

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Cr1.A.No.595 of 2011

Bureau of Indian Standards,
Coimbatore represented by
G.Baskar, Director,
Bureau of Indian Standards,
Government of India,
44, 5th Floor, Kovai Towers,
Balasundaram Road,
Coimbatore - 641 018.

... Appellant/Complainant

vs

1.M/s.Thirumalla Aqua Process
43/4, Lakshmi Narayan Nagar,
Erode - 638 003.
represented by its Proprietor
K.Subramaniam

2.K.Subramaniam

3.G.Gomathi

... Respondents/Accused 1 to 3

Criminal Appeal filed u/s.378 of the Code of Criminal Procedure
against judgment of learned Chief Judicial Magistrate, Erode, passed
in C.C.No.33 of 2009 on 25.04.2011.

For Appellant : Mr.D.Kanagasundaram

For Respondents : Mr.I.C.Vasudevan

JUDGMENT

This appeal arises against judgment of learned Chief Judicial
Magistrate, Erode, passed in C.C.No.33 of 2009 on 25.04.2011.

2. Respondents faced prosecution in C.C.No.33 of 2009 on the
file of learned Chief Judicial Magistrate, Erode, for offences u/s.11
(a), 14 r/w 33 of the Bureau of Indian Standards Act. Prosecution
case is that on 04.04.2008, appellant/complainant conducted a search
of the first accused company and found that water was filled in
polythene pouches in which BIS marks were printed. The accusation is

that accused used BIS marks without holding a license from the Bureau of Indian Standards [BIS].

3. Before trial Court, prosecution examined two witnesses and marked 11 exhibits and 7 material objects. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 25.04.2011, rendered a finding of acquittal. Hence, this appeal.

4. Heard learned counsel for appellant and learned counsel for respondents.

5. Learned counsel for appellant referred to Section 27 of the Bureau of Indian Standards Act, 1986, to submit that powers of delegation to prefer complaints was envisaged therein and complainant in the present case was an officer of the Bureau to whom powers to prefer complaints had been delegated by the Deputy Director of the southern region of the Bureau.

6. In rendering a finding of acquittal, trial Court has held thus:

'16. Under section 34(1) of the BIS Act, no court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the Government or bureau or any officer empowered in this behalf by the Government or the Bureau or any consumer or any association recognized in this behalf by the Central or State Government. The complainant states that he is an officer empowered by the Bureau. Ex.P.1 is the letter empowering the PW.1 to lodge this complaint. In this exhibit the Deputy Director General of the Bureau has authorized the PW.1 to lodge this complaint. This Deputy Director General states he in exercise of powers delegated to him by the Bureau of Indian Standards in its meeting held on 24.6.97 was authorizing the PW.1 to lodge the complaint. It appears from this exhibit that the Bureau has not empowered the PW.1 directly. It delegated its power to some other officer who in turn has authorized the PW.1 to lodge the complaint. When an Act prescribes that only a particular person can empower any officer to lodge a complaint, that particular person alone can give the power. This particular person cannot delegate its power to anybody else. In this case it has happened. The Act does not contemplate any such delegation. Even if such delegation were legal, the complainant has not produced any evidence to that such delegation was in fact occurred. No evidence of such delegation of power has been given by the complainant. For these reasons I hold that the complainant has not proved the fact that he has the authority to file this complaint. For this reason also this complaint fails.'

7. Section 2(b) of the Bureau of Indian Standards Act, 1986, informs that "Bureau" means the Bureau of Indian Standards established under section 3. Section 3 thereof informs thus:

'3. Establishment and incorporation of Bureau of Indian Standards. - (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Act, a Bureau, to be called the Bureau of Indian Standards.'

[rest of the section - otiose]

Section 27 thereof reads thus:

'27. Delegation.—The Bureau may, by general or special order in writing, delegate to any member, member of the Executive Committee, officer of the Bureau or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 38) as it may deem necessary.'

Powers of delegation u/s.27 of the Bureau of Indian Standards Act, 1986, are reserved to the Bureau and not to the Deputy Director, who is nothing more than an official working in a corporate set up. In such circumstances, no occasion to interfere with the finding of trial Court arises.

The Criminal Appeal shall stand dismissed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

gm

To

The Chief Judicial Magistrate,
Erode.

+1 cc to M/S.KANAGA SUNDARAM, Advocate SR.NO.61900/17

+1 cc to MR.I.C.VASUDEVAN, Advocate SR.NO.62225/17

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SJ(CO)
JK 27/11/17