

(2013) 03 KL CK 0073

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 27915 of 2009 (Q)

M/s. Orma Marble Palace (P) Ltd., Laji Joseph, Smt. Alphonsa
Joseph and Sri. P.K. Joseph

APPELLANT

Vs

State of Kerala and Inspector of Legal Metrology, Aluva

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102
Negotiable Instruments Act, 1881 (NI) — Section 141
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 31, 33, 62
Standards of Weights and Measures Act, 1976 — Section 39, 74

Citation : (2013) 03 KL CK 0073

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Bechu Kurian Thomas, for the Appellant; Rose Micheal Government Pleader, for the Respondent

Judgement

S.S. Satheesachandran, J.—Petitioners are the accused in a pending case on the file of the Judicial First Class Magistrate Court-II, Aluva. They are being prosecuted on a complaint filed by 2nd respondent, Inspector of Legal Metrology, Circle II, Aluva, for offences punishable u/s 39 of the Standards of Weights and Measures Act, 1976, hereinafter referred to as the "Standards Act" and Rules 6 (1) (a), (f), 23 and 39 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, for short, the "PC Rules" and Sections 31 and 33 of the Standards of Weights and Measures (Enforcement) Act, 1985, for short, the "Enforcement Act". Ext. P5 is copy of the complaint. Petitioners have filed the above writ petition for quashing Ext. P5 complaint and all further proceedings arising therefrom contending that prosecution proceedings initiated against them are thoroughly vitiated and without jurisdiction and liable to be quashed exercising the extraordinary jurisdiction of this Court. Prosecution case as disclosed by Ext. P5 complaint is that on 07.02.2006, the 2nd respondent, Inspector of Legal Metrology Circle II, Aluva inspected the trade premises of a

firm, the 1st petitioner/1st accused and, thereupon, detected packages containing "Benvara Marble Tiles" exhibited for sale without bearing the label having MRP, packing date etc. as mandated by the Standards Act, and the Rules thereunder. He prepared Ext. P1 mahazar over such packages but it is alleged that he was prevented from seizing the packages by the 4th accused who was then present in the trade premises. 4th accused also refused to attest in the mahazar and seizure receipt. After conducting further enquiries and ascertaining who are all the Directors of the Firm and issuing show cause notice to them, and replies furnished found not satisfactory, complaint was filed before magistrate to prosecute the firm and its Directors, petitioners for the offences stated supra. Cognizance taken of the offences and process issued against the petitioners/accused, the case now awaits further steps for trial.

2. I heard learned counsel for petitioners and also learned Government Pleader. Learned counsel for petitioners assailed Ext. P5 complaint and further proceedings taken against petitioners/accused contending that the entire prosecution proceedings are thoroughly vitiated and, further, no offence under the Standards Act and Rules thereunder or Enforcement Act is prima facie disclosed by the allegations imputed. Adverting to Ext. P1 mahazar, learned counsel contended that search, if any, conducted was totally in violation of the provisions of Section 102 of the Code of Criminal Procedure, for short, the "Code", and it is thoroughly illegal. Referring to Ext. P7 copies of invoices which are alleged to have been seized from the trade premises during the inspection by the Inspector of Legal Metrology, learned counsel contended that granite and marble tiles are not sold in packaged form but only on areawise measurement, as could be seen from the above invoices. The allegation imputed that such marble/granite tiles were kept in packaged form which is the basis for violation of PC Rules and, thus, the offences under the Standards Act, in the facts of the case, would not lie, is the further submission of the counsel. Lastly, it is contended that there is no whisper of allegation in Ext. P5 complaint as to who among the directors were present when inspection was conducted nor who among them was in charge of that firm. Referring to Section 74 of the Standards Act and Section 62 of the Enforcement Act, learned counsel for petitioners contended that the company/firm and the person who was in charge of the company or firm at the time the offence was committed alone is liable to be prosecuted, and where Ext. P5 complaint is silent as to who among the petitioners 2 to 4, the directors of firm was/were in charge of the firm when the alleged inspection was conducted by the Inspector, Ext. P5 complaint and all proceedings commenced therefrom are liable to be quashed.

3. A copy of the seizure receipt prepared by Inspector on his inspection of the trade premises of 1st petitioner firm was made available for my perusal. The first item referred to therein is marble tiles (Benzwara) packets three numbers. When that be so, in Ext. P1 mahazar, seizure of such packets are not specifically spelt out cannot be given much significance, and dispute canvassed by counsel for petitioners that marble/granite tiles are not sold in packets but only areawise

with reference to its particulars shown in Ext. P7 invoices, if canvassed, is a matter that can be gone into only in trial of the case. Where seizure receipt prima facie indicates that marble packets were seized and allegation is that such packaged goods did not confirm to PC Rules, challenge canvassed that marble/granite tiles are not sold in packaged form cannot be accepted. Challenge canvassed to impeach the prosecution that search was not conducted by the Inspector of Legal Metrology in compliance with the mandatory requirements covered by Section 102 of the Code does not impress me. That challenge was canvassed on the premise that independent witnesses are not shown as attestors to Ext. P1 mahazar. In carrying out a search, what is insisted upon is that the searching officer should take steps to secure the presence of two independent witnesses and not that the search list prepared after search should be invariably attested to by such independent witnesses. There may be very many cases where searching officer despite his earnest efforts is not able to secure the presence of independent witnesses and search list prepared by him has to be attested by those who were present, which may include officials who assisted him. So much so, whether he made efforts to secure independent witnesses or not and search list was attested by others due to their non-availability are all matters that have to be considered in trial. Merely because Ext. P1 mahazar was not attested by independent witnesses, it cannot be stated that search/inspection conducted and seizure made was illegal. I also take note the submissions made by the Government Pleader that what was conducted was not a search but only inspection of the trade premises of petitioners, and, then noticing violation of the PC Rules, some invoices and packaged goods were seized and there was obstruction by the person in charge, one among the petitioners herein. Whether there was inspection only or was it a case of search, is a matter that has to be gone into in trial. Challenge canvassed to assail the prosecution contending that there was a search over the trade premises and it was illegal cannot be accepted, but, I leave it open to be considered by the magistrate if so canvassed in trial.

4. In Ext. P5 complaint, no specific allegation is imputed against any of the directors of 1st accused firm as to who among them obstructed the inspection and also who was in charge when such inspection was conducted has been canvassed by the counsel to impeach the merit of prosecution case. Section 74 of the Standards Act and also Section 62 of the Enforcement Act, both of them, spell out that not only the company/firm but the person who at the time the offence was committed was in charge of and was responsible for the conduct of the business of the company/firm is liable to be proceeded against and punished for offences under the two Acts. We find identical provisions casting vicarious penal liability on such persons in charge or control of company or firm with the company/firm in other statutes like Negotiable Instruments Act, Drugs and Cosmetics Act and Prevention of Food Adulteration Act. When such vicarious liability, that too, penal liability is sought to be pinned upon a person for commission of an offence by a company or firm there must be a specific averment in the complaint that such person/persons who is/are proceeded with

the company was/were in charge of and responsible for the conduct of the business of the company. The Apex Court analysing almost identical statutory provision, u/s 141 of the Negotiable Instruments Act, 1881 has held so in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, . In Ext. P5 complaint, there is no specific averment as to who among the directors of 1st petitioner firm proceeded as accused nos. 2 to 4 was in charge and responsible for the conduct of the business of the firm when the alleged offences were committed. However, the complaint with the annexures produced have to be considered in examining the offences imputed under the relevant Act and Rules. In the complaint there is allegation as to obstruction caused to inspection by person/persons in charge of the trade premises, and statement made in Ext. P1 mahazer is that such obstruction was caused by 4th petitioner. When that be so, his prosecution as a director of 1st accused firm in charge or in control of the firm, when offences alleged were committed cannot be impeached invoking the extraordinary jurisdiction of this Court. So far as petitioners 2 and 3, the other two directors of the company taking note there is nothing to show or indicate that they too were in charge or control of the firm nor in any way of causing obstruction to inspection, I find criminal proceedings against them under Ext. P5 complaint are liable to be quashed. I make it clear that none of the observations made in this judgment would stand in the way of compounding of the offences if so sanctioned under the aforesaid Act and Rules. Criminal proceedings against petitioners 2 and 3, accused Nos. 2 and 3 in C.C. No. 633 of 2008 on the file of Judicial First Class Magistrate Court-II, Aluva, are quashed. Challenge raised by petitioners 1 and 4 (accused Nos. 1 and 4) against the criminal proceedings are negatived, and the case against them shall continue in accordance with law.

Subject to the above direction, writ petition is disposed of.