### IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

### **C.R. CASE NO.310/2017**

#### State

Vs.

Md. Keramat Ali Son of Md. Abdul Kadir Resident of village- Behuguri, P.S-Mikirbheta, District-Morigaon, Assam

Present: Sri N.K. Das, AJS

Chief Judicial Magistrate, Morigaon, Assam

For the state: Mrs. A. Kakati, Asstt. P.P.

For the defense: Mr. P. Mazumdar & Mrs. R. Devi, Advocates.

Offences explained: u/s 33 r/w s. 24 of Legal Metrology Act, 2009

Evidence recorded on: 3-3-2018 and 9-1-2019

Statement of defense recorded on: 2-2-2019
Argument heard on: 2-2-2019
Judgment delivered on: 16-2-2019

#### **JUDGMENT**

- 1. The prosecution case in brief is that one Sri C.R. Saikia, Inspector, Legal Metrology, Morigaon lodged a complaint against the aforementioned accused alleging therein that during the course of his inspection on 27-6-2014, at Barapujia in the premises of Md. Keramat Ali, i.e. the aforementioned accused, it was found that one piece of 1 Kg. C.I. (cast iron) weight, one piece of 500 gm and one piece of 200 gm were being used by the aforementioned accused person in his commercial transaction without verification. Accordingly, the above mentioned C.I. weights have been seized from the possession of the accused for violation of section 24 of the Legal Metrology Act, 2009.
- 2. Subsequently, the aforementioned complainant was authorized in writing by the Controller of Legal Metrology, Assam to lodge a complaint under the Legal Metrology Act, 2009 against the accused vide letter No.CWM/PAC-42/14-15/7134 dated 3-11-2014. The copy of the authorization letter dated 3-11-2014, the seizure certificate dated 27-6-2014 and two offence reports were also annexed with the aforementioned complaint.

- 3. On receipt of complaint, summons to the accused person was issued on receipt of which the accused person appeared before the court and was allowed to go on bail. The accused was furnished with all the relevant documents under section 207 CrPC. As the violation of the provision under section 24 of the Legal Metrology Act, 2009 is punishable vide the provisions of section 33 of the said Act, the particulars of offence under sections 33 read with section 24 of the Legal Metrology Act, 2009 were explained to the accused. The accused pleaded not guilty and claimed to be tried.
- 4. The prosecution in support of its case examined two witnesses namely Sri Kameswar Bordoloi and Sri Chenaram Saikia as PW-1 and PW-2, respectively. Prosecution side also exhibited five documents including the complaint, seizure list and offence reports. PW-2 Sri Chenaram Saikia also produced one 1Kg C.I. weight, one 500 gm C.I. weight and one 200 gm C.I. weight during his deposition. The accused while under examination under section 313 CrPC denied all the allegations leveled against him. The defence refused to adduce any evidence.
- **5.** I have heard the arguments Mrs. A. Kakati, the learned APP and the argument of Mr. P. Mazumdar, assisted by Mrs. R. Devi, the learned defence counsels. I have also perused the case record and considered the same. The following point is formulated for determination:
  - i. Whether the accused person, on or about 27-6-2014, at about 1.30 p.m., at village Barapujia under Mikirbheta police station of Morigaon district was using one 1 Kg. C.I. weight, one 500 gm C.I. weight and one 200 gm C.I. weight in his premises, without verification, as required under section 24 of the Legal Metrology Act, 2009 and thereby committed an offence punishable under sections 33 read with section 24 of the Legal Metrology Act, 2009?

### <u>Discussion of evidence, decision and reasons therefor:</u>

**6.** PW-1 Sri Kameswar Bordoloi is one of the two witnesses listed in the complaint. The other witness Md. Idrish Ali died before he could depose in court, as reported by the concerned Officer-in-Charge. Sri Kameswar Bordoloi in his deposition has stated that he does not remember when the occurrence took place. According to him, Sri Chenaram Saikia lodged the case against the accused because of non-verification of weights. He also stated that he knows that the

occurrence took place at Mikirbheta police station but expressed ignorance as to how the occurrence took place. He further stated that his name was written in the seizure certificate but he did not sign the same. While under cross-examination, he has stated that he was not present at the time of the occurrence. It may be mentioned herein that the said PW at the time of his deposition was a retired Manual Assistant of Legal Metrology, Morigaon.

7. PW-2 Sri Chenaram Saikia is the complainant, who lodged the complaint, which is exhibited as exhibit-2 and his signature thereon is proved as exhibit-2 (1). He deposed in his evidence that he has no previous acquaintance with the accused and he came to know of him only during his inspection. According to him, he went for inspection at Barapujia cross-road and during his inspection, he found the accused Md. Keramat Ali using without verification, one 1 Kg. cast iron (C.I.) weight, one 500 gm C.I. weight and one 200 gm C.I. weight in his business and were selling articles to customers by using those weights. When the said PW asked him, the accused admitted that those weights were his own. It was also told by the accused to the said PW that the said three weights were being used by the accused without verification. Therefore, PW-2 seized those three weights after obtaining signature of the accused Md. Keramat Ali. The witness PW-2 proved his signature as exhibit-1(1) and also exhibited the signature of Md. Keramat Ali as exhibit-1(2) on the seizure certificate. According to him, the accused put his signature in the seizure certificate in his presence. Thereafter, the said PW prepared offence reports and wrote to the Assistant Controller of Legal Metrology, Nagaon seeking permission to launch prosecution against the accused, who, in turn, requested the Controller of Legal Metrology, Assam to lodged complaint against the accused. Subsequently, on receipt of sanction to launch prosecution, the complaint was lodged against the accused. Sanction letter has been exhibited as exhibit-3 and the signature of the Controller of Legal Metrology, Assam, Mr. M. Rajbongshi is exhibited as exhibit-3(1) and the PW-2 indicated that he could identify the signature of Mr. M. Rajbongshi. The two offence reports were exhibited as exhibit-4 and exhibit-5, wherein the said PW Sri Chenaram Saikia proved his signature as exhibits - 4(1) and exhibit - 5(1), respectively. Three weights, one 1 Kg. C.I. weight, one 500 gm C.I. weight and one 200 gm C.I. weight were produced and exhibited during his evidence as exhibit-X-1, exhibit-X-2 and exhibit-X-3, respectively.

- 8. Though the said PW-2 was cross-examined; however, nothing could be elicited from him to indicate what he deposed in his examination-in-chief was false or untrue. Rather it has been reiterated, while under cross-examination, that three weights were seized from the shop of the accused situated at Barapujia. Perusal of the seizure certificate, which is exhibited as exhibit-1, also indicates that the said three weights were seized on 27-6-2014, at about 1.30 p.m. at Barapujia. The said PW, further, indicated in his cross-examination that at the time of seizure there were other persons available in the shop of the accused person but they refused to become witness of the seizure. The only discrepancy which we can notice in the evidence of PW-2 is that, according to him, at the time of seizure Md Idrish Ali and Sri Kameswar Bordoloi were present. We have also noticed that Sri Kameswar Bordoloi deposed in court as PW-1. PW-2 also stated that Sri Kameswar Bordoloi is an employee of his office. But Sri Kameswar Bordoloi, as PW-1, in his cross-examination, admitted that he was not present at the time of the occurrence, though, he deposed that Sri Chenaram Saikia lodged the case against the accused for the offence of non-verification of weights. PW-1 also admitted that he came to know that the occurrence took place at Mikirbheta. The question whether this admission of PW-1 in his crossexamination is sufficient enough to throw out the evidence of PW-2.
- The statement of Sri Kameswar Bordoloi, who was aged about 65 years at the time of deposition, was made in court almost after four years of the occurrence. The fact that though he could remember the lodging of the case against the accused by the complainant and also the fact that the occurrence took place at Mikirbheta, he could not remember when the occurrence took place. Therefore, his statement that he was not present at the place of occurrence at the time of occurrence is attributable to the fact that almost four years has elapsed since the time of the occurrence. It appears to this court that the said PW, though was present at that time; however, due to passes of time of almost four years, could not recollect his presence at the place of occurrence at the relevant time.
- **10.** There is nothing in the cross-examination of PW-2 or in the cross-examination of PW-1 to indicate that the complainant had any previous enmity with the accused. It has already been stated by the PW-2 that he had no previous acquaintance with the accused. Therefore, lodging of a false complaint

against the accused is out of question. Further, seizure of the three weights, as indicated above, from the shop of the accused also remained un-assailed and the same has been reiterated by PW-2 in his cross-examination also. Examination of the three weights by the court reveals that there is no verification mark on those three C.I. weights. Moreover, the signature of the accused, which is exhibited as exhibit-1(2), which, according to PW-2, was put by the accused at the time of seizure of the three weights, appears to be identical with the signatures of the accused put by him in all his applications as well as attendance sheets submitted in court. If the accused was not present at the place of occurrence and was not using the said weights, there was no reason for him to put his signature on the exhibit-1 seizure certificate. Therefore, the argument of the learned defence counsel that the accused was not using the unverified weights, or, for that matter, was selling no goods by using unverified weights cannot be accepted. This court is convinced that the accused was using the aforementioned three weights on 27-6-2014 at about 1.30 p.m. at Barapujia without verification as required under section 24 of the Legal Metrology Act, 2009 which is punishable under section 33 of the aforementioned Act.

- **11.** For the aforesaid reasons and discussion the point for determination is answered in the affirmative.
- **12.** The prosecution has, thus, been able to proved the case beyond all reasonable doubt against the accused. Therefore, the accused is found guilty for the commission of the offence under section 33 read with section 24 of the Legal Metrology Act, 2009. Accordingly, the accused is convicted under section 33 read with section 24 of the Legal Metrology Act, 2009.
- **13.** Having regard to the circumstances of the case, the manner in which the accused Md. Keramat Ali committed the offence and his continuous denial, punishment need to be imposed to deter him from committing similar offence in future and deter others from committing such kind of offence and therefore, the benefits of the provisions of the Probation of Offenders Act, 1958 cannot be extended to the convicted person.
- **14.** The aggravating circumstances of the case are that the convict, being a businessman were carrying out his business transaction without verification of the weights as required under section 24 of the Act. The customers who brought goods from him had a right to expect that verified weights would be used while

selling goods to them. The continued denial of the alleged offence while the court examined him under section 313 CrPC speaks volume of the fact that he has no repentance for the crime committed by him.

- 15. The mitigating circumstances of the case are that the convict is a petty businessman involved in selling goods in an interior place of the district. There is no record of any previous conviction against him. I have considered the personal circumstances of the convict, the need to punish the convicted person, a punishment which must be just in all the circumstances, the need to protect the community, the need for a very strong denunciation of the conduct of the convicted person, having regard to the fact that he must be sentenced according to law and the need to generally deter others who might be like minded from committing similar offence. The primary sentencing consideration here is punishment, deterrence, both personal and general, denunciation of the conduct and promotion of respect for the rule of law. In sentencing, I take account of all the matters I have referred to including the statutory maximum penalty for the offence.
- **16.** I have heard the convict as well as his learned counsel on the point of sentence. Taking into account the fact that this is the first offence on the part of the convict, this court is inclined to deal with the convict leniently while sentencing him in this case. I am inclined to impose the minimum punishment provided under the law. The convict is, accordingly, sentenced under section 33 read with section 24 of the Legal Metrology Act, 2009, to pay a fine of Rs. 2000/-(Rupees two thousand), in default, to undergo simple imprisonment for 1 (one) month.
- **17.** The bail bond of the convict is extended for a period of six months in view of section 437A of CrPC.
- **18.** The seized three C.I. weights is confiscated to the State in view of section 16 (1) of the Legal Metrology Act, 2009. The same be sold as scrap and the sale proceed be deposited in Govt. Treasury, in due course.
- **19.** Furnish a free copy of the judgment to the convict.
- **20.** The judgment is pronounced in open court and given under my hand and seal on this 16<sup>th</sup> day of February, 2019 at Morigaon, Assam.

### **APPENDIX**

## (A) PROSECUTION EXHIBITS:

Ext.-1: Seizure list

Ext.-1(1): Signature of Sri Chenaram Saikia, Inspector, Legal Metrology

Ext.-1(2): Signature of Md. Keramat Ali

Ext.-2: Complaint

Ext.-2(1): Signature of Sri Chenaram Saikia, Inspector, Legal Metrology

Ext.-3: Sanction letter

Ext.-3(1): Signature of Sri M. Rajbongshi, Controller of Legal Metrology, Assam, Guwahati.

Ext.-4 & Ext.-5: Offence Reports

Ext.-4 (1) & Ext.-5 (1): Signatures of Sri Chenaram Saikia, Inspector, Legal Metrology

### (B) **DEFENCE EXHIBITS**

None

### (C) EXHIBITS PRODUCED BY WITNESSES

Ext.- X-1: One 1 Kg. C.I. weight

Ext.- X-2: One 500 gm C.I. weight

Ext.- X-3: One 200 gm C.I. weight

### (D) <u>COURT EXHIBITS</u>

None

### (E) PROSECUTION WITNESSES

P.W.-1: Sri Kameswar Bordoloi

P.W.-2: Sri Chenaram Saikia, Inspector, Legal Metrology

# (F) <u>DEFENCE WITNESSES</u>

None

# (G) COURT WITNESSES

None

Chief Judicial Magistrate, Morigaon