(1996) 04 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7970-M of 1993

Vijay Kumar Sharma APPELLANT

Vs

State (U.T.), Chandigarh RESPONDENT

Date of Decision : 25-04-1996

Acts Referred:

Citation : (1997) 1 RCR(Criminal) 68

Hon'ble Judges : H.S.Bedi, J

Advocate : Gautam Dutt, R.S. Rai, K.G. Chaudhary, Advocates for appearing Parties

Judgement

H.S. Bedi, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing of the complaint (Annexure P1) and all subsequent proceedings arising out thereto. The petition arises out of the following facts :

2. The petitioners are employees of Bata India Limited which is a company incorporated under the Companies Act, 1913 with its Head Office at Calcutta. The said company is a manufacturer of high quality footwear items and accessories and has its own retail shops and B.S.C. Franchised Stores located in different parts of the country for the sale of goods manufactured by it. It appears that on 6th July, 1990, the petitioners sold a pair of shoes vide Cash Memo No. 4415 (Annexure P3) for Rs. 49.16 which was more than the printed price on the package. This led to the filing of the complaint Annexure P1 on the ground that the sale of pair of shoes at a price in excess of the price given on the package was a violation of Rule 23(2) of the Standard of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as, the Rules''). Aggrieved thereby the present petition has been filed.

3. In the petition it has been specifically mentioned that the complaint was misconceived inasmuch as that prior to the date of the alleged sale i.e. 5th July, 1990 the price of the shoes had been increased by the company itself and vide a

circular issued and made effective from 5.7.1990 the price of the shoes in question had been increased from Rs. 39.95 to Rs. 44.95 exclusive of taxes and that as a result of this increase, the shoes had been sold for Rs. 48.16 and not Rs. 49.16 as alleged in the complaint and that this price had been fixed in terms of the increase circulated by the company. In support of this plea the petitioner has also annexed Annexure P2, a copy of the circular issued and Annexure P3 a copy of the cash memo issued on 6.7.1990.

4. Notice was issued in this case on 8th July, 1993 and the proceedings in the trial court were also stayed meanwhile. Despite the passage of almost three years, no reply has been filed by the respondent till today. On facts, therefore, the complaint remains unrebutted.

5. I have heard the learned counsel for the parties on this aspect and find that this petition deserves to succeed. The decision of the case would rest on the interpretation of Rule 23(2) and (4) of the Rules. Both the rules are reproduced below :

"(2) No retail dealer or other person shall make any retail sale of any commodity in packaged form at a price exceeding the retail sale price thereof;

(4) Where, after any commodity has been prepacked for sale, any tax payable in relation to such commodity is increased or any fresh tax is imposed on such commodity, the retail dealer or any other person, shall not make any retail sale of such commodity at a price exceeding the revised retail sale price, communicated to him by the manufacturer, or where the manufacturer is not the packer, the packer; and it shall be the duty of the manufacturer or packer as the case may be, to indicate by not less than 2 advertisements in one or more newspapers and also by circulation of notices to the dealers and to the Central Government, State Government and Governments of Union Territories, the revised prices of such packages but the difference between the price marked on the package and the revised price shall not, in any case, be higher than the extent of increase in the tax or in the case of imposition of fresh tax so imposed."

6. A bare look at the subrule (2) indicates that no retail dealer shall make any sale at a price exceeding the retail price thereof. It clearly indicates that the retail price mentioned in the rule does into mean the price mentioned on the package and should be the sale price in the price list issued by the company itself. It is apparent from a reading of Annexure P2 which is a circular issued on June 25, 1990 and made effective from 5th July, 1990 that the company itself had increased the price of all kinds of shoes from Rs. 39.95 to 44.95 exclusive of taxes. It is, therefore, apparent that the retail price was the one fixed by Annexure P2. It is not the case of the respondent that the price that is Rs. 48.16 charged from the purchaser was not in accordance with the price fixed by Annexure P2.

7. The argument of Mr. Rai that the mater would be covered by subrule (4) of Rule 23 is also without merit as the said rule only talks about refixation of the

sale price and the notification of the increased price before it can be sold only where the sale price is to be increased on the fresh levy of tax or on any increase in the rate of tax and not in a situation where the price of the commodity itself is increased by the manufacturer. Admittedly the rate of tax with regard to the sale of shoes has not been increased in the present case.

8. For the reasons recorded above, the present petition is allowed, the complaint Annexure P1 and all subsequent proceedings thereto are quashed.

