorandum further issued notice to the respondent at his electrical shop at Collem which is far remote from Canacona and calling upon him to compound the offence by paying the requisite fine.

8. The learned J.M.F.C. had found on an examination of the evidence that no explanation of whatsoever nature was given despite the examination of the Controller, Legal Metrology Department nor was any corrigendum issued and in that context held that the benefit of such doubt had to go in favour of the accused i.e. the respondent herein and as no witnesses had been examined on this material discrepancy in the said memorandum. Admittedly, the manufacturers were also not impleaded as parties nor added as witnesses.

9. Section 46 of the Act no doubt provides for compounding of the offences but it is in the context of the offences punishable under Sections 25, 27-39, 45-47 or in Rule made under sub-section 30 or 52 of the Act.

10. Shri S. R. Rivankar, learned Public Prosecutor submitted that the reading of Section 48 of the Act indicated that it was not mandatory and therefore memorandum was not an important document to initiate prosecution. However, such contention is not worthy of merit when it is on the basis of such memorandum that the applicant has proceeded to prosecute the respondent. In the circumstances, therefore, there is no basis in the contention of Shri Rivankar, learned Public Prosecutor that the applicant had made out a case for the grant of leave to prefer an appeal against the impugned judgment and order. In the result, therefore, there is no merit in the application which is hereby dismissed. It follows that no leave is granted to the applicant to prefer an appeal assailing the impugned judgment.

NUTAN D. SARDESSAI,J.

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