Form J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

CRR 889 of 2005

Bharat Petroleum Corporation Limited & Ors.
-Vs.-
Sri Sandeep Meta and Ors.

For the Petitioners: **Mr. Debrup Bhattacharyya**
Mr. Subhas Bhattacharya

For the Proforma Respondent Nos. 2 and 3 : **Mr. K. Shah**
Mr. Pinak Kumar Mitra
Ms. Rittwika Banerjee

Heard & Judgment on: **09.06.2022**

Bibek Chaudhuri, J.

Petitioner No.1 is a company registered under the Indian Company's Act, while petitioner No.2 and 3 were the erstwhile Chairman-cum-Managing Director and General Manager (East) respectively of petitioner No.1 Company. The proforma respondent

Nos. 3 and 4 are also the Chairman and Deputy Manager (Maintenance) respectively of proforma respondent No.2 Company.

A prosecution was lodged under Section 63 of the Standards of Weights and Measures Act, 1976 read with Section 51 of the Standards of Weights and Measures (Enforcement) Act, 1985 against the petitioners and the proforma respondents on the following allegations.:-

> *"3. That in course of an enforcement drive under the leadership of Sri H.B. Sarkar (DCLM, Enforcement) on 11.03.04 the complainant entered into the premises of M/S Alipore Service Centre at 17/1B Alipore Road, (P.S. Alipore) at about 2.00 P.M. and disclosed his identity to one Bikash Dasd present there and asked him to produce some package kept their for sale. Sri Das then produce one two hundred gram package of Multi purpose Grease, manufactured by accused no.2 and packed by accused no5. M/S Alipore Service Centre is an authorised dealer of accused no 2.*
>
> *4. That on the 200g package of multi purpose grease manufactured by accused no 2 & packed by accused no 5, it was found that the sale price (as required u/s 6(f) of the SWM(PC) Rules 1977) was not in conformity to the Section*

2 (r) of the SWM (PC) Rules 1977. It was printed as M.R.P. Rs.21.00 on the lid of the package instead of MRP Rs.21.00 (inclusive of all taxes); as stipulated by Section 2(r) of the SWM (PC) Rules 1977.

5. That there was not enough free space around the quantity declaration as per section 8 of the SWM(PC) Rules 1977.

6. That the declaration regarding sale price was not properly grouped together as per Section 2(m) of the SWM (PC) Rules 1977, on the side panel of the package it was printed as "Max. Retail Price Rs.(inclusive of all taxes, but the actual sale price of the package was printed as "M.R.P. Rs. 21`.00" on the lid of the package thus making it ambiguous in contravention of Sec.9 of the SWM (PC) Rules 1977.

7. That the quantity of the package was mention as "200gm." In contravention to Sec.13(7) of the SWM (PC) Rules 1977. It should be (200g) without the period (".") as per Sec.13(7) of the SWM (PC) Rules 1977.

8. That accused no 2 & 5 had violated the provision of Sec.4 of the SWM (PC) Rules 1977 by pre packing and by *permitting to pre pack a commodity for sale which did not conform to the provisions of the SWM (PC) Rules 1977.*

9. That accused no 1 (a BPCAL Dealer) had violated the provision of Sec.23(1) of the SWM (PC) rules 1977 by keeping for sale a commodity in packaged form which did not conform to the provisions of the said rule.

10. That the said package were then duly seized from Bikash Das u/s 29 of the SWM Act 1976 vide seizure memo no A/07808 dated 11.3.04 after maintaining all legal formalities. The above-mentioned seized article are kept in the official custody and will be produced on call.

11. That this is the subsequent offence within three years for the accused no 2 & 5 in the mater of violation of the provisions of the SWM (PC) Rules 1977. The first one was detected vide seizure memo no A/07537 dt. 20.12.2000 (Case No.C/384/01, ld. CJM, Alipore) which was compounded by accused no 2 on 6.8.2001 vide memo no 92/1(6) – con of CLM (W.B.) and vide memo No.1181 (7) dt. 7.6.2001 for accused no 5.

12. That accused persons (accused no.2 & 5) are companies and every persons (including accused no 3,4,6 & 7) of the companies as well as companies is liable to be *proceeded against as per Sec.74 of the SWM Act 1976 and Sec.62 of the SWM (Enf.) Act 1985."*

It is submitted on behalf of the petitioners that allegation against the petitioners is that they have violated Rule 2R of Standards of Weights and Measures (P.C. Rules, 1972). Rule 2R defines "Retail sale price". Under the said Rule, it is obligatory for the manufacturer to print on the packages the words "maximum or Max. Retail Price… inclusive of all taxes or in the form of MRP Rupees…. incl. of all taxes." The allegation against the petitioner is that in the seized container, the petitioners wrote M.R.P.Rs.57 inclusive of all taxes. The second violation is that the amount was written on the cap of the sealed bottle of 500 gms grease and M.R.P. inclusive of all taxes was written on the side of the packet. With regard to proforma respondent Nos.3 &4, there is absolutely no averment as to whether they were in charge of day to day business of proforma respondent No.2 Company or whether they are responsible for the day to day activities of the respondent No.2 Company. Similar is the case in respect of petitioner Nos.2 & 3.

The learned Advocate for the proforma respondent Nos.3 & 4 submits relying on a judgment of this Court in ***Krishna Chandra Dutta (Cookme) Private Ltd. & Ors. Vs. P.K.Sarkar, Inspector of Legal Metrology & Anr.*** reported in (***2008) 4 CHN 372*** that a person can be held liable of the offence if at the time the offence was committed, he was in charge of, and was responsible to, the company for the conduct of the business of the Company as well as the Company but in the complaint, there is no description of the role which was played by the Directors in the day to day affairs of the Company. That apart, there is an averment in the complaint that the petitioners as Directors were at the time of offence was committed in charge of, and were responsible for the conduct of the business of the Company as well as the Company.

Thus, the complaint does not disclose any other fact so as to implicate the petitioner Nos.2 & 3 and also the proforma respondent Nos.3 & 4 with alleged offence beside disclosing the fact that they were Chairman and Managing Director of the Company. Section 62 of the Standards of Weights and Measures Act does not make the Chairman and Managing Director of the Company guilty of the offence merely by reason of the fact that he is the Managing Director of the Company. The ratio of the above-mentioned reported judgment is fully applicable in the instant case.

On the self same point, a prosecution was quashed by this Court in the case of Shri ***Arun Jyoti Vs. The State of West Bengal & Anr.*** reported in ***2014 SCC OnLine Cal 6100.***

Following the ratio of the above decisions, I have no other alternative but to conclude that the complaint against the petitioner Nos.2 & 3 and proforma respondent Nos.3 & 4 is not maintainable.

The instant revisional application, is, accordingly, disposed of with the above observation.

The prosecution in case No. C 3920 of 2004 be quashed.

(Bibek Chaudhuri, J.)

suman/Mithun, A.R.s. (Court)