
(2003) 09 KAR CK 0038

In the Karnataka High Court

Case No : Criminal Rev.P.No. 467 and 468 of 2000 & Criminal Revision Petition
No"s. 467 and 468 of 2000

Bureau of Indian Standards

APPELLANT

Vs

Janak Raj and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 203
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2004) CriLJ 1025 : (2003) ILR (Kar) 4366

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : P.G.C. Chengappa, for the Appellant; U. Ashok, for R3, G. Suresh
and K.N. Krishna Rao for R1, R4, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—These two revisions are arising out of the common order passed by the Sessions and Spl. Judge at Bangalore, by order dated 8.2.2000 in Spl. Case No. 47/97 and 48/97. The order assailed in CrI.R.R 467/00 is in respect of Spl. Case No. 48/97 and the order assailed in CrI.R.P. 468/97 is in respect of Spl. case No. 47/97.

2. Both these petitions are taken up together for disposal as they arise out of a common order.

3. The brief facts leading to these revisions are that the Bureau of Indian Standards was established under the Bureau of Indian Standards Act, 1986 (Act 63 of 1986) for harmonious development of the activities of Standardization, Marketing and Quality Certification of Goods and for matters connected therewith, the said Bureau received several complaints regarding the respondents in both the petitions that they were dealing in M.S. tubes, particularly the galvanised steel tubes as covered under IS 1239-Part -I used for water supply application and they were misleading the customers stating that the

tubes were of ISI standards though the said products did not bear ISI marks. In view of such complaints received by the Bureau, Sri P.K. Batra, Joint Director, BIS, New Delhi, lodged a complaint with the City Market Police Station, Bangalore, stating that the respondents were dealing with M.S. Tubes in violation of Mild Steel Tubes (Quality Control) Order, 1978, issued u/s 3 of the Essential Commodities Act, 1955, and as such requested the police to conduct raid and accordingly the complaint was filed and the same was registered on 3.12.1993.

4. Raid was conducted by the police and in the presence of witnesses the materials which were not having ISI mark which were said to be stocked in the premises for sale were seized and the said mahazar was said to be drawn. In this connection the respondents viz., the owners of the respective shops were arrested and later released on bail. However, some of the respondents against whom the complaint was registered could not be arrested as they were absconding and after investigation, the City Market Police registered two cases in Cr. Nos. 236/93 & 237/93 and submitted the FIRs to the 9th Addl. C.M.M., Bangalore, and since the cases were coming under the Essential Commodities Act, 1955, the same were transferred to the Special Judge, Bangalore, and in the meanwhile the Market Police is said to have filed a "B" report and thereafter, the same was transferred to the Special Judge, Bangalore and after issuance of notice to the complainant, the complainant has preferred to file objections to the "B" report. Apart from that, another complaint was filed u/s 200 Cr.P.C. by way of protest offered to the "B" report. Subsequently, on 25.4.97 the sworn statement of the complainant was recorded and after perusal of the complaint and after having taken cognizance of the alleged offences under Sections 3 and 7 of the Essential Commodities Act, 1955, in both the cases under Clause 3 of Mild Steel Tubes (Quality Control) Order, 1978, the learned Judge proceeded with the case without splitting up the case against the absconding accused viz. the respondent 1 & 2 in Cr.R.P. 467/98 and respondents 2 and 4 in Cr.R.P. 468/00 and is said to have passed an order for discharge in common holding that no case was made out u/s 203 Cr.P.C.

5. Although the other accused were not present before the Court, as no case was made out, the other accused were also discharged. The same has been assailed in these two revision petitions on the following grounds.

The approach of the Spl. Judge is perverse and erroneous; the learned Judge failed to split up the case as against the absconding accused and committed an error in discharging them. The Mild Steel Tubes (Quality Control) Order 1978 was issued u/s 3 of the Essential Commodities Act, 1955, to maintain the standard specification of the material; there is no proper application of mind by the learned Special Judge to the material facts in holding that no case is made out against the respondents; the learned Judge failed to construe the provisos of Clauses 3 and 4 of the Order 1978 harmoniously by following the Rule of Harmonious Construction. Wherefore, the petitioner prayed to set aside the impugned order dated 8.2.2000 and direct the Special Judge to proceed with the

case in accordance with law.

6. Heard the learned Counsel appearing for the respective parties.

7. The points that arise for consideration in these revisions are:

1. Whether the Special Judge has committed any irregularity or illegality in holding that no case is made out against the respondents to prosecute them under Sections 3 and 7 of the Essential Commodities Act?

2. Whether the impugned order calls for interference?

3. What order?

8. At the outset it is the argument of the learned Counsel for the petitioner that the Special Judge has grossly erred in not construing the provisions of Clauses 3 and 4 of the Mild Steel Tubes (Quality Control) Order, 1978. In support of his contention, he has relied upon the commentary of the interpretation of the Statute 1999 Edition written by Justice G.P. Singh wherein it is held at page 33 thus:

"The Courts strongly lean against a construction which reduces the statute to a futility..."

Further, at page 104 of the said book it is observed thus:

"In selecting out of different interpretations " the Court will adopt that which is just, reasonable and sensible rather than that . which is none of those things ... If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency."

Further at page 112 it is observed thus;

"A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute."

The above ratio has in fact been derived by the author from the ratio laid down by the Supreme Court in various decisions.

9. The main contention of the learned Counsel for the petitioner is that the Spl. Judge failed to take note of the intentment of the legislature muchless the order passed by the Central Government to maintain the standard of the goods while dealing with them in the market.

Clauses 3 and 4 of the Order 1978 reads thus:

"Clause 3: No person shall by himself or by any person on his behalf manufacture or store for sale, sell or distribute any mild steel tubes having wall thickness less than the wall thickness stipulated for light class in the specified standards covered by this Order and that it would be with ISI Certification mark

and provided that the thickness of zinc coating on the galvanised tubes shall be in accordance with IS: 4736-1968;

Provided further that nothing in this Order shall apply in relating to export of milk steel tubes which do not conform to the specified standard but conform to any specification required by the foreign buyer.

Clause 4: The residual quantities of sub-standard quality left with manufacturers/traders can be disposed of by cutting pipes and tubes into length not in excess of 1.5 metre before being sold in the market.

The learned Spl. Judge while reading the above clauses is found to have misread and misunderstood the intent of the legislation and observed thus at page 13 of his order:

Under clause 3 it prohibits to sell or manufacture sub-standard tubes and even storing of articles of sub-standard quality, for sale is prohibited. However, under Clause 4 storage of sub-standard tubes is not explicitly prohibited, only it is mandated that before the sub-standard quality tube is sold, the length of it should not be more than 1.5 metres."

Further in para 7 he has observed thus:

Here in the instant case, although there is prima-facie material to show different dimensions of the tubes were in shops of the accused, but however, by virtue of Clause 4, it does not prevent for the sale of sub-standard tubes of length less than 1.5 metres but only at the time of sale the trader has to take care and cut the tubes to a size less than 1.5 metres. Thus he has opined that mere possession of sub-standard tubes or storing of the same in the shops for purpose of sale under Clause 4 is not prohibited. On the other hand, the law mandates that sale of such tubes of length more than 1.5 meters is not permitted. As such, he has stated that only in case of actual sale, the offence of the contravention under clause 4 gets committed, otherwise mere storage of sub-standard tubes will not amount to contravention of Clauses 3 and 4. Accordingly, having held that there are no grounds to proceed in the matter to record plea, discharged the accused acting u/s 203 Cr.P.C.

10. At this juncture it is to be noted that the establishment of Bureau of Indian Standards Act, 1986 (Act 63 of 1986) was for harmonious development of the activities of Standardization, Marketing and Quality Certification of Goods and for matter connected therewith. The concerned Authority has moved the police on receiving several complaints regarding dealing of some substandard M.S. Galvanised steel tubes by misleading the customers stating that the tubes are of ISI standard. Actually the products were not of ISI standard.

11. To boost the morale and to maintain the standards, it is for the Government and the concerned authorities to have control over the dealers and manufacturers who manufacture and sell things to the public at large in the market and thus the public is often being cheated or fooled by advertisement or

through some other means by supplying sub-standard materials under the guise that the particular product bears ISI mark or in accordance with the standard fixed by the ISI. Therefore, it is the duty on the part of the Government authorities to maintain these specific standards in manufacturing and marketing of the goods so as to safeguard the interest of the public at large and the buyers so that they are not cheated. It is for them to regulate and to have a check over such dealings of sub-standard goods not having minimum standard as fixed by the Government and the Bureau.

12. The police while receiving the complaint from the Bureau ought to have been very careful before filing the "B" report but it is found to have mechanically acted without applying its mind properly to the material placed. In the first instance filing of the "B" report itself was found to be irregular and without proper application of mind by the concerned authorities.

13. At least when the "B" report was being protested by the complainant authorities and when the sworn statement was recorded and after hearing the Counsel for the complainant and the accused respondents, the learned Special Judge ought to have looked into the spirit behind the legislation and ought to have passed an order interpreting both Clauses 3 and 4 of the said order by applying the rule of Harmonious Construction. The very course adopted by the Spl. Judge in interpreting the provisions of Clauses 3 and 4 is shown to be not in accordance with the spirit of the Act and the legislation and thus he committed an error in misinterpreting these provisions and holding that no offence is made out against the accused. Simultaneously he failed to note the fact as to what was being mentioned in the Clause 4. (the residual quantities of sub-standard quality left with manufacturers/traders can be disposed ...) The very words used in the beginning of the Clause 4 indicates the storage of residual quantities of sub-standard quality is permitted and not for any size or type of tubes. There is a specific prohibition under clause 3 of the said order to deal with or storing or manufacturing of such mild steel tubes or any other sub-standard tubes of any size and according to the whims and fancies of the dealer for the purpose of dealing with them by cutting and reducing the size to 1.5 mts. Thus the explanation provided under Clauses 4 is to protect the interest of the manufacture or the trader to deal with residual quantities without being wasted. Further, though there is permission to deal with such sub-standard mild steel tubes for the purpose of export which do not conform to the specified standard but it may be in conformation to the specification required by the buyer and it is not the case of these accused before the Special Judge that they had stored the tubes for export purposes.

14. The learned Counsel for the petitioner submitted that on going through the records it is seen that the mild substandard steel tubes were of the length of 20" or so and larger sizes were stored and the same have been found at the time of raid conducted by the police authorities.

15. In para 7 of the impugned order it is observed that although there is prima

facie material to show that different dimensions of the tubes were in the shop of the accused, however by virtue of Clause 4 it does not prevent for sale of sub-standard tubes....

This observation clearly indicates that there is prima facie material to proceed against the accused and where the learned Special Judge misinterpreting the provision without noting the fact of only permission to stock residual quantities rather observed that at the time of sale, the trader has to take care and cut the tubes to size less than 1.5 mts. and storage of sub-standard tubes is not explicitly prohibited. Thus, he has committed an error in departing from the spirit of the legislation and in discharging the accused which calls for interference by this Court and consequently, the revisions filed by the petitioner - Bureau of Indian Standards have to be allowed.

16. In the result therefore, I proceed to pass the following:

Order

Both the revision petitions are allowed.

The impugned order passed by the learned Prl. City Sessions and Special Judge, Bangalore, by order dated 8.2.2000 in Spl.CC.Nos. 47 and 48/97 are set aside and the matter is remitted back to his file to proceed with the case in accordance with law.