

(2004) 09 MP CK 0026

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 166 of 2004

Rakesh Chaturvedi (Capt.) and others

APPELLANT

Vs

Inspector, Weights and Measures

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Standards of Weights and Measures (Enforcement) Act, 1985 — Section 33, 47, 5, 51, 63

Standards of Weights and Measures Act, 1976 — Section 24, 28, 3, 63(a)(ii), 83

Citation : (2004) 4 MPLJ 307

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : M.G. Upadhyaya, for the Appellant; Girish Desai, Deputy A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.L. Kochar, J.

This Criminal Revision has been filed against order dated 18-12-2003 passed by learned Judicial Magistrate, Indore in Criminal Case No. 13683/00, whereby learned trial Court disallowed prayer of the counsel for the applicant to discharge the applicants because the complaint was not filed by legally authorized person, as per Provisions u/s 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 (for short, "the Act"), the trial Court has no jurisdiction to take cognizance of the offence.

The Non-applicant, Inspector, Weights and Measures, Indore, has filed criminal case against the applicants for commission of breach of section 24/47 and 33/51 of the Act and Rule 23/2 read with Rule 39 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 framed u/s 83 of the Standards of Weights and Measures Act, 1976 (for brevity "the Act of 1976"). On the date of framing of charge before the trial Court, learned counsel for the applicants, had filed an application u/s 63 of the Act for quashment of the complaint because

the said complaint was not filed by the authorized person as required u/s 63 of the Act. Learned trial Court dismissed the application holding that the complaint was filed by the Inspector, Weights and Measures and he was authorized by Deputy Controller of Weights and Measures, Indore. The same point is, canvassed before this Court for quashing the criminal proceedings before the trial Court.

Having heard learned counsel for the parties and after perusing the entire record of the case, this Court is of the view that there is no substance in the submission urged by the learned counsel for the applicants before this Court. For convenience, section 63 of the Act is reproduced hereinbelow.

Section 63. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure 1973, (2 of 1974)

(a) No court shall taken cognizance of an offence punishable under this Act except upon a complaint, in writing made by-

(i) the Controller;

(ii) Any other officer authorized in this behalf by the Controller by general or special order;

(iii) Any person aggrieved, or

(iv) A recognized consumer association whether the person aggrieved is a member of such association or not.

(b) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

By order dated 6-4-2004, after hearing learned counsel for the parties for some time, this Court has directed the prosecution to file appointment order of Inspector u/s 5 of the Standards of Weights and Measures (Enforcement) Act, 1985. In pursuance thereof, appointment order of the Inspector Shri Ajit Shrivastava, who has filed complaint and order No. 5749/VMB/89 dated 9-5-1989 issued by the Controller, Weights and Measures, Bhopal as also appointment order of Inspector, Weights and Measures Shri Ajit Shrivastava, No. 1235 dated 6-5-1985 have been filed by the prosecution. The notification issued by Controller, Legal Metrology, M. P. Bhopal is reproduced as under:

Office of Controller, Legal Metrology, M.P. Bhopal

ORDER

No. 5749/VMB/89

Bhopal 9-5-1989

In exercise of the powers conferred by clause (a)(ii) of section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 (54 of 1985), I

Chandrakant, Controller of Legal Metrology, M.P. State, authorize the Inspectors of Legal Metrology, appointed under sub-section (1) of section 5 of the said Act, for the purposes of the said section 63.

Sd/- (Chandrakant) Controller, Legal Metrology, MP Bhopal.

Along with the complaint, the prosecution has also filed an order authorizing the Inspectors. Weights and Measures, Indore to file complaint before the Court, has been issued by the Controller Weights and Measures, Indore by letter No. 2399 dated 2-9-2000 has also been filed.

The Central Government has enacted the Standards of Weights and Measures Act of 1976. This enactment is describing classes of undertakings, classes of goods, classes of Weights and Measures or classes of users of weights and measures and the second enactment is Standards of Weight and Measures (Enforcement) Act, 1985. This enactment providing Provisions for enforcement of the Act. Section 28 of the Act of 1976 is regarding the appointment and powers of Directors and other staff. Under sub-section (1) of section 28 of the Act of 1976, the Central Government may, by notification appoint a Director of Legal Metrology and as many Additional, Joint, Deputy or Assistant Directors and other officers. By order No. 1768/Weights and Measures/138/dated 10-3-1998, the Controller Weights and Measures Madhya Pradesh, has authorized all Deputy Directors to grant sanction for prosecution as well as compounding the offence. This order was passed by the Controller in pursuant to notification No. 571 dated 16-7-1986 issued by the Central Government as per Provision u/s 28 sub-section (7) of the Act of 1976, authorizing the Controller to delegate its power to any officers subordinate to him, not being an officer below the rank of an Inspector and in pursuant to order dated 10-3-1998, the Deputy Director has granted sanction to Inspector Weights and Measures, Indore, and at the relevant time, Shri Ajit Shrivastava was the Inspector Weights and Measures, Indore. Before the trial Court, along with the complaint, sanction dated 2-9-2000 as mentioned above, was filed. Before this Court, another order dated 9-5-1989, issued by the Controller, as per provision u/s 63 of the Act has also been filed, authorizing the Inspector, Weights and Measures to appoint a controller of legal Metrology, and appointed under sub-section (1) of section 5 of the Act, for the purposes of Clause (a) of sub-section (ii) of section 63 of the Act.

Section 3 of the Act is providing definitions and according to subsection (c) "Controller" means the Controller of Legal Metrology appointed u/s 5. By order dated 9-5-1989, Controller of Legal Metrology shall already issued order u/s 63(a) (ii) authorizing Inspector, Weights and Measures to file complaint before the Court. Therefore, the complaint filed by the Inspector, Weights and Measures, Indore before the trial Court against the applicants, is filed by the authorized person by the Controller. Therefore, the Court has rightly taken cognizance thereon. For prosecution under the Provisions of the Act of 1976, and the Rules framed thereunder, authorization was already filed before the trial Court on 2-9-2000 as mentioned above in detailed.

In view of the aforesaid factual and legal position, the complaint was filed by the non-applicant before the Court below is properly and legally filed and the Court has rightly taken cognizance thereon. Hence, no case is made out for quashing the proceedings in favour of the applicants.

Consequently, this revision is hereby dismissed in the terms indicated above.