

(1997) 07 AP CK 0036

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 264 of 1996 and Cri Revision Petition No. 261 of 1996

Lucas Indian Service Limited and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 2, 23(1)

Citation : (1998) 2 ALD(Cri) 125 : (1999) CriLJ 1647

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : Dhnamjaya, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This revision case is directed against the Judgment in Criminal Appeal No. 8/1995 on the file of I Additional Sessions Judge, Rajahmandry, dated 29-11-1995 confirming the conviction passed by III Additional Judicial First Class Magistrate, Rajahmandry, in S.T.C. No. 69/1994 against A1 under Rule 2(r) of Standards of Weights and Measures (Packaged Commodities) Rules, 1977, for short "the Rules", and sentencing him to pay a fine of Rs. 1,000/- and also convicting A2 and A3 under Rule 23(1) of the Rules and sentencing them to pay a fine of Rs. 500/- each.

2. The Senior Inspector of Legal Meterology, Rajahmandry, filed the complaint against the accused in STC. No. 69/1994 alleging that they contravened Rule 2(r) and Rule 23(1) of the Rules. M/s. Madras Auto Services Limited, Rajahmandry, is the wholesale distributor and A3 is the Managing Partner of M/s. Vijayalaxmi Automobiles, Rajahmandry, who is the retail dealer of the said wholesale distributor. On 16-9-1993 the complainant inspected M/s. Vijayalaxmi Automobiles in the presence of A3 and found 12 packages of Ignition Luca Service Parts manufactured by Lucas Indian Services Limited distributed by M/s. Madras Auto Services, Rajahmandry. The packages bear the retail sale price

declaration as "M.R.P." instead of "Maximum Retail Price" which is contrary to Rule 2(r) of the Rules. Thereupon, the complainant seized those packages under a cover of panchanama and seizure memo and issued notices to A1 to A3 and filed a charge sheet. After full trial, A1 to A3 were convicted and sentenced to pay fines as stated above.

3. They preferred appeal in Criminal Appeal No. 8/1995 challenging the above conviction and sentence on the ground that the findings are contrary to law and facts and that the prosecution failed to prove the guilt of the accused. The learned I Additional Sessions Judge re-assessed the available material viz., evidence of PW-1 together with Exs. P1 to P5 and MOs. 1 and 2 and found that the packages contained "M.R.P." instead of "Maximum Retail Price" and that it is a contravention of Rule 2(r) of the Rules punishable under Rule 23(1) of the Rules and thereby the conviction passed against A1 to A3 by the trial Court and sentence of fine have been confirmed.

4. This revision case is directed against the above judgment of the learned I Additional Sessions Judge, Rajahmundry.

5. Sri Dhananjaya, learned counsel for the revision petitioners contended that the relevant Rule viz., Rule 2(r) of the Rules has since been amended and the requirement of amended Rule is that the package has to show "M.R.P." instead of "Maximum Retail Price". He strenuously contended that it is a beneficial legislation and that the benefit should be extended to the revision petitioners herein. He relied on a judgment of this Court in B. Satyanarayana v. State of A.P.1996 APLJ (Cri) 78.

6. On the other hand Sri K. Venkatesh, representing learned Public Prosecutor contended that the above amendment is prospective in its operation and that the alleged violation was anterior to the amendment and hence, the above case law is not helpful to the revision petitioners. He argued that the contravention has been established against A1 to A3 and hence there is no merit in this revision case.

7. I have given my careful consideration to the rival contentions. It is true that there has been an amendment to Rule 2(r) of the Rules. The present requirement is that the package should contain "M.R.P." and not "Maximum Retail Price" with effect from 12-3-1994. It is no doubt true that some formalities were to be observed by the Government before effecting the amendment and that had taken some time. It is on this ground that the revision petitioners are seeking the application of the beneficial legislation by way of amendment. The learned Additional Sessions Judge has considered this aspect in para 12 of his judgment and he is of the view that in the relevant G.O. it is specifically mentioned that it will come into force on the date of its publication in the Official Gazette and that was done on 12-3-1994, whereas the inspection of the shop of PW. 1 was on 16-9-1993 and he applied the law that was in vogue as on 16-9-1993 and confirmed the conviction and sentence. In the Judgment cited

supra (1996 APLJ (Cri) 78) this Court held -

"At the time of commission of the offence in question, the A.P. Excise Act, 1968 was having force and penalties u/s 34(a) and (b) was a minimum of two years imprisonment and a maximum of five years imprisonment and fine upto Rs. 5,000/-. In the instant case, the sentence of imprisonment awarded to the petitioner is two years R.I. and imposition of fine of Rs. 500/-. By the Amending Act 10 of 1989, the mandatory minimum sentence was reduced from two years to six months with effect from 16-9-1988 while the mandatory minimum fine is made Rs. 5,000/-. Court had to independently consider the application of the Amended Penalties (Reduction in Minimum Sentence) having regard to the fundamental right guaranteed under Article 20 of the Constitution of India. While Article 20 does not prohibit granting benefit of the Amending Act if the penalty provided therein is lesser than the law existing as on the date of commission of the offence, there is a specific prohibition of applying the amended law if the penalty is greater than the law which was existing as on the date of commission of the offence. Under Criminal Justice system whenever there is a benefit in reduction of penalty, the same should be construed liberally. It has to be held that in the circumstances of the case, the mandatory sentence which has to be imposed can only be six months and not two years. But inasmuch as the unamended Act permitted the imposition of fine upto Rs. 5,000/- increasing the fine of Rs. 500/- to Rs. 5,000/- will not offend the fundamental right under Article 20 of the Constitution of India".

8. In T. Barai Vs. Henry Ah Hoe and Another, the Supreme Court considered effect of amendment to Prevention of Food Adultration Act by State of West Bengal Amendment Act of 1973 and its scope and held -

"That the Central Amendment Act having dealt with the same offence as the one punishable u/s 16(1)(a) and provided for a reduced punishment, the accused must have the benefit of the reduced punishment. Thus, Section 16-A of the Act (as inserted by the Central Amendment Act of 1976) would be applicable to the trial for the aforesaid offence".

It is further held -

"Just as a person accused of the commission of an offence has no right to deal by a particular Court or to a particular procedure, the prosecutor equally has no right to insist upon that the accused be subjected to an enhanced punishment under the repealed Act."

Adverting to the effect of repeal of a statute whereby a different punishment is sought to be imposed or the procedure is sought to be varied, the Supreme Court held -

"When a latter statute cannot describes an offence created by an earlier statute and imposes a different punishment, or varies the procedure, the earlier statute is repealed by implication. The Rule is however subject to the limitation

contained in Article 20 against ex post facto law providing for a greater punishment and has also no application where the offence described in the later Act is not the same as in the earlier Act. i.e., when the essential ingredients of the two offences are different".

9. The question that came up for consideration before my brother B. Subhashan Reddy, J., was whether the minimum sentence of two years under A.P. Excise Act, 1968 has to be imposed or whether the reduced minimum sentence of six months under the Amending Act 10 of 1989 is to be imposed. Following the ratio laid down by the Supreme Court in Judgment cited supra (1983 Cri LJ 164) it is held that the benefit of the amendment is available to the accused in that case and hence only reduced sentence of six months imprisonment has to be imposed.

10. On the same rationale, Sri Dhananjaya now contends that the benefit of amendment of Rule 2(r) has to be extended to the revision petitioners and the conviction and sentence passed against them has to be set aside. I carefully perused both the Judgments. In para 17, the Supreme Court considered whether the amendment would deal with the procedure alone or both the procedure and the substantive right. In this context, it may be borne-in-mind that procedure is prescribed by procedural laws, whereas an offence is created by a substantive law. In paras 17 and 18 this aspect of the matter has been considered by the Supreme Court and held that the Act does not only deal with the procedure, but also touches a substantive right. The net result being that the benefit of the amendment has been extended on the anvil of Article 20 of the Constitution. The same reasoning is adopted by my brother B. Subhashan Reddy, J., in the judgment cited supra (1996 APLJ (Cri) 78).

11. Turning to the case on hand, the offence under Rule 2(r) prior to amendment was that a package should have contained "Maximum Retail Price" in so many words, whereas the same is amended and it would be sufficient if "M.R.P." is marked thereon. In fact, the revision petitioners have marked "M.R.P." and thereby they have fulfilled the requirement of the amended Rule. I am of the view that the authorities cited supra (1996 APLJ (Cri) 78) and (1983 Cri LJ 164) are applicable to this case and no offence can be said to have been committed by the revision petitioners in view of the amendment to Rule 2(r).

12. The revision case is, therefore, merited and it is accordingly allowed and the Judgment of the learned Additional Sessions Judge is, therefore, set aside and the conviction and sentence passed against the revision petitioners are accordingly set aside. The fine amounts if already paid, shall be refunded.

13. Petition allowed.