
(2001) 02 DEL CK 0116

In the Delhi High Court

Case No : Criminal M. (M) No. 2742 of 1999

Mukul Dalmia and Others

APPELLANT

Vs

Kiran Pal and Another

RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 173(1), 190, 190(1)
Penal Code, 1860 (IPC) — Section 420
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 39(2)
Standards of Weights and Measures Act, 1976 — Section 50

Citation : (2001) 4 AD 282 : (2001) 91 DLT 65

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Rahul Gupta, for the Appellant; Akshay Bipin, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—This is a petition u/s 482 of Criminal Procedure Code, 1973 (for short, Cr.P.C.) seeking quashing of the order dated 17.7.1999 summoning the petitioners u/s 50 of the Standards of Weights and Measures Act, 1976 in the complaint filed by respondent No.1 (hereinafter the complainant); on the ground that no valid cognizance could be taken without recording the statement of the complainant u/s 200, Cr.P.C. Petitioners have also placed on record the subsequent summoning order dated 8.2.2000 urging that the same is also illegal and without jurisdiction.

2. Brief facts are : that on 14th February, 1998 at 12.00 noon the complainant went to the petrol pump-M/s. Mukul Diesel of the petitioners, to buy 90 litres of diesel in the two containers and paid price for the same against receipt. Petitioner No. 3 delivered the diesel but he containers were not filled up to a particular level. The complainant asked the petitioners that 90 litres of diesel was not being supplied and requested that supplied quantity be measured again. Petitioners refused to measure the same. Thereupon the delivery boy was

directed to stop any further delivery of diesel from the said unit. police was informed. HC, PS, Gokulpuri reached the spot and started investigations. He noticed the delivery unit residing at 2.556883.6; the quantity of diesel in two cans on being measured in the presence of the petitioners was found to be only 87 litres against the claimed supply of 90 litres for which payment was made. Investigating Officer sealed and seized the two cans containing diesel as well as nozzle pipe of delivery-unit. Statements of the complainant and witnesses were recorded. Notice was served on the petitioners to stop supply of diesel of that dispensing unit. On 18.2.1999 Investigating Officer informed the In-charge, Weights Measurements Department (for short WMD). On 27th February, 1998 W.M.D. officials visited the petrol pump, fixed the hose pipe and nozzle on the said dispensing unit and checked the same in the presence of the petitioners. It was found to be correct; seal was also found intact. Earlier on 18.2.1998 some officials of Bharat Petroleum had also checked this unit and did not find any defect in the same. The details as to how they checked the same are not available. The police did not investigate the matter further in view of the report of W.M.D. officials.

3. On 1st June, 1998 complainant filed a complaint in the Court of ACMM, Delhi u/s 50 of the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985 against the petitioners, Controller, Department of Standards of Weights and Measures and Bharat Petroleum Corporation Ltd. were also arrayed as respondents. The Trial Court called the report from police as well as from Weights and Measures Department. on 24th June, 1998, SHO PS Gokulpuri, submitted the report along with DD No. 9A dated 14th February, 1998, recorded by PCR; DD No. 14A dated 14th February, 1998, recorded by investigating Officer on his return at the police station giving details of the investigations carried out by him at spot, notice u/s 160, Cr.P.C., served on the petitioners; seizure memos of diesel cans, nozzle pipe, receipt for Rs. 935/- towards price of 90 litres of diesel issued by the petitioners, statements of the complainant and witness Sunil Kumar, inspection report dated 27.2.1998 by W.M.D. and checking report of Bharat Petroleum officials and SHO in the report stated that no action on the complainant's report was taken because of inspection/checking reports. Three photographs showing the meter reading of the dispensing unit taken at the relevant time were also sent. on the basis of the above material vide orders dated 17th July, 1999 learned Trial Court summoned the petitioners and discharged remaining two respondents observing :

"...From the perusal of the complaint and the report of the SHO, I am of the considered opinion that there is enough material on record to proceed against respondent Nos. 1,2 and 3 for the offences u/s 50 of the Standards of W & M Act, 1976".

Sd/-M.M.

4. On 28th August, 1999 on the application of complainant summoning order

dated 17.7.1999 was recalled. The complainant was directed to produce evidence. Reliance was placed on the law laid down by the Supreme Court in the case of K.M. Mathew v. State of Kerala, 1 (1992) CCR 316 (SC); AIR SC 2206. Thereafter on 18th September, 1999 and 23.10.1999 pre-summoning evidence was recorded. On 8.2.2000 another order summoning the petitioners was passed observing :

"...I have carefully gone through the material on record and I have also perused the statements of the witnesses recorded by IO HC Ram Kishan during the investigation of the case and I have also perused the inspection report of Weights and Measures Department and I am of the considered view that there is sufficient material on record to proceed against the respondent Nos. 1,2 and 3 for the offences punishable u/s 39(2) of the Standard of Weight and measures (Enforcement) Act, 1985 as well as u/s 420, IPC. Accordingly, all the three respondents be summoned as accused filing PF and copy of complaint. Put up for appearance of the accused persons, 8.3.2000.

Announced in the open Court.

Sd/-M.M."

Dated 8.2.2000

5. However, in the meantime on 9.9.1999 petitioners filed the above petition praying for quashing the complaint and summoning order dated 17.7.1999. I have heard learned Counsel for the petitioners as well as Counsel for the State and have been taken through the record. None appeared on behalf of respondent No. 1.

6. Learned Counsel for the petitioner argued that cognizance of the complaint could not be taken without examining the complainant u/s 200, Cr.P.C. As impugned order of summoning dated 17.7.1999 was passed without following this procedure same is liable to be set aside; that there was no material on record to warrant the summoning of the petitioners for the said offences and that complaint is an abuse of the process of the Court. Learned Counsel for the State argued to the contrary. In order to appreciate the arguments of the learned Counsel that no valid cognizance of offence against the petitioners was taken, reference to Section 190, Cr.P.C. which lays down requisite conditions for taking of cognizance of an offence by the Magistrate is necessary. It reads:

"190. Cognizance of offences by magistrates.--(1) Subject to the provisions of this chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or

upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try."

7. Law in this regard is well settled. If the Magistrate receives a police report stating that no case is made out it can still take cognizance and issue process. The Supreme Court in *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, held as under:

"The mere fact that he had earlier ordered an investigation u/s 156(3) and received a report u/s 173 will not have the effect of total effacement of the complaint and Therefore the Magistrate will not be barred from proceedings under Sections 200, 203 and 204. Thus a Magistrate who on receipt of a complaint, orders an investigation u/s 156(3) and receives a police report u/s 173(1) may, thereafter, do one of three things : (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence u/s 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. If he adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be".

8. It may be mentioned here that on 26.4.1999 when it was brought to the notice of the Trial Court that as report of the incident was already lodged with the police against the accused persons and the matter was being investigated by the police the Court was bound to call the report. The police submitted the report along with documents noticed above. perusal of the order of summoning order dated 17.7.1999 shows that the Court had considered the complaint and the police report which was duly accompanied by the seizure memos and statement of complainant and witnesses while summoning the accused. Thus it cannot be said that cognizance in the case against the petitioner was taken merely on the basis of the complaint.

9. In any case the order of summoning dated 17.7.1999 was recalled on the application of the complainant. The complainant and other witnesses were examined and on the basis of the pre-summoning evidence led a fresh order of summoning the petitioners u/s 39(2) of the Standards of Weights and Measures (enforcement) Act, 1985 read with Section 420, IPC was passed. Irregularity, if any, stood fully cured. The argument that the Trial Court could not recall the summoning order dated 17.2.1999 relying upon *K.M. Mathew's* case (supra) because observations made therein were referred for reconsideration to a Larger bench in *Nilamani Routray Vs. Bennett Coleman and Co. Ltd.*, is equally without

merit. needless to point out that as long as the law laid down in K.M. Mathew's case (supra) is not upset by the Larger Bench it would continue to hold the field.

10. Learned Counsel also challenged the summoning order on merits and submitted that the same is not sustainable. At the stage of summoning the Court is only required to see whether there is enough material for the purpose of proceeding into the matter and not whether there is sufficient material for conviction. The object of the enquiry at the pre-summoning stage is limited to the extent to examine whether the complaint on the face of it has any substance. The enquiry is not to supersede the regular trial. Unless the allegations made in the complaint are inherently improbable and unworthy of credence and if prima facie case is made out, complaint must proceed. In the present case on 14.2.1998 the complainant bought 90 litres of diesel and payment for the same was made. Only 87 litres of diesel was found to have been supplied by the petitioners. Police on information reached the spot. The diesel in the cans on being measured was found to be only 87 litres. The cans containing diesel were seized, and deposited in the police station, statements of the witnesses were recorded at spot. Police did not take further action against the petitioners because on 18.2.1998 and on 27.2.1998 no defect in the delivery unit at the petrol pump of the petitioners, was found by the Petroleum Ministry and W.M.D. officials respectively. Even if these reports are ignored complainant may still succeed in proving its case. Defense of the accused cannot be considered at the stage of summoning.

11. In view of the above I find no merit in the petition. It is dismissed. The record be sent back forthwith. Any observation made herein shall not prejudice the merits of the case during the trial.

12. Petition dismissed.