

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.2415, 2416, 2419, 2432 of 2018

COMMON ORDER :

These four Criminal Petitions are filed to quash the proceedings in S.T.C.No.3/2018, S.T.C.No.5/2018, S.T.C.No.1/2018 and S.T.C.No.4/2018 respectively on the file of the learned I Additional Munsiff Magistrate, Mangalagiri, Guntur District.

2. The petitioners are one and the same, but for to the different products for the cases registered for the offence punishable under Section 18 of the Legal Metrology Act, 2009 (for short, 'the L.M. Act') and the Rules 19 & 20 of the Legal Metrology (Packaged Commodities) Rules, 2011 and Rule 32 of the A.P. Legal Metrology (Enforcement) Rules, 2011 punishable under Section 36(2) of the L.M. Act.

3. The sum and substance of the contentions in the quash petitions are that there is nothing to show that the petitioners are responsible for the day-to-day affairs and there is specific authorization as contemplated by Section 49(1)(2) of the L.M. Act and intimated to the Director of Legal Metrology, New Delhi and no separate intimation for every District concerned authorities required, that was not considered and otherwise without array of the entity respectively for the respective products, the array of the accused persons is unsustainable. A perusal of the wording of Section 49 of the L.M. Act is almost in para-materia to Section 141 of the Negotiable Instruments

Act, 1881 (for short, 'the N.I. Act') amended from time-to-time including by Act 26 of 2015. The only difference so far as Section 49(1) of the L.M. Act by keeping in juxta position to Section 141(1) of the N.I. Act is the use of the word in Section 141(1) as "as well as the company" and in Section 49(1)(b) as "and the company". It makes practically no difference in the respective wording as contended by the learned counsel for the petitioners from the company also to be made as a party from said wording. The three Judge Bench expression of the Apex Court in **Aneeta Hada v. M/s. Godfather Travels & Tours Private Limited**¹ particularly at paragraph No.59 is very clear that for maintaining the prosecution arraigning of a company as an accused is imperative and the other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. It was observed as under:

"We say so on the basis of the ratio laid down in **State of Madras v. C.V.Parekh**² which is a three Judge Bench decision. Thus, the view expressed in **Sheoratan Agarwal v. State of M.P.**³ does not correctly lay down the law and accordingly, is hereby overruled. The decision in **Anil Hada v. Indian Acrylic Limited**⁴ is overruled with the qualifier as stated in para 51. The decision in **U.P. Pollution Control Board v. Modi Distillery**⁵ has to be treated to be restricted to its own facts as has been explained by us hereinabove."

4. Thus, it is very clear from the settled law supra that without array of the company the persons responsible for day-to-day affairs

¹ (2012) 5 SCC 661

² (1970) 3 SCC 491

³ (1984) 4 SCC 352

⁴ (2000) 1 SCC 1

⁵ (1987) 3 SCC 684

are not to be made liable, for their liability is only vicarious with that of the company, from use of “as well as” and even from use of “and” respectively from the respective wording of the Sections 141(1) of the N.I. Act and 49(1) of the L.M. Act on keeping juxta position of the same and the expression in **Aneeta Hada’s** case (supra 1) reiterated by the subsequent two Judge Bench expression in **Standard Chartered Bank v. State of Maharashtra**⁶.

5. Having regard to the above, on the core point the prosecution is not sustainable. In the parawise remarks submitted by the learned Public Prosecutor representing the respondent-complainant it is sought the indulgence of the Court to implead. In this regard no purpose will be served for the reason when the very complaint and the cognizance are not sustainable, a subsequent impleadment will not cure the defect.

6. Having regard to the above, without going into other merits, leave about the fact that there is no specific authorization or nomination of a particular individual so far as the State of Andhra Pradesh much less intimation even to the Director of Legal Metrology, New Delhi and in turn communication to the A.P. State for what the document filed is confined to Haryana State, that contention is not available; leave about the further fact that the persons arrayed as accused are responsible for the day-to-day affairs or not is also a disputed question of fact from the perusal of the

⁶ (2016) 6 SCC 62

material on record and those contentions now are not available to consider.

7. In the result, these Criminal Petitions are allowed and the proceedings in S.T.C.No.3/2018, S.T.C.No.5/2018, S.T.C.No.1/2018 and S.T.C.No.4/2018 on the file of the learned I Additional Munsiff Magistrate, Mangalagiri, Guntur District, are hereby quashed and the bail bonds of the petitioners-accused are cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

31.10.2018
MVA



Dr. B. SIVA SANKARA RAO, J