

(2011) 08 KL CK 0020
In the High Court Of Kerala
Case No : Criminal M.C. No. 3240 of 2006

The Managing Director

APPELLANT

Vs

The State of Kerala and Anr

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2011) 3 KLJ 784

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

Bench : Single Bench

Advocate : C.P. Mohammed Nias, for the Appellant; L.G. Suresh Babu (PP), for the Respondent

Final Decision : Allowed

Judgement

N.K. Balakrishnan J.

1. This petition is filed u/s 482 of Cr. P.C to quash the further proceedings in C.C. No. G-840 of 2005 of Judicial First Class Magistrate Court-II, Kollam. That case was taken cognizance on a complaint filed by the second respondent alleging commission of offences punishable under Sections 39(4), 63 and 67 of the Standards of Weights and Measures Act, 1976 (hereafter referred to as "Act") r/w Rules 4, 6(1), 12(6), 23(1) and 39 of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 (hereafter referred to as "Rules") On 1.9.2003 the second respondent was stated to have inspected the shop of one A.V. Shivaraj, proprietor of M/s. Sharavana Agencies, Maharani Market, Kollam. It is alleged that the second respondent detected certain violations under the Rules on the packages which were exhibited for sale in that shop. According to the complainant the packages bore unlawful and misleading expressions on the packages "30 g (FREE)" and "FREE 10 PIECES of Alpenliebe" kept for sale in the name and style "Alpenliebe Cream Strawberry Candy". The complainant says that the word "tree" is similar to the word "EXTRA" and, therefore, there was violation of Section 39(4) of the Act and Rule 12(6) of the Rules. Annexure-I is

the complaint filed by the second respondent before the Magistrate. The complaint narrates the allegations mentioned earlier.

2. The petitioner contends that several products are being sold or exhibited for sale having identical advertisements, offering a particular quantity as "free". In support of that submission copies of such advertisements have been produced before court. The question is not whether some other companies are also engaged in making such advertisements. The fact that the products of some other companies are also sold making similar advertisements will not come to the rescue of the petitioner if the act alleged against the petitioners is proved to be illegal.

3. The crucial point for consideration is whether there has been violation of the Rules attracting the penal provision mentioned in the complaint. The manner in which declaration of quantity shall be expressed is mentioned in Rule 12 of the Rules mentioned earlier. Rule 12(6) reads thus:-

(6) The declaration of quantity shall not contain any word or expression which tends to create an exaggerated, misleading or inadequate impression as to the quantity of the commodity contained in the package, for example, words or expression like-

(i) "minimum", "not less than", "average", "about", "approximately" or any other word of a similar nature, or

(ii) "Jumbo", "giant", "full", "family", "huge", "economy", "large", "extra", "colossal", "king", "queen" or any other word or expression of a similar nature, shall not be used.

4. The learned counsel for the petitioner would submit that the word "Free" which according to the complainant is a misleading word or expression is not mentioned in Rule 12(6). But the complainant contends that the word "Free" is similar to the word "Extra". It is pointed out by the learned counsel for the petitioner that the intention in showing such words or expressions on the label/advertisement, should be one which tends to create an exaggerated, misleading or inadequate impression as to the quantity of the commodity contained in the package. Therefore, according to the learned counsel to uphold the argument advanced on behalf of the complainant the word or expression (here the word "Free") must be one which must relate to the commodity contained in the package intended for sale for the price shown therein. According to the petitioner it states only about the quantity of the commodity contained in the package and not about the small packet given as free. Even according to the complainant the actual package exhibited for sale contained the label declaration as to the net weight as 500 grams. Since the quantity of the commodity contained in the package leaves no doubt as to its weight, that it is 500 grams, which is the net weight of that package, how could it be construed as a misleading word or expression is the pertinent question posed by the learned counsel for petitioners. Unlike the word "Extra" which may not describe the actual quantity of commodity

contained in the package exhibited for sale, here, the weight of the commodity contained in the package was specified and it would create no doubt nor can it mislead the consumer. The object of the Act is to regulate interstate trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and to provide for matters connected therewith or incidental thereto. So far as the case on hand is concerned since the weight of the commodity contained in the package was specified as "net weight 500 grams", it can be found that there was no misleading statement as alleged by the complainant. The learned counsel for petitioner would submit that a manufacturer or seller may offer ever so many products as "free". It may be intended to attract or lure the customers, but so far as the commodity sold is concerned, if there is no misleading word or expression as to the quantity, weight or number, it cannot be said that there was violation of Rule 12(6). There is no allegation that the commodity exhibited for sale was not duly pre-packed bearing thereon a label securely affixed thereto, and it contains such declarations as are required to be made under the Rules. There is also no contention that the declaration to be made on every package as required under Rule 6 was not complied with. There was no noncompliance of Rule 4 or Rule 6 of the Rules as well. There is no allegation that the retail dealer had sold the item at a price exceeding the retail sale price indicated on the label declaration. If there is no violation of Rule 12 (6) as mentioned earlier then there can be no difficulty to hold that there was no violation of Rule 23 (1) also since the package stood complied with in all respects the provisions of the Act and the Rules.

5. The statement on the package or label as to the net weight of the contents thereof shall not include any expression which tends to qualify such weight, measure or number as has been stated in Section 39 (4) of the Act. This section is similar to Rule 12(6) which says that the package or label shall not include any impression which tends to qualify such weight, measure or number. Here, it was specifically noted that the net weight is 500 grams. In the complaint and in the mahazar (annexure-1) what was stated, with reference to the weight, is that the net weight was 500 grams and 3 grams free. At another plea it is shown as "30 grams free" and that "free 10 pieces" were also offered to the purchaser (consumer). The learned counsel for the petitioner would submit that the actual package intended for sale is the package on which the net weight was specifically noted as 500 grams. The word "Free" does not qualify the statement as to the net weight of the commodity contained in the package when the commodity was packed. The other offer made is only "Free"; it does not form part of the declaration as to the net weight of the commodity contained in the package. So far as it relates to this case the word "free" means : costing nothing, gratuitous (Blacks Law Dictionary seventh edition). Section 63 is the penal provision for contravention of Section 39. Section 67 is the penal provision in respect of other contraventions in respect of which specific penalty is not provided for In the factual background of what has been stated above, the learned counsel for the petitioner would submit that the allegations contained in the compliant would by

no stretch of imagination constitute any infraction of law to sustain the prosecution against the petitioner. According to the learned counsel if ultimate conviction is impossible in view of the fact that there was no infraction of any Rule no purpose would be served by prosecuting the petitioner and as such this Court would be justified in invoking the jurisdiction u/s 482 Cr. P.C to quash the complaint as otherwise it would lead to miscarriage of justice. The Rule has specified certain words which according to the law makers may tend to create exaggerated, misleading or inadequate impression as to the quantity of the commodity contained in the package. The very fact that the word "Free" is not mentioned or cited as an example would make it clear that the rule making authority did not contemplate that the manufacturer or seller should not offer a small quantity of the very same commodity as "free". When the offer so made does not in any way infringe any of the rules pertaining to the weight, quantity or number of the commodity contained in the package, according to the petitioner, the words "Free" 10 cases of Alpenliebe nor 30 grams "free", do not tend to create exaggerated, misleading or inadequate impression as to the quantity contained in the package. Since the package bears a clear and unambiguous declaration as to the net quantity contained in that package intended and packed for sale it cannot at any stretch of imagination amount to contravention of Rule 12(6). Such consumer promotional schemes, offering something as "Free" does not offend Rule 12(6), for, according to the learned counsel for the petitioner, it is a normal practice prevalent in such commercial venturers. Looking at the conspectus of all factors what is discernible is that so far as the package intended to be sold and exhibited is concerned there was no exaggerated or misleading impression; there was clear and unambiguous declaration that the weight of the commodity contained in the package was 500 grams. The word "Free" 3 grams does not pertain to the net weight of the commodity contained in the package. That was something given as "free". As such the case of the prosecution that there was contravention of Rule 12(6) and Section 39(4) attracting the penal provisions contained in Section 63 and 67 of the Act cannot be sustained. If that be so, it has to be held that the prosecution would be abuse of process of the court and thus this Court should invoke jurisdiction u/s 482 of Cr. RC to quash the further proceedings in CC. No. G. 844 of 2005.

In the result, this CrI. M.C. is allowed. The further proceedings in CC. No. G.840 of 2005 of the Judicial First Class Magistrate Court-II, Kollam is hereby quashed. But it is made clear that if any other violation is detected the complainant can proceed in respect of those violations.