(1993) 02 MAD CK 0054

In the Madras High Court

Case No : Criminal Revision No. 329 of 1989

Ramchand, Proprietor, P.M. Vest and Co. APPELLANT

Vs

State RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Citation : (1993) LW(Cri) 409

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : V. Manokaran, for the Appellant; R. Raghupathy Addl. Public Prosecutor on behalf of the State, for the Respondent

Final Decision : Allowed

Judgement

Arunachalam, J.—Petitioner Ramchand (A.1) was convicted under R.23(2) read with R.39(2) of Standards of Weights and Measures (Packed Commodities) Rules, 1977 and sentenced to pay a fine of Rs. 500/-in default to suffer simple imprisonment for 4 weeks. Sunil arrayed as A.2 in the same calendar case was, however, acquitted by the trial Magistrate. Aggrieved Petitioner challenged the correctness of his conviction and consequent sentence in C.A. No. 177 of 1988 on the file of the VIII Additional Sessions Judge, Madras. Appellate Court concurred with the findings recorded by the trial Magistrate and dismissed the appeal. Hence this revision.

2. The case of the prosecution is that when inspection was conducted in the shop of the Petitioner at 10:45 a.m. on 22.9.1987 in the absence of the Petitioner it was found that M.O.1 Mico Spark plug had been sold for Rs. 17/- though the maximum price mentioned in the carton was Rs. 16.20. Similarly M.O.2 Lucas T.V.S. Genuine Spare was sold at Rs. 33.00 though the price fixed on the carton is Rs. 32.74. There is no dispute that M.Os. 1 and 2 were sold at Rs. 17/- and Rs. 33/-respectively. It is the case of the Petitioner, that he was entitled to sell at the rates sold by him, for price shown on the cartons were only maximum price and not maximum retail sale price. To substantiate his case, he marked Ex.D.1

and D.2 received from the manufacturers to show that the consumer price for M.O.1 inclusive of tax and surcharge will be Rs. 18.87 and the net sale price for M.O.2 would work out to Rs. 37.19. However, the appellate court felt, that non-examination of the authors of Ex. D.1 and 2 as received by him from the respective manufacturers, Prosecution has not challenged that Ex. D.1 and D.2 were not genuine documents. The more important question is whether the Petitioner had violated any Rule under the Standards of Weights and Measures (Packed commodities) Rules 1977. "Total sale price has been defined under R.2(r) to mean the maximum price at which the commodity in package form may be sold to ultimate consumer inclusive of all taxes, transport charges and other duties. Under R.2(q) sale price in relation to any commodity in package form is stated to mean price inclusive of freight, but exclusive of local taxes and where such price is mentioned on the package, there shall be printed on the package the words ''maximum price''........local tax. Further to mean retail sale price where such price is mentioned on the package, there shall be printed on the package the words, ''maximum price'', has not been printed on any of the cartons, M.Os. 1 and 2. If retail sale price means the maximum price at which the commodity in package form may be sold to ultimate consumer, one cannot overlook Ex.D.1 and 2 which denote the ultimate consumer price. To convict a person under R.23(2) of the Rules, prosecution must establish that the said person had sold the commodity in package form at a price exceeding the retail sale price thereof. That the prosecution has failed to establish in this case. If that be so, the Petitioners will be entitled to an acquittal. The totality of facts mentioned by me clearly show that the conviction recorded on the Petitioner cannot be sustained. Conviction and sentence shall stand quashed. Petitioner is acquitted. Fine if any paid shall be refunded. This revision is allowed.

