

(2010) 09 OHC CK 0014

In the Orissa High Court

Case No : Criminal Revision No. 613 and 743 of 2009

Kulamani Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Orissa Weights and Measures (Enforcement) Act, 1958 — Section 39
Penal Code, 1860 (IPC) — Section 265, 324, 420

Citation : (2011) 1 OLR 325 Supp

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mishra, J.—In these revisions, the Petitioners assail the order of cognizance dated 18.03.2009 u/s 39 of the Orissa Standards of Weights and Measures (Enforcement) Act, 1958, hereinafter referred as the "Act", passed by the learned S.D.J.M., Kendrapara in 2 (c) C.C. No. 1 of 2009.

2. The undisputed fact of the case is that on 04.01.2009, the Senior Inspector, Legal Metrology, Kendrapara and his staff inspected the petrol pump of the Petitioner situated at Mahakalpada in the name and style of "M/s. Alaka Fuel Services". During inspection, they have found short delivery of 30 ml. in 5 litres measurement in each observation. Accordingly, a seizure list was prepared and sale of the aforesaid outlet was stopped. Thereafter, INDIAN LAW REPORTS, CUTTACK SERIES [2010] 365 prosecution report was submitted u/s 39 of the Act against Alaka Rath (Petitioner in Criminal Revision No. 613 of 2009), who is the owner of the sales outlet and Kulamani Das (Petitioner in Criminal Revision No. 743 of 2009), who was the Manager of the said petrol sales outlet. On such prosecution report, on 18.03.2009, the learned S.D.J.M., Kendrapara took cognizance of the offence u/s 39 of the Act and issued process against the Petitioners.

3. Learned Counsel for the Petitioners assails the order of cognizance mainly on

two grounds; firstly, it is submitted by the Petitioners' counsel that 30 ml shortage in a sample of 5 litres is within the permissible limit and, therefore, cognizance of the offence should not have been taken. Secondly, it is submitted that another case bearing Mahakalapada P.S. Case No. 4 of 2009 has been registered under Sections 420 and 265 of the I.P.C. for the selfsame occurrence and therefore, the Petitioner should not suffer double jeopardy.

4. Coming to the second contention, it is seen that in these revision applications, the Petitioners do not challenge the order of taking cognizance in G.R. Case No. 5 of 2009. Offences alleged in the G.R. Case are different than that of the offences for which prosecution report is laid in the case at hand. It is also not clarified by the learned Counsel if actually charge-sheet has been submitted against the Petitioners under Sections 420 and 324 of the I.P.C. It is, therefore, held that if such a case is pending against the Petitioner and the charge-sheet has been laid and cognizance has been taken, then the Petitioner may move for clubbing of the case, if it is arising out of the same incident. In such a case, the learned S.D.J.M. shall examine both the cases and if he finds that actually both the cases arise from the same transaction, then both the cases are to be tried together. It is not a case of double jeopardy as the offences alleged in the case under the Act are different from the offence allegedly committed under the provisions of the Indian Penal Code.

5. The other aspect that the learned Magistrate while taking cognizance did not take into consideration his stand that the error in deficiency was within the maximum permissible limit, needs careful examination. The Standard of Weights and Measures (General) Rules, 1987 provides for the verification and inspection of the dispensing pumps in Part-I of Schedule VIII. Clause 5 provides a table. Such table prescribes that for verification for a sample of 5 litres, an error of 30 ml. in excess only is permissible. It is further provided that no error in deficiency shall be permitted during verification. The said table further provides that during inspection, the error excess i.e. 30 ml. Kulamani Das v. State³⁶⁶ in 5 litres sample and error deficiency should be 15 ml. In simple words, it means that in course of inspection the unit should not be dispensing 30 ml. more or 15 ml. less in a measurement of 5 litres. In this case, it is not disputed that at the time of the inspection, the unit was found to be dispensing 30 ml. less in a sample of 5 litres. Thus, such deficiency clearly goes above the maximum permissible error and for that reason, an offence u/s 39 of the Act is prima facie made out. Thus, the learned lower court has not committed any error in taking cognizance of the offence u/s 39 of the Act.

Hence, this Court comes to the conclusion that the Revisions are without merit and the same are dismissed. Revision dismissed.