

(2010) 05 GUJ CK 0050

In the Gujarat High Court

Case No : Criminal Revision Application No. 84 of 1996

Gujarat Tea Processors Packers Ltd. and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(1), 468, 470, 470(3), 482
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 33, 33(1), 50, 51, 51(1)
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 39(1), 4
Standards of Weights and Measures Act, 1976 — Section 72

Citation : (2010) CriLJ 4319 : (2011) 1 Crimes 288 : (2010) 3 GLH 1 : (2010) 1 GLH 3 : (2011) 52 GLR 386 : (2011) 2 RCR(Civil) 935 : (2011) 2 RCR(Criminal) 935

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : A.D. Shah, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

H.N. Devani, J.—By this application u/s 397(1) read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), the applicants have challenged order dated 09.11.1995 made by the learned Judicial Magistrate, First Class, Borsad, below Exhibit 4, in Criminal Case No. 2239 of 1993, whereby the applicants' application to dismiss the complaint lodged against them on the ground that the same is barred by limitation has been rejected.

2. The facts of the case stated briefly are that the Respondent No. 2 herein had lodged a complaint against the applicants herein on 24.08.1993 in the Court of the learned Judicial Magistrate, First Class, Borsad, alleging that when the Respondent No. 2 visited the shop of one Kiritbhai Narshinbhai Thakker at Bochasan on 23.01.1991, he found packets of "Wagh Bakri" tea, which were not

in accordance with the Rules in respect of sale price. That the applicants had, therefore, contravened the provisions of Section 33(1) of the Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as "the Act") and Rule 4 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as the Rules) and thereby committed the offence punishable under Sub-section (1) of Section 51 of the Act and Rule 39(1) of the Rules. Vide order dated 07.08.1993 the Court took cognizance of the matter and directed registration of the case and issuance of process against the accused (the applicants herein). The case accordingly came to be registered as Criminal Case No. 2239/93.

3. The applicants herein moved an application (Exhibit 4) u/s 468 of the Code on the ground that the offence alleged against the applicants was u/s 51 of the Act and Rule 39(1) of the Rules; that the offence u/s 51 of the Act for contravention of the Rules read with Section 33 of the Act is punishable with fine of Rs. 5,000/-, whereas the offence under Rule 39(1) is punishable with fine, which may extend to Rs. 2,000/-. Since both these offences are punishable with fine only, as per provisions of Section 468 of the Code, the period of limitation for lodging a complaint relating the said offences is six months from the date of the offence. According to the applicants, since the date of the alleged offence is 23.01.1991 and the complaint has been lodged on 24.08.1993, that is, after a period of more than two years, the complaint is on the face of it barred by limitation, as the same has been lodged beyond the statutory period of six months.

4. The learned Judicial Magistrate, after considering the contentions raised on behalf of the respective parties, held that the complaint was within the period of limitation and rejected the application. Being aggrieved, the applicants have moved the present application.

5. Mr. Ekant Ahuja, learned advocate for Mr. A.D. Shah, learned advocate for the applicants, has invited attention to the impugned order to point out that the learned Judicial Magistrate has held that the application had been filed within the period of limitation by excluding the period which had been consumed in obtaining the sanction from the competent authority. Referring to the provisions of Section 72 of the Standards of Weights and Measures Act, 1976 as well as Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985, it is submitted that neither of the said provisions envisages obtaining of prior sanction for lodging a complaint under the provisions of the Act and/or the Rules. It is, accordingly, submitted that when there is no requirement under the relevant statute for obtaining prior sanction of the competent authority, even if any such procedure is followed, the Respondent would not be entitled to the benefit of the provisions of Section 470 of the Code for exclusion of the time taken for obtaining such sanction under.

6. On the other hand, Mr. K.L. Pandya, learned Assistant Public Prosecutor has opposed the application and has submitted that the impugned order made by

learned Judicial Magistrate is just, legal and proper and does not warrant interference.

7. The facts are not in dispute. The offence in question has been lodged pursuant to a visit made to the shop of one Kiritbhai Narshinbhai Thakker on 23.01.1991 whereupon packets of "Wagh Bakri" tea were found to be not in accordance with the Rules. The complaint in respect of the said offence came to be lodged on 24.08.1993. Pursuant to the said complaint, the learned Judicial Magistrate took cognizance of the offence and issued process thereon. The applicants herein moved an application (Exhibit 4) u/s 468 of the Code contending that the same was barred by limitation. The fact that the offences alleged against the applicants are punishable with fine alone and hence, the period of limitation for lodging the complaint is six months is not in dispute. The learned Judicial Magistrate in the impugned order has placed reliance upon the provisions of Section 470(3) of the Code and has allowed exclusion of the time taken in obtaining the consent of the competent authority. The learned Judicial Magistrate has noted that the Respondent No. 2 had made an application for obtaining sanction on 14.03.1991 and that necessary sanction had been granted by the concerned authority vide order dated 21.07.1993 and had accordingly computed the period of limitation by excluding the period of two years and four months taken in obtaining sanction from the competent authority, and consequently had found that the complaint had been lodged within the period of limitation.

8. The question that, therefore, arises for consideration is as to whether the Respondents were entitled to exclusion of the time taken in obtaining sanction while computing the period of limitation for lodging the complaint.

9. In this regard it may be germane to refer to the provisions of Section 63 of the Act, and Section 72 of the Standards of Weights and Measures Act, 1976, which read thus:

63. Cognizance of offences. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).

(a) no Court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by--

(i) the Controller;

(ii) any other officer authorised in this behalf by the Controller by general or special order;

(iii) any person aggrieved ; or

(iv) a recognised consumer association whether the person aggrieved is a member of such association or not.

Explanation.-- For the purposes of this clause recognised consumer association means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;

(b) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

72. Cognizance of offences, etc.-- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by

(i) the Director;

(ii) any other authorised officer ;

(iii) any person aggrieved ; or

(iv) a recognised consumer association whether the person aggrieved is a member of such association or not.

Explanation.-- For the purposes of this clause recognised consumer association means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;

(b) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(c) an offence punishable u/s 50, Section 52, Section 53, Section 56, Section 58, Section 60, Section 61, Section 63, Section 64, Section 65 or Section 66, may be tried summarily by a Magistrate and no sentence of imprisonment for a term exceeding one year shall be passed in the case of any conviction for an offence which is summarily tried under this section.

10. A plain reading of the aforesaid provisions makes it abundantly clear that the same do not provide for any prior sanction to be obtained from the competent authority as a condition precedent for the Court to take cognizance of the offences punishable under the said Acts.

11. Section 470(3) of the Code, reads as under:

470. Exclusion of time in certain cases.(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.-- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

Sub-section (3) of Section 470 and the explanation thereto are relevant for the purpose of the present case. A plain reading of the said provisions makes it apparent that in computing the period of limitation, the time taken for obtaining consent or sanction is required to be excluded only where previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence under any law for the time being in force. In the facts of the present case, as noted hereinabove, neither Section 63 of the Act nor Section 72 of the Standards of Weights and Measures Act, 1976, provide for any such requirement of obtaining any sanction of the Government or any other authority for the institution of any prosecution for an offence under the said Acts. The learned Additional Public Prosecutor is not in a position to point out any provision which requires sanction of the Government or any other authority to be obtained for the institution of any prosecution for the offences in question. In the circumstances, the Respondents are not entitled to exclusion of the time taken in obtaining the consent of the concerned authority while computing the period of limitation. Accordingly, the complaint in question has been filed beyond the period of limitation as prescribed u/s 468 of the Code and is accordingly barred by limitation and as such cognizance of the offence in question could not have been taken pursuant to the said complaint. The impugned order made by the learned Judicial Magistrate, is therefore, contrary to the statutory provisions and as such cannot be sustained.

12. For the foregoing reasons, the application succeeds and is accordingly allowed. The impugned order dated 09.11.1995 made by the learned Judicial Magistrate, First Class, Borsad, below Exhibit 4 in Criminal Case No. 2239 of 1993 is hereby quashed and set aside. The Application Exhibit 4 is hereby allowed. Consequently, Criminal Case No. 2239 of 1993 is hereby quashed and set aside. RULE is made absolute accordingly.

Application allowed.