
(2023) 12 JH CK 0024

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2056 Of 2015

Charan Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 07-12-2023

Acts Referred:

Legal Metrology Act, 2009 — Section 25, 49

Citation : (2023) 12 JH CK 0024

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Saurav Kumar, Vishwanath Roy

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Saurav Kumar, learned counsel for the petitioner and Mr. Vishwanath Roy, learned counsel for the State.

2. This petition has been filed for quashing of the entire criminal proceeding of Weight and Measurement Case No.13 of 2013 including the order taking cognizance dated 21.08.2013, whereby, cognizance has been taken under Section 25 of the Legal Metrology Act, 2009, pending in the Court of the learned Sub Divisional Judicial Magistrate, Bermo at Tenughat.

3. The case was filed alleging therein that in the Electronic Weighbridge of S.D.Q.I., Kalyani Project, Turio of Central Coalfields Limited, an inspection was conducted by the Department and it was found that verification certificate and test weights were not found there. It was further alleged that an error was found in the weighbridge as a result of which, prosecution was launched by the Department concerned.

4. Mr. Kumar, learned counsel for the petitioner submits that the Central Coalfields Limited is a Central Government Company and a subsidiary of Coal

India Limited. He submits that the petitioner is the Officers of the Central Coalfields Limited and is posted as General Manager, Dhori Area, Tenughat at Bokaro. He further submits that for weighing coals, which are being despatched the electronics weighbridge is installed. He also submits that it is admitted fact that the weighbridge belong to the Central Coalfields Limited. He submits that verification certificate has been issued by the Inspector, Legal Metrology Department, Bermo at Tenughat about the machine saying that it is installed properly. He further submits that Section 25 of the said Act provides for punishment with fine for the first offence and with imprisonment in respect of second offence or subsequent offence in respect of using of weights or measures, which is not in accordance with standards. He also submits that Section 49 of the said Act deals with the offences by the Company. He submits that the petitioner is not the authorized person under the Act to be proceeded against. He submits that in view of the certificate, it is crystal clear that the Project Officer, S.D.Q.I. Kalyani Project, Turio is the registered person under the Legal Metrology Act, 2009 on behalf of the Company. He further submits that there is no even whisper that the petitioner was the In-charge of Weighbridge or the particular establishment where weighbridge is located. On these grounds, he submits that the proceeding against the petitioner is bad in law and, hence, entire criminal proceeding may kindly be quashed.

5. Mr. Roy, learned counsel for the State submits that there are allegations against the petitioner and the learned Court has rightly taken cognizance.

6. In view of above submission of the learned counsel for the parties, the Court has gone through the contents of the complaint and finds that admittedly the case is lodged under Section 25 of the said Act. Section 49 of the said Act speaks as under:-

"49. Offences by companies and power of Court to publish name, place of business, etc., for companies convicted.-(1) Where an offence under this Act has been committed by a company,-

(a)(i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as a person responsible); or

(ii) where no person has been nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and

(b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Director or the concerned Controller or any legal metrology officer authorised in this behalf by such Controller (hereinafter in this section referred to as the authorised officer) in such form and in such manner as may be prescribed, that it has nominated such director as the person responsible, along with the written consent of such director for being so nominated. Explanation. Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

(3) The person nominated under sub-section (2) shall, until-

(i) further notice cancelling such nomination is received from the company by the Director or the concerned Controller or the authorised officer; or

(ii) he ceases to be a director of the company; or

(iii) he makes a request in writing to the Director or the concerned Controller or the legal metrology officer under intimation to the company, to cancel the nomination, which request shall be complied with by the Director or the concerned Controller or the legal metrology officer, whichever is the earliest, continue to be the person responsible:

Provided that where such person ceases to be a director of the company, he shall intimate the fact of such cessation to the Director or the concerned Controller or the authorised officer:

Provided further that where such person makes a request under clause (iii) the Director or the concerned Controller or the authorised officer shall not cancel such nomination with effect from a date earlier than the date on which the request is made where an offence under this Act has been committed by a company and it is

(4) Notwithstanding anything contained in the foregoing sub-sections, proved that the offence has been committed with the consent or connivance of, or is attributable to the neglect on the part of, any director, manager, secretary or other officer, not being a person nominated under sub-section (2), such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where any company is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other

particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspaper or in such other manner as the Court may direct.

(6) No publication under sub-section (5) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(7) The expenses of any publication under sub-section (5) shall be recoverable from the company as if it were a fine imposed by the Court. Explanation. For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm but excludes nominated directors, honorary directors, Government nominated directors."

7. Looking to Section 49 of the Act, it appears that if anything is done by the company, the company is required to be made party and there is no averment that the petitioner is looking into day-to-day affairs of the company and this aspect of the matter is well settled by the judgment in the case of Anita Hada v. God Father Tour and Travels Private Limited, reported in (2012) 5 SCC 661.

8. In view of the above facts, reasons and analysis, the entire criminal proceeding of Weight and Measurement Case No.13 of 2013 including the order taking cognizance dated 21.08.2013, pending in the Court of the learned Sub Divisional Judicial Magistrate, Bermo at Tenughat are quashed.

9. Accordingly, this petition is allowed and disposed of.