Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 3778 of 2006
CRAN 1 of 2008
CRAN 2 of 2010
CRAN 3 of 2011
Sri Naresh Chandra Das & Ors.
Vs.
The State of West Bengal & Anr.

For the Petitioners	:	Mr. Soubhik Mitter, Adv. Mr. Saryati Dutta, Adv. Mr. Chitrak Biswas, Adv.
For the State	:	Mr. Arijit Ganguly, Adv. Mr. Sanjib Kumar Dan, Adv.
Heard on	:	22nd March 2023
Judgment on :	:	22nd March 2023

The Court:

This revisional application challenges the legality of the proceeding being Case No. C-319 of 2005 under Section 63 of the Standards of Weights and Measures Act 1976 was initiated for alleged violation of Rules 4, 17(1)(b, 30, 23(7) and 35 of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 read with Section 33 of Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as 'said act') pending before the learned Chief Judicial Magistrate, Sealdah, 24 Parganas (South).

Briefly stated, that M/S. N.C. Das and Co., a partnership firm is registered under the Indian Partnership Act and deals in business of export of Shrimps. Petitioner no. 3 is employed as the manager of the company while petitioner nos. 1 and 2 were the partners. Petitioner no. 1, as a matter of fact passed away on 01.6.2016 during pendency of the case. On 3rd March,, 2005 the Inspector of Legal Metrology, Packaged Commodities, Wing, Mr. Sanjoy Pal along with Sri Himangshu Bhusan Sarkar, Deputy Controller of Legal Metrology, Enforcement Wing, and Sri Bhaskar Sanyal, Assistant Controller of Legal Metrology, Enforcement Wing conducted a search at the business place of the said firm and seized an export package of shrimp vide seizure memo No. A / 07725, dated 03.5.2005 under Section 29 of the Standards of Weights and Measures Act, 1976 alleging violation of certain rules framed under the Standards of Weights and Measures (Enforcement) Act. Without complying Section 73 of the said Act. Direction was given upon the petitioners to pay compounding fees of Rs.30,000/-. The petitioner no. 1 (since deceased) submitted two representations before the controller of Metrology and thus brought to his notice that there was no violation of any provision of the said Act and the controller of Metrology by letter dated 19.7.2003 acceded to such contention of the petitioner. However, as a public servant a petition of complaint was filed by Sri Sanjoy Pal before the learned Jurisdictional Magistrate against the petitioners and learned Court was pleased to issue process. The petitioners surrendered to the jurisdiction of learned Trial Court. Being examined by the learned Trial Court under Section 251 of Cr.P.C. they pleaded to be innocent. However, subsequently the accused persons took out a petition seeking dismissal of the case challenging the maintainability of the proceeding. Learned Additional Chief Judicial Magistrate, Sealdah, however, refused to accede to such prayer by passing an order dated 24.7.2006.

Mr. Mitter, learned counsel appearing on behalf of the petitioners submits that petitioners are engaged in the business of exporting shrimps duly authorized by the competent authority and the partnership firm was never engaged or entrusted with inter-state or intra-State commerce. Therefore, the provision of Standards of Weights and Measures (Packaged Commodities) Rules or the Standards of Weights and Measures (Enforcement) Act, 1985 cannot be made applicable to the partnership firm.

It is further contended that the business was going on in the name of the firm. But as a matter of fact, M/S. N.C. Das and Co. has not been impleaded or arrayed as accused.

Drawing my attention to the letter dated 4th April, 2005, Mr. Mitter, submits that consequent upon the proposal receipt to pay of Rs.30,000/- in order to compound the offence M/S. N.C. Das and Company wrote several letters to the controller of Legal Metrology, West Bengal indicating the inapplicability of the provision of the Act and Rule and in reply to such representations, Controller of Legal Metrology West Bengal vide Memo No. 5P-01/2 03/1103 dated 19.7.2005 in no certain terms informed the said firm that there is no statutory obligation for the said firm to get registration under Rule 35 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

According to Mr. Mitter, the Standards of Weights and Measures Act, 1976 is not applicable to the partnership firm under reference as the firm never dealt with inter-State or intra-State business.

To buttress his argument, Mr. Mitra, relied upon a decision of a co-ordinate Bench of this Court pronounced in the case of Indian Oil Corporation Ltd. vs. S.A. Neyazi reported in 1998 CRI. L. J. 2281.

Paragraphs 11 and 12 of the said judgement enunciate that,

"11. The Standards of Weights and Measures (Packaged Commodities) Rules, 1977 are the rules which are made by the Central Government in exercise of its powers conferred by Section 83 of the Act of 1976. Delegation of this power in favour of the Central Government for making rules was evidently meant only for carrying out the provisions of the Act of 1976. When the very object of the Act itself is to regulate inter-State trade or commerce in goods intended to be sold or distributed by weight, Section 83 of the Act could not confer upon the Central Government to make any rule for accomplishing anything which is not in the contemplation' of the Act itself. In other words, the Rules owe their origin to the Act itself and must, accordingly"; be subservient to the Act. The Central Government would be acting without jurisdiction if they made the rules in exercise of the delegated powers under Section 83 of the Act for carrying out any of the purposes for achieving which the Act was not enacted by Parliament. As such, I can safely hold that the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 Well made only for the purpose of carrying out the provisions of the Act of 1976. That being so, none of the provisions of these rules can have any manner of application by itself to any goods intended to be sold or

distributed within the State. In short, both the Act of 1976 and the Rules of 1977 made thereunder are meant for regulating the inter-State trade or commerce, and not intra-State trade or commerce, in goods which are intended to be sold by weight.

12. If we now look to the Standards of Weights and Measures (Enforcement) Act, 1985, we will find that its preamble suggests as if that it is an Act only to provide for the enforcement of the Standards of Weights and Measures established by or under the Standards of Weights and Measures Act, 1976 and for matters connected therewith or incidental thereto. But, if we analyse the provisions of this Act of 1985, we will at once discover that its preamble does not fully reflect all the objectives of the Act. I have already held that the Act of 1976 was not meant for regulating intra-State trade or commerce in relation to goods which are intended to be sold by weight. I shall presently show that the Act of 1985 was enacted not only for the enforcement of the Standards of Weights and Measures established by or under the Act of 1976 but also for regulating the intra-State trade or commerce in relation to goods intended to be sold by weight. Patently, one of the basic features of the Act of 1985 is regulation of packaged commodities sold or distributed in course of intra-State trade or commerce. Section 2 is categorical in laying down that nothing in this Act shall apply to any inter-State trade or commerce either in any weight or measure or any other goods which are sold, delivered or distributed by weights, measures or number. Section 3(k) of this Act provides that 'Standards Act' means the Standards of Weights and Measures Act, 1976. Section 3(o) provides that the words and expressions used in this Act and not defined but defined in the Standards Act shall *have the meaning respectively assigned to them in that Act. According to Section 4, provisions of this Act override the provisions of any other law except the Standards Act. Section 5 empowers the State Government to appoint controller, inspector and other officers and staff for exercising powers and discharging duties' imposed by this Act for carrying but the purposes of this Act. Section 29 empowers the inspector to enter any premises whenever he has any reason to believe that an offence punishable under this Act has been or is likely to be committed in relation to not only any weights and measures, but also goods which are sold, delivered or distributed by weight. The premises to be inspected is one where such goods are manufactured, packed or distributed or kept or offered for sale in packaged form. There-is also power to verify the net content by weight of any package. Chapter 9 has a caption entitled "provisions with regard to the sale and distribution of commodities in packaged form within the State". Sub-section (1) of Section 33 provides that the provisions of the Standards Act as well as the rules made thereunder relating to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale in the State as if the provisions aforesaid were enacted by or made under this Act, subject only to the modification that any reference therein to the "Central Government", "Standards Act" and the "Director" shall be construed as references respectively to the "State Government", "this Act" and the "Controller". Sub-section (2) of Section 33 empowers the State Government to make rules, not inconsistent with the Standards Act or any rule made thereunder, to regulate the packaging of any commodity intended to be sold or distributed, within the State, in packaged form, or to* *regulate the sale or distribution, within the Slate, of any commodity in packaged form. According to the Explanation to Sub-section (2), the expression "commodity in packaged form" shall have the meaning assigned to it in the Standards Act and shall include a pre-packed commodity. It has not been brought to my knowledge if the State Government has at all made any rules under Sub-rule (2) of Section 33 of this Act uptill now. The expression "commodity in packaged form" is defined in the Standards Act in Section 2(b). It means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail. Thus, it is clear that regulation of packaged commodities sold or distributed in the course of intra-State trade or commerce is one of the main features of the Act of 1985."*

Besides that it is admitted from the attending facts that the business was conducted by M/S. N.C. Das and Co., the petitioners being the partners and an employee of the company has been arrayed as an accused person. Whatever action they take is on behalf of the company. Therefore, principally, the company is liable for any infraction of rule or law. The criminal proceeding in my humble opinion cannot be allowed to remain in force without the principal offender being the firm as accused.

In this regard, I can profitably rely upon the judgement pronounced by Dilip Hariramani vs. Bank of Baroda reported in SCC online at pargraph 16 read as follows;-

"16. The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm.

Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in Sharad Kumar Sanghi v. Sangita Rane,17 Himanshu v. B. Shivamurthy and Another,18 and Hindustan Unilever Limited v. State of Madhya Pradesh.19 The exception carved out in Aneeta Hada (supra),20 which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent."

Under such circumstances, I am of the view that if the impugned proceeding being Case No. C-319 of 2005 under Section 63 of the Standards of Weights and Measures Act 1976 which was initiated for alleged violation of Rules 4, 17(1)(b, 30, 23(7) and 35 of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 read with Section 33 of Standards of Weights and Measures (Enforcement) Act, 1985 pending before the learned Chief Judicial Magistrate, Sealdah, 24 Parganas (South) is allowed to remain in force it would amount to an abuse of the process of law. Accordingly invoking the provision of Section 482, I am inclined to quash the proceeding.

Consequently the Revisional Application is allowed. Case No. C-319 of 2005, pending before the Trial Court stands quashed.

Let a copy of the judgment be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury,J)

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