

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13934 OF 2006

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the notice in P.C. Case No.586/PC/05-06 dated 24.3.2006 and panchanama dated 24.3.2006 issued by the 2nd respondent against petitioner No.1, as illegal and without any jurisdiction, and to set aside the same, and consequently, to direct the respondents to return the seized products viz., 2 units of product namely AQUASURE-4 water purifier in one packed single carton box, while restraining them from taking any action in pursuance of the impugned notice dated 24.3.2006.

2. Heard Sri Saloori Ramesh, learned Counsel for the petitioners and the learned Government Pleader for Civil Supplies; Sri K. Lakshman, Assistant Solicitor General and Sri, R.S.R.S. Sarma, for the respondents.

3. The case of the petitioners in brief is as follows:

(i) The 1st petitioner is engaged in the business of marketing Water Purifiers in the brand name of "AQUASURE" and the said product is being marketed and sold throughout the country. The 2nd petitioner is the selling agent of the 1st petitioner, at Karimnagar. On 24.3.2006, the 3rd respondent forcibly and without any authority entered the office of the 2nd petitioner and conducted search and seized 2 units of AQUASURE-4 in one packet and single carton pack from the office of the 2nd petitioner and issued panchanama and handed it over to the representative of the 2nd petitioner. Pursuant to the said illegal seizure, no steps were taken by respondents Nos.2 and 3 to return the seized articles and hence, the petitioners got issued a legal notice dated 25.5.2006 to the respondents

with a request to return the seized articles to the petitioners and the said notice was received by the 2nd respondent through respondent No.3 on 31.5.2006. On 8.6.2006, the Counsel for the petitioners received a reply dated 1.6.2006. While so, the 2nd respondent issued a notice bearing dated 24.3.2006, which was received by the 1st petitioner on 7th /8th, informing that the manufacturers viz., FORBES AQUATECH contravened Section 39/33 of the Standards of Weights & Measures (Enforcement) Act of 1976/1985 and Rule 4 r/w Rule 6(1)(a), 6(1)(f) and Rule 10 of the Packaged Commodities Rules, 1977 and thereby, committed the offence under Section 63/51 of the Act and Rule 39 of the Rules. Vide the said notice, the respondents asked the 1st petitioner to pay the compounding fee and to compound the offence alleged to have been committed.

(ii) The registered envelope containing the notice dated 24.3.2006 received by the 1st petitioner indicates that the registered packet has been posed on or before 1.6.2006. The 3rd respondent intentionally backdated the notice as 24.3.2006 to show that on the date of seizure itself, the same was issued. The action of the respondents in issuing the impugned notice is wholly ultra vires.

(iii) Insofar as the products of the 1st petitioner-company are concerned, the same are sold by specifications. The product AQUASURE is not packaged commodity within the meaning and the provisions of the Act, 1985. The said product is packed only to protect it from damage during transit. Therefore, no inference can be drawn that the said product is sold in a packaged form.

4. Respondents Nos.2 and 3 filed separate counter-affidavits stating that during the course of routine inspection on 24.3.2006, the shutters of the shop of S.M.S. Opticals were found open, and it was found that the

packages exposed for sale had the brand name FORBES AQUATECH BANGLOOR, containing aqua storage water purifiers and that packages do not contain complete address of the manufacturer and that the sale price was not marked on the packages. They conducted panchanama and seized two packages and a notice was also issued on 1.6.2006 calling the explanation of the charged persons. The notice was not the ante-dated notice and that the 2nd petitioner approached the office of the 3rd respondent and requested for compounding the offence and for not issuing any notice of prosecution and thereafter, the 2nd respondent did not turn up, and after waiting for some time, the notice was issued.

5. It has been contended by the learned Counsel for the petitioners that the respondents issued notice dated 1.6.2006 to the Counsel for the 1st petitioner, but not to the petitioners. It has been further contended that at the time of seizure of the articles at M/s. S.M.S. Opticals, Karimnagar, no procedure was followed more particularly on 24.3.2006, and the respondents straightaway issued the notice dated 1.6.2006 to the Counsel for the 1st petitioner for compounding the offence, but not to the 1st petitioner, and that the 2nd petitioner has not received any such notice.

6. The facts undisputed are that the seizure took place on 24.3.2006 and the petitioners got issued notice to the respondents on 25.5.2006 and thereafter, respondents issued notice dated 1.6.2006 directly to the Counsel for the 1st petitioner, that too, after issuance of the notice by the petitioners for return of the seized goods. No such notice was issued to the 2nd petitioner. The silence on the part of the respondents till receipt of the notice from the Counsel for the petitioners, without issuing any proceedings either to the 1st petitioner or to the 2nd petitioner, is contrary to the rules and it is nothing but a counter-action. There is no material on

record to establish the stand taken by respondents Nos.2 and 3 in their counter that the 2nd petitioner approached the office of the 3rd respondent and requested for compounding the offence and for not issuing any notice of prosecution, and thereafter, the 2nd petitioner did not turn up.

7. This Court having considered the rival submissions made by the parties, is of the view that if any offence is to be compounded, such information by way of notice should be informed directly to the party, who is alleged to have committed such offence, but not to the Counsel. Admittedly, the petitioners got issued a notice to the respondents through their Counsel on 25th May, 2006, which was received by the respondents on 31.5.2006, and as a counter-action to the notice, the respondents issued notice dated 1.6.2006 to the Counsel for the 1st petitioner, but not to the 1st petitioner. Further, the proceedings dated 1.6.2006 were not communicated to the petitioners and therefore, it would amount to violation of principles of natural justice. On this ground alone, the impugned notice is liable to be set aside.

8. Accordingly, the Writ Petition is allowed setting aside the impugned notice. No costs. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd April, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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