

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 04 OF 2015

1. Shri Anup Rajaram Kantik,
Major, married, Managing Partner,
M/s. G.M.S Contoco & Bros.,
Panaji, Goa,
dealer of M/s. Bharat Petroleum
Corporation Ltd.

2. M/s. G.M.S. Contoco & Bros.,
Opp. Vidyut Bhavan,
Near Police Head Quarters,
Panaji, Goa, Dealer of M/s. Bharat
Petroleum Corporation Ltd.
Through Managing Partner
Shri Anup R. Kantik.

.... Petitioners

V e r s u s

STATE

Through the Assistant Controller Legal Metrology
Legal Metrology, Central Zone,
Panaji, Goa -HQ)

..... Respondent

Shri A. R. Kantik, Advocate for the Petitioner.

Shri S. R. Rivankar, Public Prosecutor for the Respondent/State.

CORAM: C. V. BHADANG, J.
DATE: 26TH February, 2018.

ORAL JUDGMENT :

This Criminal Revision Application is directed against the conviction of the petitioner for the offence punishable under section 24 r/w section 47 of

the Standard Weights and Measures (Enforcement) Act 1985 (Act, for short). The learned Magistrate has sentenced the petitioner to pay a fine of Rs.400/- and in default to undergo simple imprisonment for a period of four days. Indisputably the amount of fine has been paid. The conviction of the applicant has been confirmed in appeal by the learned Sessions Judge vide judgment and order dated 27/6/2014 in Criminal Appeal No.122/2010.

2. I have heard Shri Kantak, the learned counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent. With the assistance of the learned counsel for the parties, I have perused the record.

3. Shri Kantak, the learned counsel for the petitioner has raised two contentions. Firstly, it is submitted that the petitioners were mere dealers of Bharat Petroleum Corporation Ltd. (BPCL, for short). It is submitted that the “measure” could not be in possession of two entities i.e. BPCL and the petitioner. It is submitted that BPCL having compounded the offence, the prosecution of the petitioner was not permissible. Secondly, it is contended that section 47 of the Act would presuppose that a show cause notice is issued prior to launching of the prosecution. The learned counsel has referred to section 47 of the Act in order to submit that it contemplates the failure of any person to present any weight or measure for verification or re-verification

“without any reasonable cause”. It is contended that a person who is proceeded against has to be afforded an opportunity to show a reasonable cause before prosecution could be launched. The learned counsel has referred to the Memorandum dated 13/7/2012 in order to point out that it only refers to section 65 of the Act indicating that the offence is compoundable and the memorandum cannot be read as a show cause notice, as has been held by the learned Sessions Judge. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in the case of **State of Maharashtra & others Vs. Raj Marketing & anr. 2012 (3) Bom. C.R. 277** and the judgment of the Andhra Pradesh High Court in the case of **Titan Watches Limited V. Senior Inspector, Legal Meteorology Weights & Measures** AIR 2003 A.P. 175, in order to submit that a show cause notice is necessary before launching of the prosecution. Except these, there are no other contentions raised.

4. Shri Rivankar, the learned Public Prosecutor for the respondents has submitted that there is no scope for reading a prior show cause notice in section 47 of the Act. It is submitted that even otherwise nothing prevented the respondent from showing cause during the course of the trial as to the circumstances which prevented the petitioner from getting the re -verification done. It is submitted that section 24 of the Act envisages a person having any

weight or measure in his possession, custody or control and once the petitioners were in actual custody and control of the “measure”, they cannot escape liability.

5. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. The petitioners are the dealers of Bharat Petroleum Corporation Limited in respect of a Petrol Pump. The verification certificate had admittedly expired on 6/7/2006 and during a surprise visit made on 10/7/2006, the inspector concerned had found that there was no renewal of the verification certificate obtained as required by section 24 of the Act. It is not in dispute that the Inspector verified the measure and nothing was found amiss insofar as the quantity of the measure is concerned. However essentially the offence is about the failure or omission of the petitioners to obtain the renewal on or before its expiry i.e. 6/7/2006. In this regard the provisions of section 24 of the Act may be noticed, which reads thus:

“24.Verification and stamping of weights or measures-
(1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or likely to be used by him in any transaction or for industrial production or for protection, shall before putting such weight or measure verified at such

place and during such hours as the Controller may, by general or special orders, specify in this behalf (hereinafter referred to as the specified place or specified time) on payment of such fees as may be prescribed.”

It can thus be seen that section 24 contemplates the verification and re-verification of any weight or measure by every person having any weight or measure in his possession, custody or control. Sub section (2) of section 24 contemplates that every such weight or measure referred to in sub-section (1) shall be re-verified at such periodical intervals as may be prescribed. In the present case the period was one year. The verification certificate was issued on 7/7/2005 and had thus expired on 6/7/2006. The fact that there was no re-verification obtained on or prior to 6/7/2006 is also not in dispute. In such circumstances, it would be necessary to examine the two contentions raised on behalf of the petitioners.

7. The first contention about BPCL having compounded the offence and being in possession of the measure, to my mind cannot be accepted. It is clear from a bare perusal of the section 24 that it is the person who is in possession, custody or control of the weight or measure who has the responsibility to get it verified and re-verified as prescribed under the Act and the rules framed thereunder. It was not disputed during the course of the

arguments at bar that the petitioner was in custody and control of the measure at the relevant time. In such circumstances, the first contention will have to be refuted.

8. In so far as the necessity of show cause notice is concerned section 47 of the Act reads thus:

“47. Penalty for contravention of section 24- whoever, being required by section 24 to present any weight or measure for vitrification or re-verification, omits or fails, without any reasonable cause to do so, shall be punished with fine which may extend to five hundred rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine”.

The question is whether section 47 contemplates any prior show cause notice. The reliance in this regard placed on the two decision is entirely misplaced. In none of the two cases i.e. **Titan Watches Ltd. and Raj Marketing and anr. (supra)**, there was a specific issue adverted or dealt with about the necessity of a prior show cause notice under section 47 of the Act. The learned counsel for the petitioner has pointed out that in those cases the authorities under the Act had issued a show cause notice. This itself cannot be an authority to hold that a prior show cause notice is necessary. It is trite that a decision is an authority for what it decides. As noticed earlier in

none of the two cases there was an issue as to whether a show cause notice is necessary to be issued under section 47 of the Act. The learned Sessions Judge has held that the memo dated 13/7/2006 would be a show cause notice. It is true that there is nothing in the memo to indicate that it required the petitioner to show cause. The memo only indicates the nature of the offence and the fact that it is compoundable according to section 65 of the Act. However, the question is whether it was open to the petitioners to show the reasonable cause to the learned magistrate during the course of the trial. This can be done in varied ways i.e on basis of the cross examination of the prosecution witnesses or by way of statement under section 313 Cr.P.C. or by leading independent defence evidence. Nothing of the sort has been done by the petitioner in this case. Shri Kantak, the learned counsel for the petitioner urged that this Court should lay down law as to the necessity of issuing a show cause notice. However, I do not find that it would be necessary, particularly when the petitioner had failed to show any reasonable cause for their failure to obtain re-verification. The point whether the show cause notice is necessary or not can be left open to be decided in an appropriate case. It was submitted by the learned counsel for the petitioner that this is a technical offence in as much as the concerned officer had not found anything objectionable or amiss in so far as the measure is concerned. Here the learned counsel for the petitioner would be right. However, going by the

provisions of section 24 of the Act the offence alleged is essentially about failure or omission to obtain re-verification which is not factually in dispute. I have carefully gone through the judgment of the learned Magistrate as also the learned Sessions Judge and they do not show any infirmity so as to require interference in the revisional jurisdiction of this court under section 397 of the Code. The petition is accordingly dismissed.

C. V. BHADANG, J.

Ap/