

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 1663 OF 2003
WITH
CRIMINAL WRIT PETITION NO. 1664 OF 2003
WITH
CRIMINAL WRIT PETITION NO. 1665 OF 2003
WITH
CRIMINAL WRIT PETITION NO. 1666 OF 2003
WITH
CRIMINAL WRIT PETITION NO. 1667 OF 2003**

S.G. Karmakar & Ors. ... Petitioners
VS.
S.D. Shivagunde & Ors. ... Respondents

**WITH
CRIMINAL WRIT PETITION NO. 167 OF 2004**

S.G. Karmakar & Ors. ... Petitioners
VS.
Shrinivas B. Jadhavar & Ors. ... Respondents

Mr. Aabad Ponda a/w. Mr. Abhay Jadeja, Varun Satiya I/b.
Crawford Bayley & Co., Advocate for the petitioners in all the Writ
Petitions.

Mrs. Geeta P. Mulekar, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 6th December, 2018**

P.C.:

All these six Writ Petitions are taken together, as the issue
involved in all these Writ Petitions is one and the same.

2. In all these Writ Petitions, the petitioner-company and its directors are prosecuted for the offences punishable under sections 8(1), 9(1) and 12(1) of Packaged Commodities Rules (P.C.R.) 1979 and Section 63 of Standard of Weights and Measures Act of 1976.

3. The facts of the case, in brief, are as follows:

The petitioner No. 2-Britannia Company is a manufacturer of the biscuits, namely, 50-50. In the year 2000, when the inspector of Legal Metrology Department visited to the various places where the packages of 50-50 Britannia biscuits were sold, they found that the packages were not packed as per Schedule III of Standards of Weights and Measures (Packaged Commodities) Act, 1977 read with Rule 23(1), 4 and 5 of Standards of Weights and Measures (Packaged Commodities) Rules 1977. Thereafter the respondents filed complaints before the Metropolitan Magistrate, Mumbai. The petitioner-company and directors of the said company thereafter approached this Court by invoking writ jurisdiction of this Court under Article 227 of the Constitution of India and section 482 of Cr. P.C. and prayed that the order of issuance of process in following criminal cases filed before the Metropolitan Magistrate be

quashed and set aside.

Writ Petition No. 1663 of 2003	Criminal Case No. 1/SWM/2001 filed before the Metropolitan Magistrate, 22 nd Court, Andheri, Mumbai
Writ Petition No. 1664 of 2003	Criminal Case No. 419/S/2000 filed before Metropolitan Magistrate, 34 th Court, Vikhroli, Mumbai.
Writ Petition No. 1665 of 2003	Criminal Case No. 24/S/2000 filed before Metropolitan Magistrate, 27 th Court, Mulund, Mumbai.
Writ Petition No. 1666 of 2003	Criminal Case No. 136/S/2000 filed before Metropolitan Magistrate, 31 st Court, Vikhroli, Mumbai.
Writ Petition No. 1667 of 2003	Criminal Case No. 505/S/2000 filed before Additional Chief Metropolitan Magistrate Court, Kurla, Mumbai.
Writ Petition No. 167 of 2004	Criminal Case No. 154/SWM/2000 filed before Additional Chief Metropolitan Magistrate, 22 nd Court, Kurla, Mumbai.

4. At the outset, the learned counsel Mr. Ponda for the petitioners submitted that due to lapse of time, it is difficult to lay hand over any such order of issuance of process because such order is not filed with the Petitions, however, he relied on the judgment of Division Bench dated 3rd July, 2009 in Writ Petition no. 685 of 2001 wherein the Division Bench in paragraph 24 of the said judgment on page 31 has specifically observed that “no process was issued” till July 2009 and present petitions are of the years 2003 and 2004. The petitioners have filed the Petitions for

quashing and setting aside the proceedings filed by the complainants under the Act.

5. The petitioner-company was manufacturing the biscuits by name "50-50" in the year 2000 and made per package of the biscuits weighing 75 grams plus 20% extra free of cost. Thus, the total weight of each packet was 90 grams.

6. Schedule III, Rule 5 is reproduced as follows:

THE THIRD SCHEDULE

(See rule 5)

Commodities to be packed in specified quantities

The following commodities shall be packed in such quantities by weight, measure or number as are specified in the corresponding entries against them.

Sr.No.	Commodities	Quantities in which to be packed
1.	----	----
2.	----	----
3.	Biscuits	25g, 50g, 75g, 100g, 200g, 300g and thereafter in multiples of 100 g upto 1 kg.

7. Thus, the weight of the packet should be 25 gms, 50 grams,

75 grams and 100 grams. The weight of 90 grams is not mentioned as standard weight under Rule 5 of the Act and hence the prosecution was initiated.

8. The learned counsel Mr. Ponda has submitted that on the packet of 50-50 biscuits, the petitioner-company has disclosed the weight, i.e., 75 grams + 15 grams extra, thus it comes to 90 grams. He submitted that the net weight was 75 grams for which the price chart for the said packet is same which was for 75 grams packet. However, the company was giving 20% of 75 grams free of cost, which was 15 grams. He relied on the judgment of Division Bench filed by the petitioner-company against the respondents raising the same issue and where the Division Bench has observed that sufficient time has lapsed and since no process has been issued and as the petitioners have stopped packaging the biscuits of 90 grams, this prosecution also can be quashed.

9. Learned APP submits to the order of this Court in view of the judgment of the Division Bench.

10. Perused the record and the documents in all these Writ

Petitions and the relevant rules of the Act and especially of the judgment of Division Bench in Writ Petition No. 685 of 2001. It is mandatory for the manufacturer to adhere to Rule 5 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 while packing the biscuits, so the total weight of each packet should not be 90 grams but as per the standard weight, it should be 75 grams or 100 grams. It is the technical offence under the Act.

11. I have perused the wrapper of the said package, which is part of the record, on which the break up of the weight of the biscuits was mentioned as “75 grams + 15 grams free of cost”. Thus, admittedly, the total weight of the package was 90 grams. This, being the technical offence, there was a violation of Rule 5 under the Act. However, in the Writ Petition No. 685 of 2001, the petitioners have raised the related issue, as follows:

“Whether the commodity, which is given free or extra along with the commodity packed in the standard package, infringes Rule-5 and, Schedule-III of the Standards of Weights & Measures (Packaged Commodities) Rules, 1977?

The Division Bench after considering the law on the point has held

that “Rule 5 mandates that specified commodities are to be packed and sold only in the standard package and the said standard quantities are specified in relation to a particular commodity in the Third Schedule to the said Act. In respect of biscuits, the said standard quantity is also mentioned”. The Division Bench has also observed that consumer protection is object of Standards of Weights and Measures Act. The standards given in the rules are to be strictly followed. It held that the rules ensures that the consumer stands to get for whatever he has paid for.

12. There is no bar in giving more quantity of goods or commodities free of cost on purchase of one, however, it should not be packed in the same package but the commodity which is to be given free of cost is required to be separately packed and the packages should be as per the standard quantity mentioned in Schedule. So it is applicable in respect of the biscuits. The weight of the package was 90 gms each amounting to violation of the Rule under the Act. However, the prosecution is of the year 2000. I am informed by the learned counsel that the petitioner-company has stopped packing the packages of 90 grams long back, and

have strictly adhered to the packaging rules prescribed under the Act. At the end of the judgment of the Division Bench, the Bench held as follows:

“Though we have come to a conclusion that the challenges raised by the Petitioner have no merits, however, in so far as the prosecution launched against the Petitioner is concerned, in view of the fact that sufficient time has now elapsed and since no process has been issued and also in view of the fact that the Petitioner has discontinued the said practice, We are of the view that the authorities should take into consideration whether the prosecution launched against the Petitioner should be proceeded with in the light of the aforesaid facts.”

13. The learned counsel Mr. Ponda has submitted that some of the Directors of the petitioner-company has passed away. Moreover, now the said Act is also repealed and the prosecution is pending since 18 years.

14. Hence, Rule made absolute in terms of prayer clauses (a) and (b). The proceedings in the Magistrate Court are quashed and set aside.

15. Writ Petitions are allowed.

(MRIDULA BHATKAR, J.)