

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.336 OF 2006

1. Vijay s/o Govind Gokhale
Age : 65 years, Occu : Business,
Whole – time Director Bombay
Chemicals Pvt Ltd., 129, Kalpataru
Heritage, Above HDFC Bank, Fort,
Mumbai
2. Suhir s/o Govind Gokhale
Age : 58 years, Occu : Business,
Whole-time Director, Bombay
Chemicals Pvt Ltd., 129, Kalpataru
Heritage, Above HDFC Bank, Fort,
Mumbai

.. Petitioners

Versus

1. Union of India
2. The Secretary,
Ministry of Consumer Affairs Food
& Public Distribution (Department of
Consumer Affairs) Krishi Bhawan,
New Delhi
3. The State of Maharashtra
4. The Secretary
Ministry of Food & Civil
Supplies Department, Government
of Maharashtra Mantralaya, Mumbai
5. The Inspector of Legal Metrology Office
of the Inspector of Legal Metrology,
Aurangabad Division, Yagnya Building,
Mohanlal Nagar, Damadi Mohalla,
Aurangabad

.. Respondents

Shri Amol D. Soman h/f. Shir D.V. Soman, Advocate for Petitioners ;
ASG for Respondent Nos.1 & 2 : Shri Sanjeev B. Deshpande ;
APP for respondent / State : Shri A.S. Shinde .
Respondent No.5 – Served.

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CORAM : N.B. SURYAWANSHI, J.
Dated: December 09, 2019

ORAL JUDGMENT :-

1. The petitioners seek the relief of quashing of S.C.C. No.3840 of 2001 pending in the court of Ld. Chief Judicial Magistrate at Aurangabad, lodged under Section 33 of The Standard of Weights and Measures Act, 1976 (hereinafter referred to as the 'Act') as well as Rule 13 (5) along with Schedule VI of the Standards of Weights & Measures (Packaged Commodities) Rules – 1977 (in short 'Rules').

2. The petitioners are the Directors of Bombay Chemicals Pvt Ltd, which manufactures Tortoise Mosquito Coil. On 09.08.2001 the Inspector visited M/s. Manish Traders, Shop No.66, N-5, CIDCO, Aurangabad. The Inspector found the packets of Tortoise Mosquito Coils containing 12 coils i.e. 10 for sale plus 2 free, which according to the Inspector was in violation of the provisions of the said Act and Rules. After obtaining necessary permission, he lodged a complaint against petitioners on 05.10.2001 wherein violation of Section 33 of

the said Act and Rule 13 (5) of the said Rules is claimed.

3. The learned counsel for the petitioners argues that, no case of violation of Section 33 of the said Act or Rule 13 (5) of the said Rules is made out by the prosecution in the impugned complaint. He further argues that, the packet contained 10 Mosquito Coils for sale and 2 coils were offered free. That by itself does not violate the provisions of the said Act and Rules. Number of coils offered for sale were as per the specifications of Schedule VI and merely because two free coils were offered, the same does not contravene any provisions of the said Act and Rules. He, therefore, prays that there is no material on record justifying the continuation of the prosecution against the petitioners and prosecution is liable to be quashed and set aside.

4. The learned APP vehemently opposed the prayer for quashing stating that, there is violation of Section 33 and Rule 13 (5). It is submitted that, the number of coils packed in a packet were 12 and the same was in violation of Schedule VI. Placing reliance on Schedule -VI, he states that, if the denomination of packed items exceeds 10 then the same has to be in multiple of five. In the present case, since 12 items were packed in one packet, the

Inspector was justified in lodging the present complaint. He therefore urged that, there is no merit in the present petition and the same may be dismissed.

5. To decide the present petition, it is necessary to consider the relevant provisions i.e. Section 33 of the said Act as well as Rule 13 (5), and Schedule VI of the said Rules.

Section 33 of The Standard of Weights and Measures Act, 1976:-

“33. Prohibition of quotations, etc., otherwise than in terms of standard units of weights, measures or numeration.

No person shall, in relation to any goods, thing or service to which this part applies,—

- (a) quote, or make announcement of, whether by word of mouth or otherwise, any price or charge, or
- (b) issue or exhibit any price list, invoice, cash memo or other document, or
- (c) prepare or publish any advertisement, poster or other document, or
- (d) indicate the contents of any package either on itself or on any label, carton or other thing, or
- (e) indicate the contents on any container, or
- (f) express any quantity or dimension, otherwise than in accordance with the standard unit of weight, measure or numeration.”

Rule 13 (5) of the Standards of Weights & Measures (Packaged Commodities) Rules – 1977 :-

“13. Statement of units of weight, measure or number.-

- (1)
- (2)
- (3)
- (4)

(5) When any commodity is packed by number, such number shall be expressed on the package in international form of Indian

numerals and every package intended to be sold by number shall be packed in the manner specified in Schedule VI:

[PROVIDED that the Central Government may, if it is satisfied that for any technical or mechanical reason, it is not possible to pre-pack any commodity in the standard quantities specified in Schedule VI authorise the prepacking of such commodities in such number as it may specify.]

6.
7.”

Schedule VI of the Standards of Weights & Measures (Packaged Commodities) Rules – 1977 :-

“SCHEDULE VI :

THE MANNER IN WHICH COMMODITIES INTENDED TO BE SOLD BY NUMBER SHALL BE PACKED -

Where any commodity is packed by number, such packing shall be made unless otherwise provided in these rules in the following manner, namely -

- (a) where the number is less than ten, by the integral number;
- (b) where the number exceeds ten but does not exceed one hundred, in multiples of five;
- (c) where the number exceeds one hundred but does not exceed five hundred, in multiples of ten;
- (d) where the number exceeds five hundred but does not exceed one thousand, in multiples of fifty;
- (e) where the number exceeds one thousand, in multiples of one hundred.”

6. On perusal of Section 33 and Rule 13 (5) as well as Schedule VI, it is clear that, what is prohibited is packing the commodity in a specified numbers for sale. That Section and the Rule as well as the Schedule cannot be interpreted to prohibit a manufacturer from offering free commodity.

7. Affidavit-in-reply filed on behalf of the respondents

reiterates that, there is violation of Section 33, Rule 13 (5) and Schedule VI. The affidavit further states that, it is a common knowledge that, no person firm can offer to give anything free of cost and the petitioners had been offering two free coils along with ten coils kept in package only with a view to circumvent Schedule VI. It is further stated that, if at all the manufacturer had an intention to pass on some benefits to the consumer, then they should have reduced the price of the package keeping the quantity as specified in Schedule VI. On plain reading of the Section, Rule and the Schedule it is clear that, there is no such intention of the legislature as is tried to be propounded by the respondents in their affidavit-in-reply.

8. The learned APP argues that, there is violation of Rule 12 (6) of the said Rules. That contention cannot be accepted for the simple reason that, it is not even the case of the prosecution that there is violation of Rule 12(6).

9. The learned counsel for the petitioners was right in placing the reliance in the case of **Santanu Jagatbandhu Sinha & Anr V/s State of Maharashtra** reported in **2008 (1) Bom.C.R. (Cri.) 902**. In identical set of facts where the manufacturer was offering a

detergent cake weighing 250 gms, 25 gms was being offered as free. This Court, after considering the provisions, has come to the conclusion that, if the package offered for sale shows correct net weight and if something in addition is given free and is not charged, then no offence is made out. It is clearly mentioned that, the quantity offered for sale is 125 gms and 25 gms is free and extra. This being the position, it cannot be said that, the packing was in the breach of Rules. The price of the quantity offered for sale is also mentioned on the pack. In that view, this Court was pleased to quash and set aside the prosecution in that case.

10. Coming to the facts of the present case, it is not disputed that, the packing was of ten coils and two free coils were offered. Obviously two free coils were neither charged nor offered for sale. This was clearly printed on the packet that the pack of 10 coils was for sale and two coils are offered free. The weight, price, the description mentioned on the packet was in order. In this view of the matter, there is no substance in the allegations made by the prosecution that there is violation of provisions of the said Act and Rules. The continuation of the proceedings against the petitioners is an abuse of process of law. For the reasons best known the complainant failed to array the manufacturer Company as accused.

11. Taking into consideration the aforesaid facts, the proceedings against the petitioners cannot be permitted to continue. Hence, the following order.

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause 'B'.
- (ii) Rule is accordingly made absolute.
- (iii) There shall be no order as to the costs.

(N. B. SURYAWANSHI)
JUDGE

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