

**(2016) 06 DEL CK 0014**

**In the Delhi High Court**

**Case No : Crl. M.C. No. 1248 of 2016**

M/s Standard Fireworks Pvt. Ltd.

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

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**Date of Decision : 13-06-2016**

**Acts Referred:**

**Citation : (2016) 166 AIC 595 : (2016) 231 DLT 274**

**Hon'ble Judges : Mr. P.S. Teji, J.**

**Bench : Single Bench**

**Advocate : Mr. Sachin Mittal and Mr. Anuj Saxena, Advocates, for the Appellant;  
Mr. Kamal Kumar Ghei, APP, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Mr. P.S. Teji, J.—The present petition has been filed under Section 482 of the Cr.P.C. for quashing the summoning order dated 16.04.2015 and for quashing of the criminal proceedings arising therefrom in Criminal Complaint No. 156/1W/2015.

2. The case in the nutshell is that on 21.10.2014, an inspector of Legal Metrology Department, Govt. of NCT of Delhi had visited a shop by the name of M/s. Sushil Kumar (Prop.) at T-135, T Type Market, Sri Niwas Puri, New Delhi 110065 and inspected a packet of Standard Brand Thunder Bomb Manufactured by M/s Standard Fireworks (P) Ltd. 1/3, Thiruthangal Road, Sivakasi 626123, but the customer care number was not mentioned on the said package. This led to the filing of the complaint in question. The Trial Court vide order dated 16.04.2015 dispensed with the examination of the complainant being a public servant and on perusing the complaint and documents and finding sufficient material on record, took cognizance of offence under Section 18(1) and 36(1) of Legal Metrology Act, 2009 (hereinafter referred to as the 'Act') and the petitioner/accused was summoned for 10.09.2015. Hence, the present petition has been filed.

3. The learned counsel for the petitioner has sought quashing of the impugned

notice on the following grounds:

- i) That the complaint in question is undated and the same is filed in a cyclostyled pro forma in a most cryptic manner which is not permissible in law;
- ii) There is inherent lack of legal requirements in the complaint filed.
- iii) That the complaint was not filed by a legally authorised person nor the complaint is accompanied by any valid authorization.
- iv) That as per Rule 6(1)(a) read with Rule 10 of The Legal Metrology (Packaged Commodities) Rules, 2011, the only mandatory requirement in law is that every package shall bear thereupon a definite, plain and conspicuous declaration as to the name and complete address of the manufacturer. It is submitted that neither Rule 6 nor any other provision of The Legal Metrology (Packaged Commodities) Rules, 2011 makes it mandatory for the manufacturer to arrange for and mention the Customer Care Number compulsorily on the product and hence, mere non-mentioning of the Customer Care Number cannot be said to be a ground for launching criminal prosecution against the petitioner even under the Act and the Legal Metrology (Packaged Commodities) Rules, 2011 especially in light of the fact that at the relevant time, the product in question manufactured by the petitioner contained the complete name and postal address of the petitioner, who can be contacted for any consumer complaint. Therefore, there was due compliance with the requirements as required by law.
- v) That no investigation of any kind as is mandated by the notification of the Weight and Measures Department, has been carried out by the Inspector for launching prosecution against the petitioner and the criminal proceedings are liable to be quashed on this sole ground.
- vi) That this being the first offence of the petitioner, the same is punishable with fine only and thus there is non application of mind on the part of the Trial Court.
- vii) That the allegation made in the complaint do not disclose any offence punishable under Section 36(1) of the Act. It is submitted that any violation of Section 18(1) of the Act may be dealt only in accordance with the provisions of Rule 32(2) of the Legal Metrology (Packaged Commodities) Rules, 2011 and not under Section 36(1) of the Act. Section 18(1) of the Act requires that all the packages must bear declarations whereas Section 36(1) of the Act requires that the packages must conform to the declarations given thereon. Thus, Section 18(1) of the Act read with Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011 are not violated. Since there is no specific provision in the Act for violation of Section 18(1) of the Act, proceedings may be initiated for violation of Rule 6 and this comes under Rule 32(2) only but not under Section 36(1) of the Act.
- viii) That mere mention of the items seized in the Inspection Memo is not sufficient in the eyes of law which provides provisions in a separate seizure memo to be attached, if any item is seized with such Inspection Memo/Report.

4. I have heard the learned counsel for the parties and perused the record. This Court is of the view that it was not incumbent upon the Department to have carried out an investigation to find out whether a statutory declaration was not complied with by the petitioner.

5. Sections 18(1) and 36(1) of the Legal Metrology Act, 2009 are as under :

"18. Declarations on pre-packaged commodities.?(1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

36. Penalty for selling, etc., of non-standard packages.?(1) Whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both."

6. The contention of the petitioner that there is no requirement of mentioning of telephone number or customer care number of the manufacturer on the package, is having no force inasmuch as Rule 6(2) of the Legal Metrology (Packaged Commodities) Rules, 2011 clearly provides for mentioning of name, address, telephone number, e-mail address of the person or the office which can be contacted in case of any consumer complaint about the packaged commodity. Rule 6(2) of the Rules, 2011 is quoted as under :

"(2) Every package shall bear the name, address, telephone number, e mail address, if available, of the person who can be or the office which can be, contacted, in case of consumer complaints."

7. A bare perusal of Section 6(2) of the Rules, 2011 makes it abundantly clear that mentioning of telephone number of the person or the office is mandatory to be declared on the packaged commodity and in view of the seizure memo prepared, it is apparent that no such telephone number or the customer care number was mentioned on the packet of fire cracker. So, there is clear violation of mandatory declaration of Rule 6(2) of the 2011 Rules which makes out a valid case of the respondent against the petitioner.

8. The other grounds raised by the petitioner are matter of trial which can be ascertained only after adducing evidence by the parties. The contentions raised by the petitioner regarding illegality in the proceedings; regarding non-authorization to file the complaint; regarding complaint being undated; regarding

complaint being cyclostyled pro forma; regarding no investigation was carried on and contention regarding irregularity while preparing the inspection memo are not sustainable at this stage and no comment on the same can be made in a petition under Section 482 Cr.P.C. as it is a settled law that in a petition under Section 482 Cr.P.C, the High Court cannot go into the findings of fact.

9. In view of the above facts and circumstances, this Court is of the considered opinion that neither any abuse to the process of law has been established nor any interference is warranted in the impugned order of summoning the petitioner dated 16.04.2015.

10. Before parting with the matter, it is made clear any observation made above shall not have any bearing on the merits of the case.

11. The petition is accordingly dismissed.