

(2007) 11 GAU CK 0008
In the Gauhati High Court
Case No : Criminal Petition No. 300 of 2007

North East Pure Drinks Pvt. Ltd. and Others	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Assam Finance (Sales Tax) Act, 1956 — Section 27, 27(1), 27(2)
Assam Value Added Tax Act, 2003 — Section 87, 87(2)
Assam Weights and Measures (Enforcement) Act, 1958 — Section 38
Central Excise Rules, 1944 — Rule 11
Central Sales Tax Act, 1956 — Section 11
Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 155(2), 156, 156(1)
Penal Code, 1860 (IPC) — Section 120A, 120B, 272, 273, 415
Prevention of Food Adulteration Act, 1954 — Section 10(4), 12, 14, 14A, 16(1AA)
Prevention of Food Adulteration Rules, 1955 — Rule 32
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 6, 63

Citation : (2008) GLT 898 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : J.M. Choudhury, B.M. Choudhury and A.D. Lahkar, for the Appellant;
K. Munir, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—The Petitioners herein have put to challenge, in this application, made u/s 482 IPC, the First Information Report (in short, "the FIR"), which has been registered as Azara Police Station Case No. 139/2007 under Sections 120B/272/273/420/468/471 IPC.

2. The FIR, which has been lodged, on 14.09.2007, at Azara Police Station, by the Sub-Divisional Officer(s), Kamrup (Metro), alleges, in brief, thus: During the course of inspection of the premises of the North East Pure Drinks (NEPD) Ltd. on 13.09.2007, it was revealed from the Sales Section of the said company that the management, including the Chairman-cum-Managing Director of NEPD Ltd., their employees and the proprietor of M/s Mahamaya Enterprise, Guwahati, have

conspired to defraud the State Government by concealing the fact that the products, shown as supplied to M/s Mahamaya Enterprise, have actually been sold outside the State of Assam. Two trucks, which belong to one S. Rane of Sonapat, Haryana, were found placed, at the NEPD plant, by Rajdhani Road Lines, Beltola, with the object of shipping the products outside the State. This apart, some manufactured products of NEPD, whose base syrup has expired and are not fit for human consumption, have been found stored in the premises despite direction given to them that the product should be drained out. Moreover, some bottles of manufactured products were found not carrying labels regarding the date of manufacture, batch number, price, etc. Some products were also found to be containing less than the standard amount of product and that the fork-lift, used at the godown, was seen to be powered by an LPG cylinder.

3. From a careful reading of the impugned FIR, what transpires to be the substance of the accusations can be divided into the following five parts:

(i) During the course of inspection of the premises of the Petitioner company, carried out on 20.09.2007, the Chairman-cum-Managing Director of the Petitioner company and its other employees have been found to have conspired to defraud the State Government by concealing the fact that the products, shown as supplied to M/s Mahamaya Enterprises, have actually been sold outside the State. It is further alleged that two trucks were found to be parked in front of the premises of the Petitioner company for carrying the products, manufactured by the Petitioner company, outside the State.

(ii) Some of the products manufactured by the Petitioner company, which are not fit for human consumption, have been kept stored in the premises of the Petitioner company despite orders given to the Petitioner company to drain out the same. In fact, some of the manufactured products were found to be carrying labels indicating that the "Best Before" date had expired.

(iii) Some products of the Petitioner company, which were found contained in bottles, do not carry the mandatory labels regarding the date of manufacture, batch number, price, etc.

(iv) Some other products of the Petitioner Company have been found to be containing less quantity than that of the standard quantity.

(v) The fork-lift, used at the godown, seems to be powered by an LPG cylinder.

4. I have heard Mr. J.M. Choudhury, learned Senior counsel, appearing on behalf of the Petitioners, and Mr. K. Munir, learned Additional Public Prosecutor, Assam.

5. Assailing the FIR, Mr. Choudhury submits that M/s Mahamaya Enterprises is an authorized distributor of the Petitioner company and the said distributor purchases finished products from the Petitioner company on the strength of Invoice-cum-Delivery Challan issued under Rule 11 of the Central Excise Rules. As M/s Mahamaya Enterprises is a registered dealer under the Assam Value Added Tax Act, 2003, they are, contends Mr. Choudhury, at liberty to sell or

despatch the manufactured products of the Petitioner company, after purchase thereof, to anyone, in any State, in accordance with law. Since there is no allegation, points out Mr. Choudhury, that the Petitioner company has not paid the tax or excise duty for sale of its products to M/s Mahamaya Enterprises, the Petitioner company cannot be accused of having committed any offence if M/s Mahamaya Enterprises sells the products, so purchased, to anyone outside the State of Assam so long as the Central Sales Tax or excise duty are paid by M/s Mahamaya Enterprises. In the present case, there is absolutely no allegation, further points out Mr. Choudhury, that the Petitioner has not paid the excise duty and tax to the State Government in terms of the law, when the goods were sold to M/s Mahamaya Enterprises nor there is any allegation that M/s Mahamaya Enterprises has sold the goods, so purchased, without making payment of the excise duty, Central Sales Tax, etc., which maybe payable in this regard. This apart, there is also no accusation, submits Mr. Choudhury, that M/s Mahamaya Enterprises has no authority to carry the manufactured products of the Petitioner company outside the State of Assam or sell the same outside the State. In such circumstances, the allegations made that there is conspiracy between the Petitioner company and M/s Mahamaya Enterprises, as alleged in the FIR, has no substance and the police ought not to have registered the case on the basis of allegations, which do not make out commission of any cognizable offence. Mr. Choudhury reiterates that there is no legal impediment, on the part of M/s Mahamaya Enterprises, to carry the Petitioner company's products outside the State after purchase thereof by M/s Mahamaya Enterprises. In fact, the Petitioner company, contends Mr. Choudhury, sold its products to M/s Mahamaya Enterprises after charging the taxes payable to the State Government @ 12.5%; whereas the Central Sales Tax payable is barely 3%. Thus, there was no loss caused to the State exchequer by the transaction of sale, in question, and the whole FIR has, thus, been lodged out of malice and is mala fide.

6. It is further submitted by Mr. Choudhury that the Central Sales Tax Act, 1956, (in short, "the CST Act, 1956") and/or the Assam Value Added Tax Act, 2003 (in short, "the Vat Act, 2003") are both special Acts and Courts are debarred from taking cognizance of any offence committed u/s 11 of the CST Act, 1956, except with the previous sanction of the Government within the local limit of whose jurisdiction the offence has been committed. Similarly, u/s 87 of the VAT Act, 2003, no Court can take cognizance of any offence under this Act except with the previous sanction of the Commissioner. In such circumstances, contends Mr. Choudhury, the registration of the FIR without any complaint having been made by the appropriate authority is not tenable and cannot be sustained.

7. Yet another allegation, made in the FIR, points out Mr. Choudhury, is that the manufactured products are not fit for human consumption. In this regard, it needs to be noted, submits Mr. Choudhury, that the manufacture, sale or storage for sale of an article of food, which is not fit for human consumption, is an offence under the Prevention of Food Adulteration Act (in short, "the PFA Act") and such an offence can be dealt with in accordance with the procedures

prescribed by the PFA Act and the rules framed thereunder. In the present case, contends Mr. Choudhury, there is no allegation that the products, in question, having become unfit for human consumption, were kept stored for sale. In such circumstances, no case under the PFA Act can be said to have been made out nor can an offence under Sections 272 or 273 of the IPC can be said to have been committed by the accused.

8. Assailing the registration of the FIR under Sections 272 and 273 IPC, Mr. Choudhury submits that these two penal provisions would come into play only when an article of food, which has been rendered noxious or which has become unfit for use as food or drink, is sold or offered or exposed for sale. There is, however, points out Mr. Choudhury, not even a vague allegation in the FIR that the Petitioner company has sold or offered or exposed for sale its products, which has been rendered noxious or which has become unfit for use as food or drink. In such circumstances, registration of the FIR under Sections 272 and 273 of the IPC, is, contends Mr. Choudhury, wholly misconceived in law.

9. Mr. Choudhury points out that storage for sale of an adulterated article is an offence under the PFA Act, which is a special enactment and prescribes special mechanism and procedure for bringing a guilty to book. By registering an FIR, as in the case at hand, the police cannot, contends Mr. Choudhury, assume jurisdiction to investigate an offence under the PFA Act and give a go-bye to the provisions of the PFA Act and the provisions of the Prevention of Food Adulteration Rules (in short, "the PFA Rules"). The registration of the FIR by the police for an act or omission, which may constitute an offence under the PFA Act, is without any authority of law, for, the jurisdiction to investigate and lodge complaint, according to Mr. Choudhury, lies with the authorities mentioned in the PFA Act and the PFA Rules.

10. On the strength of the submissions, so made, Mr. Choudhury points out that even the allegation that the date of manufacture, batch number, price etc. of the products have not been given is an allegation, which can be investigated into and tried under the PFA Act and the PFA Rules, and, hence, such allegations could not have formed the basis for registering a case against the Petitioners without having followed the mechanism as prescribed under the PFA Act and the PFA Rules.

11. There is no accusation, points out Mr. Choudhury, that the storage of the products, in question, were for sale. Hence, as long as the storage is not for sale, neither the provisions of the PFA Act nor the provisions of Sections 272 IPC or 273 IPC can be said to have been attracted. So contends Mr. Choudhury.

12. It is submitted by Mr. Choudhury that the allegation made against the Petitioner company that some bottles were found to contain less quantity than that of the standard quantity of product can, at best, make out an offence under the Weights and Measures Act. At any rate, it is the special procedure prescribed under the Weights and Measures Act, which, in such" cases, according to Mr.

Choudhury, shall be followed. Hence, in the present case, police had no authority under the law, according to Mr. Choudhury, to register and investigate any case for non-compliance of the provisions of the Weights and Measures Act.

13. Mr. Choudhury contends that when a person sells or attempts to sell any manufactured item, projecting the same to be of a particular weight, whereas the product, so exposed or offered for sale, does not weigh as projected by the manufacturer or vendor, then, it may become an offence u/s 420 IPC. In the case at hand, there is absolutely nothing to show, points out Mr. Choudhury, that there is any false representation made by the Petitioner company or any of its employees or its functionaries to the effect that the products are of certain quantity, whereas they are not. In such circumstances, pleads Mr. Choudhury, no case of cheating can be said to have been made out against the Petitioners.

14. Section 420 IPC requires, points out Mr. Choudhury, satisfaction of the ingredients u/s 415, which, in turn, requires making of false representation inducing a person to part with the property or to do or omit to do an act, which such a person would not have, otherwise, done or omitted to do. In the present case, contends Mr. Choudhury, there is absolutely no material to show that the accused have, in any manner, made false representation or have, by deceitful means, fraudulently or dishonestly, induced, or attempted to induce, any person, so deceived, to deliver to any person any property or to do or omit to do an act, which such a person would not have done or omitted to do if he were not so deceived.

15. It is further contended by Mr. Choudhury that since the Petitioner company is not shown to be involved in forging any papers or documents, no case of forgery can be said to have been made out against the accused person. In such circumstances, submits Mr. Choudhury, registration of the FIR u/s 468 and/or 471 IPC is not tenable in law. Lastly, it is contended by Mr. Choudhury that the Petitioner company is not shown to be involved in the commission of any offence, which is cognizable, and, hence, the whole FIR needs to be quashed.

16. Controverting the submissions made on behalf of the Petitioners, Mr. Munir, learned Additional Public Prosecutor, Assam, submits that in the face of the accusations made in the FIR, the police have acted within the ambit of their jurisdiction in registering a case against the Petitioner Company, its employees and functionaries and, hence, such an FIR, being sustainable in law, cannot be legally quashed.

17. The law with regard to quashing of criminal complaint is no longer res integra. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case of R.P. Kapur Vs. The State of Punjab, wherein the question, which arose for consideration, was whether a first information report can be quashed u/s 561A of the Code of Criminal Procedure, 1898. The Court held, on the facts before it, that no case for quashing of the proceeding was made out; Gajendragadkar, J., speaking for the Court, observed that though,

ordinarily, criminal proceedings instituted against an accused must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises and it is a matter of merely looking at the FIR or the complaint in order to decide whether the offence alleged is disclosed or not. In such cases, said the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the Criminal Court to be issued against the accused. From the case of R.P. Kapoor (supra), it becomes abundantly clear that when a mere look into the contents of a complaint shows that the contents of the complaint, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint shall be quashed.

18. As a corollary to what has been discussed above, it is also clear that if the contents of the complaint constitute offence, such a complaint cannot be quashed.

19. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Apex Court in the leading case of State of Haryana and Ors. v. Bhajanlal and Ors. reported in 1992 Suppl. (1) SCC 335, laid down as follows:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter-XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers u/s 482 of the Code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration, wherein such power could be exercised either to prevent abuse of the process of the any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases, wherein such power should be exercised--

(1) Where the allegations made in the First Information Report or the complaint even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegation in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance of the accused and with a view to spite him due to private and personal private grudge.

20. In the case of Bhajanlal (supra), the Apex Court gave a note of caution on the powers, of quashing of criminal proceeding in the following words:

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

(Emphasis is added).

21. It is clear from a close reading of the principles laid down in the case of R. P. Kapoor (supra) and Bhajanlal (supra) that broadly speaking, quashing of a First Information Report or a complaint is possible, (a) when the allegations made in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused; (b) when the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any offence and/or make out a case against the accused; and (c) when the allegations made in the FIR or complaint are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

22. In other words, when the allegations made in a complaint disclose commission of an offence, such a complaint cannot be quashed by relying upon some other materials on which will depend the defence of the accused, for, in such cases, truthfulness or otherwise of the allegations contained in the

complaint or the probability of the defence plea can be determined only by effective investigation or at the trial. I am also guided to take this view from the case of *State of Bihar and Anr. v. Mohd. Khalique and Anr.* reported in (2002) SCC 652, wherein the Apex Court, while dealing with the quashing of FIR, observed as follows:

7. In *Bhajanlal* case, this Court has also held that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest or rare cases. The present case is not rarest of rare case.

8. In view of the settled legal position and as offences have been disclosed in the FIR, the High Court ought not to have interfered with the investigation and should have permitted the police to complete it. We, accordingly, hold that the High Court has committed a grave error in quashing the entire proceedings and ought not to have thwarted the prosecution.

See also *Latif Ahmed Bin Hussain v. State of Assam* reported in (2003) 1 GLR 514 : 2005 Supp GLT 872 , and *Kailash Chandra Pareek Vs. State of Assam*,

23. In the light of the law as regards quashing of FIR, I, now, turn to the contents of the present FIR and determine if the FIR is sustainable in law.

24. While considering the impugned FIR, what attracts the eyes, most prominently, is that the chief accusation of the informant is that the Petitioner Company, their functionaries and employees have conspired with the proprietor of M/s. Mahamaya Enterprise, Guwahati, to defraud the State Government by concealing the fact that the products, shown as supplied to M/s. Mahamaya Enterprise, have actually been sold outside the State of Assam.

25. Countering the allegation, so made, the Petitioners submit that M/s. Mahamaya Enterprise is an authorized distributor of the Petitioner Company and that the said distributor purchases the products from the Petitioner Company on the strength of invoice-cum delivery Challan as issued under Rule 11 of the Central Excise Rules and M/s. Mahamaya Enterprise, being a registered dealer under the VAT Act, 2003, is at liberty to carry products of the Petitioner Company to anyone, in any State, in accordance with law. It is further pointed out, as already indicated above, on behalf of the Petitioners, that since there is no allegation that the Petitioner Company has not paid tax or excise duty on the sale of its product to M/s. Mahamaya Enterprise, the Petitioner Company cannot be accused of having committed any offence if M/s. Mahamaya Enterprise sells products, so purchased, to anyone outside the State of Assam so long as the Central Sales Tax and excise duty are paid by M/s. Mahamaya Enterprise.

26. Before I enter into the question as to whether the present FIR deserves to be quashed, let me deal with Mr. Choudhury's contention that the CST Act, 1956, as well as the VAT Act, 2003, are both special enactments and, therefore, the police have no jurisdiction to investigate any offence under any of these two enactments.

27. With regard to the above, it needs to be noted that it is Section 87 of the VAT Act, 2003, which makes provisions for taking cognizance of offence committed under this Act. Section 87 reads:

87. Cognizance of offences - (1) No Court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner and no Court inferior to that of a Metropolitan Magistrate of the first class shall try any offence under this Act. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all offences punishable under this Act or the rules made thereunder shall be cognizable and bailable.

28. The provisions of Section 87, with regard to taking of cognizance of offence, need to be carefully examined in order to ascertain the correctness or otherwise of the submissions made, on behalf of the Petitioner, that police is not empowered to register any FIR or investigate any case for an offence allegedly committed under the VAT Act, 2003.

29. A bare reading of Section 87 shows that though no Court can take cognizance of any offence under the Vat Act, 2003, except with the previous sanction of the Commissioner, the fact, however, remains that an offence, committed under this Act, is, in the light of the provisions of Sub-section (2) of Section 87, cognizable and bailable.

30. A cognizable offence, u/s 2(c) of the Code of Criminal Procedure, 1973, (in short, "the Code"), means an offence in which a police officer may, in accordance with the 1st Schedule or under any other law for the time being in force, arrest without warrant. Section 154 of the Code makes it clear that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced into writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced into writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 156 of the Code empowers the Officer-in-Charge of a police station to investigate, without order of the Magistrate, any cognizable case. As against the provisions so made with regard to cognizable offence, Section 155 bars the police from investigating, without order from the Magistrate, any offence, which is non-cognizable. Thus, the chief distinction between a cognizable case and a non-cognizable case is that while in a cognizable case police can investigate without order of the Magistrate, no such power of investigation can be exercised by the police without the order of the Magistrate in a non-cognizable case.

31. When Section 87 of the VAT Act, 2003, makes an offence, committed under this Act, a cognizable one, there is no impediment, on the part of the police, to register an FIR on the basis of the information, oral or written, that a person has

committed an act of omission or commission, which constitutes an offence under the VAT Act, 21)03, and upon such registration, the police can investigate such a case.

32. Coupled with the above, it is also worth noticing that there is a difference between investigation of a case, which discloses commission of a cognizable offence, and taking cognizance of an offence by Court. No Court can take cognizance of any offence under the VAT Act, 2003, except with the previous sanction of the Commissioner appointed under this Act. Hence, the power to take cognizance belongs to the Court. While the police can, thus, investigate into an allegation of commission of an offence under the VAT Act, 2003, no Court can take cognizance of an offence under this Act except with the previous sanction of the Commissioner. When the police registers a case under the VAT Act, 2003, and arrest an offender, there is no impediment for the police to investigate such a case; but on completion of investigation, if the police finds that the accusations made against the offender are true, it cannot submit any report, u/s 173 of the Code, to the Magistrate for taking cognizance without obtaining requisite sanction, in this regard, from the Commissioner concerned. This is the broad scheme of prosecution of an offender under the VAT Act, 2003. It is, therefore, incorrect to contend that there being a special mechanism prescribed under the VAT Act, 2003, for enforcement of the Act and also for investigation of offences committed thereunder, the police is debarred from registering an FIR and from investigating into an allegation of commission of offence under the VAT Act, 2003.

33. I may, at this stage, pause here to point out that Section 27 of Assam Finance (Sales Tax) Act, 1956, made provisions, similar to the ones as we find in Section 87 of the VAT Act, 2003, with regard to taking of cognizance of offence under the said Act as well as investigation thereof. The provisions of Section 27 were, in fact, *pari-materia* with the provisions of Section 87 of the VAT Act, 2003. A Division Bench of this Court, in *Crompton Greaves Ltd. Vs. Commissioner of Taxes and Others*, held that a police officer is empowered to investigate a case in relation to an offence under Assam Finance (Sales Tax) Act, 1956. The relevant observations of the Division Bench read as follows:

Section 27 of the Act reads as under:

27. Cognizance of offence - (1) No court shall take cognizance of any offence under this Act, except with the previous sanction of the Commissioner.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, all offences punishable under this Act or the rules made thereunder shall be cognizable and bailable.

Reading of Sub-section (2) of Section 27 of the Act quoted above, leaves no room to doubt that all offences punishable under the Act are cognizable and bailable; whereas Sub-section (1) of Section 27 provides that no court shall take cognizance of any offence under the Act except with the previous sanction of the Commissioner. A clear distinction must be noticed. Sub-section (i) comes for the

purpose of the court to take cognizance of any offence, which mandatorily requires sanction of the Commissioner; that is to say, a court will have the right to proceed in the matter only after sanction has been given by the Commissioner and not otherwise. But, so far Sub-section (2) of Section 27 is concerned, it makes all the offences under the Act cognizable and bailable, notwithstanding anything contained in the Code of Criminal Procedure, meaning thereby, a Police Officer may proceed to investigate the case in relation to the offences under the Act as in the cognizable offences without requiring any order of a Magistrate. In the present case, though, we find that he had obtained search warrant from the court of the Chief Judicial Magistrate.

34. In the light of the law, laid down in *Crompton Greaves Ltd. (supra)*, there can be, thus, no escape from the conclusion that the police is competent to register an FIR in respect of an offence alleged to have been committed under the VAT Act, 2003.

35. Turning to the Central Sales Tax Act, 1956, it may be pointed out that it is Section 11, which makes provisions for taking of cognizance and investigation under the CST Act, 1956. Section 11 states as under:

11. Cognizable offences - (1) No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Government within the local limits of whose jurisdiction the offence has been committed or of such officer of that Government as it may, by general or special order, specify in this behalf; and no court inferior to that of a presidency magistrate or a magistrate of the first class shall try any such offence.

36. From a bare reading of Section 11, it is clear that an offence, under the CST Act, 1956, is a cognizable offence. Hence, there is no bar for a police officer, who is, otherwise, competent to register an FIR if any offence is alleged to have been committed under the CST Act, 1956, and investigate the same without any order of the Magistrate, though no Court can take cognizance of an offence committed, under the CST Act, 1956, except with the previous sanction of the Government within the local limit of whose jurisdiction the offence has been committed. Thus, even under the CST Act, 1956, police have the power to register an FIR if information as regards commission of an offence under the CST Act, 1956, is received by them and the police officer is also empowered to investigate such a case.

37. Having pointed out that there is no legal impediment, on the part of a police officer, to register an FIR or to investigate a case relating to any offence committed either under the CST Act, 1956, or under the VAT Act, 2003, what I am, now, required to determine is whether the FIR, in the present case, makes accusations, which constitute an offence either under the CST Act, 1956, or under the VAT Act, 2003.

38. There is, admittedly, no accusation in the FIR that in terms of the provisions of the VAT Act, 2003, taxes were not paid by the Petitioner Company for the sale

of its product to M/s. Mahamaya Enterprise. There is also no accusation in the FIR that M/s. Mahamaya Enterprise has not paid tax, which is, otherwise, payable under the CST Act, 1956, in inter-State sale of the Petitioner Company's product. It is also conceded by the prosecution that there is no law in force, which prohibits M/s. Mahamaya Enterprise from carrying the Petitioner Company's product and selling the same to anyone outside the State. Even if there be any contractual agreement between the Petitioner Company and M/s. Mahamaya Enterprise binding M/s. Mahamaya Enterprise not to sell the products of the Petitioner Company to anyone outside the State, the fact remains that contravention of such a covenant would be a mere breach of agreement and would not be an offence either under the CST Act, 1956, or under the VAT Act, 2003. This apart, as correctly pointed out by Mr. Choudhury, the Petitioner Company pays Value Added Tax @ 12.5% on its products; whereas Central Sales Tax is payable @ 3% if a registered dealer sells any goods to any registered dealer outside the State. If the sale is made to an unregistered dealer outside the State, then, the tax payable would be the same as determinable under the VAT Act, 2003.

39. Above all, there is no law, which prohibits either the Petitioner Company or M/s. Mahamaya Enterprise to sell the said products outside the State of Assam. Hence, the question of the Petitioner Company having conspired to defraud the State Government does not arise at all if the products of the Petitioner Company are sold by M/s. Mahamaya Enterprise to anyone outside the State.

40. The second important accusation made against the Petitioner company is that the Petitioner company's some of the products, which are not fit for human consumption, were found stored in the premises of the Petitioner company and the Petitioner company has, thus, committed offences under Sections 272 and 273 IPC.

41. For the purpose of better understanding of the penal provisions of Sections 272 and 273 of the Indian Penal Code, Section 272 and 273 IPC are reproduced below:

272. Adulteration of food or drink intended for sale-

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink-

Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may

extend to six months, or with fine which may extend to one thousand rupees, or with both.

42. A careful reading of Section 272 IPC shows that this penal section is attracted, when a person adulterates an article of food with the intention to sell such an article or knowing that it is likely that the article will be sold as food or drink. Thus, the gravamen of the charge, u/s 272, is the intention to sell the article as food or drink or the knowledge that the substance is likely to be sold as food or drink. In the case at hand, however, there is no allegation, in the FIR, that the Petitioner company or any of its functionaries or employees had kept its products, in question, stored with the intention to sell the same or knowing that the products aforementioned were likely to be sold as food or drink or that the said products were exposed or offered for sale. In such circumstances; Section 272 IPC was not attracted at all and the case could not have, therefore, been registered legally u/s 272 IPC.

43. Turning to Section 273 IPC, what needs to be noted is that whoever sells or offers or exposes for sale any article as food or drink, which has been rendered or has become noxious or unfit for consumption as food or drink, or whoever sells, offers or exposes as food or drink any article knowing or having reason to believe that the same has become noxious as food or drink or is unfit for human consumption, would be liable for punishment u/s 273 IPC. In the present case, the Petitioner company's products, in question, are not alleged to have been rendered noxious. This apart, even if one presumes that the seized products had been rendered noxious or were unfit for human consumption, the fact remains that mere possession or storage of such articles of food or drink would not be an offence u/s 273 IPC unless one, who is in possession of such an article of food or drink, sells the same or offers or exposes the same for sale or knows or has reason to believe that such article of food or drink would be sold or offered or would be exposed for sale. There is, however, no allegation that the Petitioner company's said products were meant for sale. In the circumstances of the present case, even the provisions of Section 273 IPC are not attracted.

44. Yet another accusation made against the Petitioner company is that in some cases, their products were found in less quantity than that of the standard quantity of the product. If a person exposes for sale or has in his possession for sale any article contained in a sealed package or container without a label containing description of the net weight or measure of the article contained therein, it becomes an offence under the Standard of Weights & Measurements Act, 1976, which is a Central Act, and is also an offence under the Assam Weights & Measures (Enforcement) Act, 1958. The offences committed under both these Acts are not made cognizable. Viewed thus, it is clear that no FIR can be registered by the police and no act or omission, which constitutes an offence under these two Acts, can be investigated into by the police. In fact, u/s 63 of the Standards of Weights and Measures (Enforcement) Act, 1985, no Court shall take cognizance of an offence punishable under this Act except upon a complaint,

in writing, made by the Controller or any other officer authorized in this behalf by the Controller by general or special order or any person aggrieved or a recognized consumer association whether the person aggrieved is a member of such association or not. As far as Assam Weights & Measures (Enforcement) Act, 1958, is concerned, Section 38 of this Act makes it clear that no Court shall take cognizance of an offence punishable under this Act except upon complaint, in writing, is made by the Controller or any officer authorized in this behalf by the Controller by general or special order.

45. Let me, now, turn to the accusation made in the FIR that some products of the Petitioner company did not carry mandatory labels regarding the date of manufacture, batch number, etc. While considering this allegation, what is of great significance is that Rule 32(e) and Rule 32(f) of the PFA Rules deal with the requirements of affixing the date of manufacture, batch number, etc. The relevant provisions of Rule 32(e) and Rule 32(f) are, therefore, reproduced here in below:

32. Package of food to carry a label. - Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label-

(a) **** (b) **** (C) **** (d) ****

(e) A distinctive batch number or lot number or code number, either in numerals or alphabets or in combination, the numerals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words "Batch Number" or "Batch" or "Lot Number" or "Lot" or any distinguishing prefixes; provided that in case of canned food, the batch number may be even at the bottom, or on the lid of the container, but the words "Batch Number" given at the bottom or on the lid, shall appear on the body of the container;

(f) The month and year in which the commodity is manufactured or pre-packed : provided that in case of package weighing 20 g. less and liquid products marketed in bottles which are recycled for refilling, particulars under clause (b) need not be specified:

Provided further such declaration shall be given on the label of multipiece package either on the label of multipiece package or in a separate slip inside the multipiece package in such a manner the same is readable even without opening the package:

Provided also that in case of carbonated water containers and the packages of biscuits, confectionery and sweets, containing more than 60 g but not more than 120 g and food packages weighing not more than 60 g particulars under clauses (d) and (e) need not be specified:

Provided also that in case of package containing bread and milk including

sterilised milk, particulars under clause (e) need not be specified:

Provided also that in case of any package containing bread or liquid milk, sterilized or Ultra High Temperature treated milk, soya milk, flavoured milk, any package containing dhokla, bhel puri, pizza, vegetables, meat, fish or any other like commodity which has a short shelf life, the date, month and year in which the commodity is manufactured or prepared or prepacked shall be mentioned, on the label:

Provided also that in case of package containing confectionery weighing 20 g or less, the particulars under this clause need not be specified.

46. While considering the provisions of Rule 32 (e) and Rule 32 (f), what needs to be emphasized is that the PFA Act is a special enactment and prescribes stringent punishment. Because of the stringent nature of punishment prescribed under the PFA Act, this Act makes elaborate provisions to safeguard the interest of the accused. To put it a little differently, the PFA Act makes special provisions for bringing a wrong-doer to book. The safeguards provided to an accused under the PFA Act and the Rules cannot, therefore, be likely ignored or discarded.

47. I may, at this stage, pause here to point out that Section 20 of the PFA Act makes provisions for taking of cognizance and trial of offences. For the purpose of this criminal petition, a careful study of the provisions of Section 20 is of immense importance. Section 20 reads as under:

20. Cognizance and trial of offences. - (1) No prosecution for an offence under this Act, not being an offence u/s 14 or Section 14A shall be instituted except by, or with the written consent of, [the Central Government or the State Government or a person authorized in this behalf, by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in Section 12, if he or it produces] in a court a copy of the report of the public analyst along with the complaint.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of-1974), an offence punishable under Sub-section (1AA) of Section 16 shall be cognizable and non-bailable.

48. From a careful reading of the provisions of Section 20, what transpires is that an offence, punishable u/s 16(1AA) of the PFA Act, is the only offence, which is cognizable. A cognizable offence is one, which can be investigated by the police without the order of the Magistrate. Since it is the offence u/s 16(1AA), which is the only cognizable offence under the PFA Act, one must necessarily turn to the provisions of Section 16(1AA). Section 16(1AA) reads:

Section 16[(1AA)] If any person in whose safe custody any article of food has been kept under Sub-section (4) of Section 10, tampers or in any other manner interferes with such article, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees.

49. When a person tampers or, in any other manner, interferes with an article of food, which has been kept in his safe custody, in terms of Section 10(4) of the PFA Act, he is liable to be punished with imprisonment for a term, which would not be less than six months, but it maybe extended to two years with fine, which shall be less than one thousand rupees. In other words, the only case, wherein the police can register an FIR and investigate a case without an order of a Magistrate is when an information is received by the police, in terms of Section 154 Code of Criminal Procedure, that a person, who had, in his safe custody, any article of food, in terms of Sub-section (4) of Section 10, has tampered or has, in any other manner, interfered with the article of food so kept in his custody, in the present case, when no allegation, as envisaged in Section 16(1AA), has been made against the accused, the police were not competent, in the present case, to investigate the case by registering a case-under any of the provisions of the PFA Act.

50. What logically follows from the above discussion is that for contravention of even Rule 32(e) and Rule 32(f), the police is not competent to register any case and investigate the same. Similarly, Rule 32(d) requires that every product of food shall carry a label specifying thereon the net weight or number or measure of volume of content, as the circumstances may require, except in the case of biscuits, breads, confectionery and sweets, where the weight may be expressed in terms of either average net weight or minimum net weight. Even in respect of contravention of Rule 32(d), the police, in the light of what have been discussed above, do not have any power of registering an FIR and investigating the same. As regards the statement, made in the FIR, that the fork-lift, used at the godown of the Petitioner company, seems to be powered by LPG cylinder, suffice it to point out that this statement is too vague and cannot be treated as accusation relating to commission of a cognizable offence.

51. It is also necessary, at this stage, to point out that when two or more persons agree to do or cause to be done an act, which is not illegal, by illegal means, such an agreement is defined by Section 120A IPC as a criminal conspiracy. Section 120B IPC makes criminal conspiracy a substantive offence.

52. In the case at hand, when there is no sustainable accusation that the Petitioner company has entered into a conspiracy with anyone to commit an offence or to commit a legal act by illegal means, no offence can be said to have been made out against the Petitioner company, its employees and functionaries u/s 120B IPC.

53. Because of what have been discussed and pointed out above, this Court is

fully satisfied that even if the contents of the FIR are assumed to be correct and true in their entirety, they do not make out any case of commission of any offence, which is cognizable. In such circumstances, allowing the FIR to survive and the investigation to be carried out will amount to abuse of the process of law. This Court is, therefore, firmly of the view that the impugned FIR needs to be quashed.

54. In the result and for the reasons discussed above, this criminal petition succeeds. The impugned FIR and the registration of the case made on the strength thereof, shall accordingly stand quashed.

55. With the above observations and directions, this Criminal Petition shall stand disposed of.