
(2015) 01 MAD CK 0263

In the Madras High Court

Case No : Criminal R.C. No. 106 of 2015 and M.P. No. 1 of 2015

D. Thillairaj

APPELLANT

Vs

Bureau of Indian Standards

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 11, 11(1), 12, 14, 15
Criminal Procedure Code, 1973 (CrPC) — Section 200, 251, 252

Citation : (2015) 01 MAD CK 0263

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : A. Thiyagarajan, Senior Counsel for S. Ramesh Kumar, for the Appellant

Final Decision : Dismissed

Judgement

S. Manikumar, J.

1. Revision Case is filed against the Judgment in CC No. 5272 of 2013 on the file of the learned XVIII Metropolitan Magistrate, Chennai.

2. Mr. A. Thiyagarajan, learned Senior counsel appearing for the petitioner that the revision case is filed only against the order of forfeiture of the properties seized.

3. Learned Senior Counsel for the petitioner submitted that before the forfeiture, the learned Magistrate ought to have given an opportunity to the petitioner.

4. Inviting the attention of this Court to Section 26 of the Bureau of Indian Standards Act, 1986, learned Senior Counsel for the petitioner submitted that provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to every search and seizure made under Section 26 of BIS Act. There is no dispute over the said submission. Learned Senior Counsel for the petitioner further submitted that procedure contemplated under Sections 251 and 252 of the Code of Criminal Procedure, 1973, has not

been followed. Laying emphasize on the words "may have "it" employed under Section 33(2) of the Bureau of Indian Standards Act, 1986, learned Senior Counsel for the petitioner submitted that in the impugned Judgment, there is nothing to indicate as to whether any question was posed to the petitioners regarding the forfeiture of the properties. It is also the submission of the learned Senior counsel for the petitioner that the learned Magistrate ought to have considered that the goods are owned by the Company and do not belong to the individual Directors. According to him, pleading guilty by the Directors would not bind the Company.

5. Heard the learned Senior Counsel for the petitioner and perused the material available on record.

6. Material on record discloses that on 19.03.2013, when a search was made, the following articles have been seized.

7. By virtue of the powers vested in them, the Officers of Bureau of Indian Standards, Marks-II of Chennai Branch Office lead by Shri S. Ranganathan, SC "E" and Shri M.A.J. Vinod, SC "D" have carried out the search and seizure, in the premises of the office, factory and godown of the company. During such search, it was found that M/s. Tower Steels Limited, C-19, 20 and 21, SIDCO Industrial Estate, Kappalpur, Madurai District, was misusing ISI Mark without a valid BIS Certification Marks Licence. Using BIS Certification Marks Licence is a violation under Bureau of Indian Standards Act, 1986, read with the Rules and Regulations framed thereunder.

8. The 1st accused is M/s. Tower Steels Limited, C-19, 20 and 21, SIDCO Industrial Estate, Kappalpur, Madurai District. The 2nd accused Mr. Thillairaj, is the Managing Director of the above said Company. The 3rd accused is M. Thangaraja, Quality Controller, of the said company. A notice dated 19.03.2013 has been issued to the abovesaid Company. Subsequently, complaint under Section 11(1) and Section 33 of the Bureau of Indian Standards Act, 1986, read with Section 200 of the Code of Criminal Procedure, has been filed before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, which was taken on file in CC No. 5272 of 2013. Section 11 of the Bureau of Indian Standards Act, 1986, reads as follows:

"11.(1) No person shall use, in relation to any article or process, or in the title of any patent, or in any trade mark or design the Standard Mark or any colourable imitation thereof, except under a licence.

(2) No person shall, notwithstanding that he has been granted a licence, use in relation to any article or process the Standard Mark or any colourable imitation thereof unless such article or process conforms to the Indian Standard."

9. Case of the complainant is that accused were carrying on manufacturing activity of steel bars without a valid licence of BIS. The accused were manufacturing steel bars with ISI monogram, printed on the sticker pasted on

the container, without a valid licence under the brand name of "SABARI" with ISI mark and thus, the accused had contravened the provisions of Section 11, 12 or 14 or 15 of the Act and as per Section 33 of the Bureau of Indian Standards Act, 1986, the accused are liable to be prosecuted for having contravened Section 11 and 12 of the Bureau of Indian Standards Act, 1986.

10. In CC No. 5272 of 2013, accused have been furnished with the copies of documents. The accused have pleaded guilty. Accepting the same, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, vide Judgment in CC No. 5272 of 2013, dated 23.10.2013, has imposed a fine of Rs. 5,000/- to each of the accused, in-default to undergo simple imprisonment for one month. The total fine amount imposed for all the three accused is Rs. 15,000/-. Section 33 of the Bureau of Indian Standards Act, 1986, reads as follows:

"33.(1) Any person who contravenes the provisions of section 11, or section 12 or section 14 or section 15 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both.

(2) Any court trying a contravention under sub-section (1) may direct that any property in respect of which the contravention has taken place shall be forfeited to the Bureau."

11. Though, Mr. A. Thiagarajan, learned Senior counsel for the petitioners contended that the impugned judgment, finding the petitioners as guilty, is not in accordance with Section 251 and 252 of the Code of Criminal Procedure, this Court is inclined to countenance the same for the reason that the Judgment in CC. No. 5272 of 2013, dated 23.10.2013 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, has not been assailed against conviction and fine amount imposed on the petitioners. The only objection was regard to forfeiture. At this juncture, it is worthwhile to incorporate the prayer made in the revision case viz., "In these circumstances, it is therefore prayed that this Honourable Court may be pleased to call for the records pertaining to the Judgment passed in CC No. 5272 of 2013, dated 23.10.2013, on the file the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, and to set aside portion of the order of vesting the property to the respondent alone." Grounds of Revision also reflect that the challenge to the impugned order is only to the forfeiture of the properties. In the light of the limited prayer sought for, arguments, as to the manner of pleading guilty and acceptance of the same, do not merit consideration.

12. Emphasizing the words "may have it" used in Section 33(2) of the Bureau of Indian Standards Act, 1986, it is the contention of the learned Senior Counsel for the petitioners that it confers only discretion to the Magistrate for forfeiture and opportunity has to be given. According to him, principles of natural Justice, be read in the Section. Section 33(2) of the Bureau of Indian Standards Act, 1986, states the trial Court trying a contravention under sub-section (1) may direct

that any property in respect of which the contravention has taken place shall be forfeited to the Bureau. Section does not contemplate any prior notice or opportunity. Section 33(2) of the Act empowers the Magistrate, to forfeit any property in respect of contravention of the provisions of Section 11 or 12 or 14 or 15, punishable for imprisonment of one year or with fine, which may extend to Rs. 50,000/- or with both.

13. In the latter portion of Section 33(2) of BIS Act, the word "shall" is used. The word "may" used Section 33(2) of the Bureau of Indian Standards Act, 1986, does not contemplate any prior notice to the person who had contravened the abovesaid provisions. Intention of the legislature is that the person who contravenes the abovesaid provisions, shall not be permitted to retain the property, and consequently, forfeiture should follow. Otherwise, the purpose of this Section would be defeated.

In the light of the above discussion, this Court is of the view that there is no merit in the revision case. Hence, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.