
(1989) 09 RAJ CK 0041

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No's. 360 of 1989 and 361 of 1989

Pukh Raj and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1989) 2 RLW 17 : (1989) WLN 344

Hon'ble Judges : Farooq Hasan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Farooq Hasan, J.—In the above mentioned both the miscellaneous petitions a common question of law is involved so both the miscellaneous petitions are being disposed of by a common order. More over the cases have been registered against the petitioners who are common in the petitions alleging in the complaint that the shop of the petitioner was inspected twice in a day and contravention of the act was alleged on this ground also both these petitions are disposed of by a common order.

2. These miscellaneous applications are filed u/s 482, Cr.P.C. for quashing the criminal proceedings in criminal case No.1 154/87 and 1153/87 pending in the Court of Chief Judicial Magistrate, Pali.

3. Briefly stated facts of the case are that Inspector. Weight and Measures, Pali inspected the country liquor shop of petitioners situated at Pali on 17 6-1987 and found that liquor sold in the bottles was not in standard measurement. Hence, contravention of Sections 32 and 7/23 of the Weight and Measurement Enforcement Act, 1958 (here in after referred to "Act") has been alleged. Learned Chief Judicial Magistrate took cognizance against all the petitioners under the aforesaid section of the Act. The petitioners through these miscellaneous petitions have challenged the said proceedings initiated by the

learned Chief Judicial Magistrate.

4. Heard learned Counsel for the parties.

5. It has been contended that cognizance for the contravention of the provisions of the Act can be taken only when the complaint is filed by the Controller or any Officer authorised by the Controller as is provided u/s 37 of the Act-Learned counsel further contended that in the instant case no such procedure is followed and the Inspector was not authorised to file the complaint. He further submitted that in the absence of valid complaint proceedings before the learned CJM, is vitiated.

6. Learned Public Prosecutor sought time to seek instructions but admitted that the complaint has been filed by the Inspector.

7. I have considered the points raised by the learned Counsel for the petitioners and gone through Section 37 of the Act. It cannot be disputed that any complaint for the contravention of the provisions of the Act can be filed by the Controller or by any authority by the Controller as is provided u/s 37 of the Act. In the present cases the complaints have not been filed by the Controller or any officer authorised by the Controller. In the instant cases the complaint was filed by the Inspector under the authorisation made by the Assistant Controller. It is this clear that (be Inspector was authorise to file the complaints who if was delegated the powers by the Controller, then in that situation he (Asstt. Controller) was only competent to file the complaint and he had no power to again authorise the Inspector to file complaint. It is settled law that an authorised person cannot authorise someone else to do certain act for which he himself is authorised by someone else. Learned C.J.M. could have seen this important aspect of the case before taking cognizance.

8. Learned counsel further contended that if assuming the Asstt. Controller was also the competent officer to authorise someone to file the complaint then in that situation also the complaint has not been filed against those persons for whom the Inspector was authorised because the Asstt. Controller has authorised to file the challan against Pukhraj S/o Murlidhar, partner or proprietor of M/s. Pukhraj Murlidhar and Company in the Court. Pukhraj S/o Murlidhar is not the accused in this case and he neither the partner nor the proprietor of M/s. Pukhraj Murlidhar and Company. Complaint has been filed against M/s. Pukhraj Murlidhar and its partners and servants for which the Inspector was not authorised at all. Thus, the filing of the complaint and further proceedings in the trial court are without jurisdiction and liable to be quashed,

9. In view of the foregoing discussions I am of the opinion that the proceedings against the petitioners have not been legally instituted as the proceedings are going on in the court of Chief Judicial Magistrate on the basis of a complaint filed by the incompetent officer. On the basis of such complaint neither any cognizance was possible nor any proceedings are warranted.

10. In view of the foregoing discussions, these miscellaneous petitions are allowed and the proceedings before the learned Chief Judicial Magistrate in Case No 1154/8and 153787 are quashed. The accused petitioners are discharged. Their bail bonds, if any, are cancelled.