(2010) 03 MP CK 0065

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1308 of 2009

Nestle India Limited	APPELLANT
Vs	
Dinesh Kumar	RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 191, 200, 24, 25, 264
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 33, 51, 51(2), 66
Madhya Pradesh General Clauses Act, 1957 — Section 27

Citation : (2010) 4 MPHT 413 : (2010) 3 MPLJ 447 : (2010) 5 RCR(Criminal) 819

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Mody, J.

Being aggrieved by the order dated 13-8-2009 passed by JMFC, Mhow in Cri. Case No. 1098/2003, whereby the charge has been framed against the petitioner for an offence alleged to have been committed u/s 420, IPC, the present petition has been filed.

Short facts of the case are that respondent No. 1 filed a private complaint against the petitioner on 3-12-2003 under Sections 24, 25, 191, 200 and 420, IPC alleging that the respondent No. 1 purchased three packets of Nescafe Coffee on 20-3-2003 from a vendor at Mhow. It was alleged that petitioner was having apprehension that weight of coffee in the packets is less. It was alleged that in the circumstances respondent No. 1 opened each of the packets in presence of witnesses and got the same measured. It was alleged that upon measuring it was found that all the three packets, which ought to have 15 gms. was having the coffee of 12 gms. in one packet and 5 gms. in other two packets. It was alleged that by giving less quantity of the coffee as declared on the packets petitioner has committed an offence punishable u/s 420, IPC, hence the petitioner has cheated the respondent No. 1. In the complaint it was alleged that after taking cognizance of the offence and also notice to the respondent petitioner be convicted.

After taking cognizance of the offence petitioner appeared before the learned Court below and after hearing the parties the learned Trial Court framed the charge against the petitioner u/s 420, IPC, against which the present petition has been filed.

Learned Counsel for the petitioner argued at length and submits that prosecution filed by the respondent No. 1 deserves to be quashed as the alleged offence is duly covered by Standards of Weight and Measures (Enforcement) Act, 1985 (for short hereinafter referred to as the Act). It is submitted that under the said Act the prosecution of the petitioner under IPC is specifically barred. Learned Counsel further submits that before filing prosecution the notice was issued by respondent No. 1, wherein the compensation was claimed, therefore, at the most respondent No. 1 could have filed the complaint against the petitioner before the Consumer Protection Forum. It is submitted that in the facts and circumstances of the case, learned Trial Court committed error in framing the charge u/s 420, IPC, it is submitted that petition filed by the petitioner be allowed and the impugned order, whereby charge has been framed u/s 420, IPC be set aside.

Shri Vijay Sharma, learned Counsel for the respondent No. 1, submits that no illegality has been committed by the learned Trial Court in framing the charge u/s 420, IPC. It is submitted that prohibition, which has been alleged in the Weights and Measures Act is for Chapter XIII of IPC, which deals with offences relating to Weights and Measures. It is submitted that as per Section 27 of M.P. General Clauses Act, 1957, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be prosecuted and punished twice for the same offence. It is submitted that in view of the aforesaid provisions the contention raised by the petitioner is not tenable. It is submitted that petition filed by the petitioner be dismissed.

Section 51 of the Weights and Measures Act deals with penalty for contravention of Section 33. Sub-section (2) of Section 51 reads as under:

(2) Whoever manufactures, packs, distributes or sells, or causes to be manufactured, packed, distributed or sold, any commodity in packaged form, knowing or having reason to believe that the commodity contained in such package is lesser in weight, measure or number than the weight, measure or number, as the case may be, stated on the package or label thereon, shall be punished with imprisonment for a terms which may extend to two years, or with fine which may extend to three thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a terms which may extend to five years and also with fine.

Section 66 of the Act lays down that the provisions of IPC in so far as such provisions relates to offence with regard to weights and measures shall not apply to any offence which is punishable under this Act. Chapter XIII of IPC deals with the offence relating to weights and measures. Section 264 deals with fraudulent use of false instrument for weighting. Section 265, IPC deals with fraudulent use of false weight or measure and Section 266 deals with the situation in possession of false weight or measure. To cover the situation where the goods, which has been sold by a consumer is less in quantity is provided in the Standards of Weights and Measures Act, 1985, therefore, it cannot be said that petitioner committed the offence u/s 420, IPC. The bar of Section 66 of the Act not only deals with Chapter XIII, IPC but also deals with other provisions for which accused is prosecuted, while the specific provision is provided under the Weights and Measures Act.

In view of this petition filed by the petitioner is allowed and the impugned order passed by the Trial Court, whereby the charge has been framed against the petitioner u/s 420, IPC is set aside with a direction to the Trial Court to re-frame the change keeping in view the provisions of Standards of Weights and Measures (Enforcement) Act, 1985 after hearing the parties.

With the aforesaid observations petition stands disposed of.