

(1998) 11 KL CK 0063
In the High Court Of Kerala
Case No : Criminal M.C. 2846/98

Govindankutty

APPELLANT

Vs

Public Prosecutor and Another

RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 228, 251, 468
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 39, 6(1)
Standards of Weights and Measures Act, 1976 — Section 63

Citation : (1998) 11 KL CK 0063

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : Babu S. Nair, for the Appellant; Muraleedharan Nair, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D. Sreedevi, J.—The Petitioner seeks an order quashing the proceedings in S.T. No. 1996 of 1995 of the Judicial First Class Magistrate Court, Nilambur.

2. The second Respondent filed a complaint against four persons including the Petitioner alleging that the Petitioner and other members have violated Rule 6(1) of the Standards of Weight and Measures (Packaged Commodities) Rules, 1977 as under Annexure A1. The Petitioner was shown as the first accused. Since the attendance of the accused Nos. 2, 3 and 4 could not be procured the case against them was split up and refiled as S.T. No. 586 of 1998. Now the Petitioner is the accused only in S.T. No. 1996 of 1995. According to the prosecution at the time of inspection by the second Respondent, he could detect that the Petitioner has exhibited packets which did not bear all the declarations envisaged in Rule 6(1) of Standards of Weight and Measures and kept non-standard measurement instrument for measuring marble stables in his shop and thereby committed offence punishable u/s 63 of the Standards of Weights and Measures. The

penalty prescribed u/s 63 of the Standards of Weights and Measures Act, 1976 is fine which may extend to Rs. 5,000. Penalty under Rule 39 is fine which may extend to Rs. 2,000. The Petitioner was alleged to have committed the offence on 25th February 1995. The Petitioner was asked to appear before the Court on 9th November 1995. Section 468 Code of Criminal Procedure provides for limitation of 6 months for taking cognizance of the offence which is punishable with fine only. It is submitted that the Magistrate has taken cognizance of the offence after 6 months.

3. The Petitioner appeared before Court on 9th November 1995 and was released on bail and thereafter he was attending the Courts regularly. On 4th March 1997 he filed a petition to discharge him in the light of the decision in "Common Cause" A Registered Society through its Director v. Union of India (S.C.) 1996 (2) K.L.T.820 (S.C.). It was held therein:

It was a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years-or even less-with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Quite often, the private complainants institute these proceedings out of oblique motives. Even in case of offences punishable for seven years or less-With or without fine-the prosecutions are kept pending for years and years together in Criminal Courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to poorer sections of the society, who are unable to afford competent legal advice. Instances have also come before Courts where the accused, who are in jail, are not brought to the Court on every date of hearing and for that reason also the cases undergo several adjournments. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution. It is also necessary to ensure that these criminal prosecutions do not operate as engines of oppression. Accordingly, the following directions are made which shall be valid not only for the State of U.P., Bihar and Delhi but for all the States and the Union Territories.

* * *

2(c) Where the cases pending in criminal Courts under I.P.C. or any other law for the time being in force pertain to offences which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be and close such cases.

2(d) Where the cases pending in Criminal Courts under I.P.C. or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such pendency is

for more than one year and if in such cases trial have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

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So far no charge has been framed against him and the trial also has not commenced. The Apex Court in "Common Cause", A Registered Society through its Director v. Union of India 1996 (2) KLT 820 (S.C.), has clarified that the trials shall be treated to have commenced when charges are framed u/s 228 Code of Criminal Procedure, and in cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appeared or brought before the Magistrate are seized u/s 251 whether they plead guilty or have any defence to make.

Since no charge has been framed even after 3 years, the Petitioner is entitled to get an order quashing the proceedings in S.T. No. 1996 of 1995 of the Judicial First Class Magistrate's Court, Nilambur.

In the result, the Crl. M.C. is allowed. S.T. No. 1996 of 1995 of the Judicial First Class Magistrate's Court, Nilambur is quashed.