

The State Of Maharashtra Through The ... vs Subhash Arjundas Kataria. M/S. Liberty ... on 23 January, 2020

Bench: Arun Mishra, Vineet Saran, M.R. Shah

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) . 1117/2010

THE STATE OF MAHARASHTRA & ORS.

APPEL

VERSUS

SUBHASH ARJUNDAS KATARIA
M/S. LIBERTY OPTICS AND EXPORTS
AS SOLE PROPRIETOR

RESPO

O R D E R

1. Heard learned counsel for the parties.

2. The fact lies in a narrow compass. The Authorities under The Standards of Weights and Measures Act, 1976 visited the premises of M/s. Globus Stores Pvt. Ltd., on 17.10.2003, and under a panchnama seized sunglasses belonging to the respondents vide seizure memo drawn on the same day for not declaring the name and address of the manufacture and alteration/smudging of the Standards of Weights and Measures (Enforcement) Act, 1985 (Section 35/51) read with Section 6(1) and Rule 23(6) of the Standards of Weights and Measures (Packaged Commodities) Rule, 1977.

3. A Show Cause Notice dated 20.10.2003 was issued in proforma 'A' to respondent for violation of the aforesaid Sections and Rule 33 read with Rule 23(1).

It was also submitted that the offence is compoundable as per Section 73 of the Standards of Weights and Measures Act, 1976 and Section 65 of the Standards of Weights and Measures (Enforcement) Act, 1985.

4. The respondent opted for compounding while submitting a letter dated 20.10.2003. The same was compounded vide order dated 30.10.2003 imposing compounding fee of Rs.3,000/-. Questioning the compounding order, W.P. No.120/2005 was filed in the High Court. The case set up by the respondent was that letter of compounding was obtained under coercion, it was not voluntary

and under free will. It was submitted that under duress a blank cheque was obtained improperly. Legal notice was given to return the blank cheque. Vide order dated 30.10.2003, the respondent was required to pay an amount of Rs.3,000/- as compounding fee.

5. Seizure memo indicates that following branded articles have been seized:-

“During my inspection/visit on 17.10.2003 to the premises of M/s. Globus Stores Pvt. Ltd. located at Bandra Hill Road, Bandra (W) Mumbai-50, the following irregularities were observed:-

1) on the packages of Calvin Klein, Christin Dior & Buss-Hiro supplied by you, no declaration of Name and Address of the Importer, Mfg. Date of Mgs, Sale price etc. not declared as per Rule.

Due to the above, the following goods were seized from the said premises vide Seizure Receipt No.015919 and 20 and Panchanama dated 17.10.2003.

i) Package of Calvin Klein

ii) Package of Christin Dior

1. I have, therefore reasons to believe that you have prima-facie contravened Section/Rule 33 r/w Rule 23(1) which is punishable under section/Rules 51 of the said Act/Rules.

2. The contravention is compoundable vide provisions of Section 73 of the Standards of Weights and Measures Act, 1976 and Section 65 of the Standards of Weights and Measures (Enforcement) Act, 1985 by the Deputy/Assistant Controller of Legal Metrology by virtue of the powers vested in him.”

6. It is apparent from the aforesaid that the aforesaid products were branded imported products which were sold in packages. In the reply that was filed by the respondent after three days i.e. on 20.10.2003 is extracted hereunder:-

“...we state and admit as under:-

1. The product seized were Calvin Klein sunglasses. Christian Dior Sunglasses and Hugo Boss sunglasses, were distributed by us.

2. This is our first offence. We have not committed this type of offence in the past.

3. Kindly compound our case at departmental level instead of lodging in the court of law.

4. We are ready to pay the compounding fees as may be imposed by you.

5. We shall take due care in future to prevent commission of such type of offence.

6. The name of the proprietor is Mr. Subhash A. Kataria.”

7. Thereafter, an amicable settlement order of offence committed has been passed on 30.10.2003, which reads as under:-

“O R D E R As empowered and entrusted me by Notification No.LM2/95/2468 issued on 25th April, 1995 by the Government, I the Deputy Controller of legal metrology Science Branch of Mumbai Metropolitan Division, Mumbai by making use of section 65 of Weight and Measurement Act, 1985 of Weight and Measurement Units (Enforcement) Rules, 1987, I hereby settle the offence committed under-rule offence No.33/51 recorded under section/Rule 3(1)33 of Weight and Measurement Units (Enforcement) Act 1985 and Maharashtra Weight and Measurement Units (Enforcement) Rules 1987 committed by Mr. Subhash S. Kataria of M/s. Liberty Antics/Exports, on 17.10.2003 having address at 104, A.N. Chambers, 130 Turner Road, Bandra (W), Mumbai having occupation of export and imports/distributors for Rs.3000/-

(Rupees Three Thousand only) by paying into the government treasury on the agreed terms and conditions enclisted.”

8. It is apparent that the order is based upon the compounding of the offence and the admission made by the respondent that they have admitted the product which were seized as well as they admitted the offence, it cannot be said that there was any coercion behind it. The High Court has not gone into the question of compounding and decided the case on merits. There was no question to go into the merits in this case as the order was based upon the admission and compounding of the offence. We are not satisfied merely by issuing a legal notice, the case has been made out by the respondent that blank cheque has been obtained under coercion. We are satisfied that no case was made out to go into the merits of the case in view of the compounding of the offence. We are satisfied that there was no coercion.

9. It was pointed out by Mr. Arvind P. Datar, learned senior counsel for the appellant, that in paragraph 10 of reference order dated 26.08.2011 certain expression of opinion has been made by the Division Bench of this Court while referring the matter to a larger Bench. An overall reading of the order makes it clear that after expression of opinion without going into the question of coercion the entire matter has been referred to a larger Bench.

10. Thus, we are of the opinion that in view of admission and compounding of offence no question arises in this case to go into the merits of the case. In view of the compounding prayer made by the respondent himself it was not open to the High Court to go into the merits of the case. Thus we have no hesitation in setting aside the order passed by the High Court. We need not answer the question referred as that does not arise in view of the compounding order passed by the concerned authority.

11. The appeal is, accordingly, allowed.

12. Pending application(s), if any, shall stand disposed of.

.....J. [ARUN MISHRA]J. [VINEET SARAN]J. [M.R. SHAH] NEW DELHI;

JANUARY 23, 2020.

ITEM NO.101

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 1117/2010 THE STATE OF MAHARASHTRA & ORS. APPELLANT(S) VERSUS SUBHASH ARJUNDAS KATARIA M/S. LIBERTY OPTICS AND EXPORTS AS SOLE PROPRIETOR RESPONDENT(S) WITH C.A. No. 1122/2010 (IX) C.A. No. 1121/2010 (IX) C.A. No. 1118/2010 (IX) C.A. No. 1120/2010 (IX) C.A. No. 7874/2015 (III) C.A. No. 59/2009 (XI-A) CrI.A. No. 118/2010 (II-C) C.A. No. 1123/2010 (IX) T.C.(C) No. 40/2011 (XVI-A) T.C.(C) No. 45/2011 (XVI-A) T.C.(C) No. 46/2011 (XVI-A) T.C.(C) No. 47/2011 (XVI-A) T.C.(C) No. 84/2011 (XVI-A) T.C.(C) No. 115/2011 (XVI-A) T.C.(C) No. 67/2012 (XVI-A) T.C.(C) No. 67/2014 (XVI-A) T.C.(C) No. 68/2014 (XVI-A) T.C.(C) No. 69/2014 (XVI-A) T.C.(C) No. 66/2014 (XVI-A) T.C.(C) No. 71/2014 (XVI-A) T.C.(C) No. 70/2014 (XVI-A) T.C.(C) No. 65/2014 (XVI-A) T.C.(C) No. 72/2014 (XVI-A) T.C.(C) No. 73/2014 (XVI-A) T.C.(C) No. 74/2014 (XVI-A) T.C.(C) No. 81/2014 (XVI-A) T.C.(C) No. 79/2014 (XVI-A) T.C.(C) No. 78/2014 (XVI-A) T.C.(C) No. 75/2014 (XVI-A) T.C.(C) No. 76/2014 (XVI-A) T.C.(C) No. 82/2014 (XVI-A) T.C.(C) No. 77/2014 (XVI-A) T.C.(C) No. 80/2014 (XVI-A) T.C.(Crl.) No. 1/2015 (XVI-A) SLP(Crl) No. 5902/2018 (II-C) (FOR ADMISSION) Date : 23-01-2020 These petitions were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE M.R. SHAH Counsel for parties Ms. Madhavi Divan,ASG
Mr. A.K. Srivastav,Sr.Adv. Mr. Vibhu Shanker Mishra,Adv. Mr. Prashant Singh,Adv.
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Lalit Sankhla,Adv.

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Prasad,Sr.Adv. Ms. Aruna Gupta,Adv.

Mr. B. Krishna Prasad,Adv. Mr. Lalit Sankhla,Adv.

Mr. Arvind P. Datar,Sr.Adv. Mr. Amar Dave,Adv.

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Mr. Nishant Rao,Adv.

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Mr. Devdutt Kamath,Sr.Adv. Mr. Shubhranshu Padhi,Adv. Mr. Ashish Yadav,Adv.

Mr. Rakshit Jain,Adv.

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Mr. Pranab Kumar Mallick,Adv. Ms. Sona Mullick,Adv.

Ms. Minakshi Midha,Adv. Sebat Kumar Deuria,Adv.

Mr. Ramesh Babu M.R.,Adv. Ms. Swati Setia,Adv.

Mr. G. Prakash,Adv.

Mr. Jishnu M.L.,Adv.

Mrs. Priyanka Prakash,Adv. Mrs. Beena Prakash,Adv.

Mr. Nishe Ranjen Shonker,Adv. Mr. Anu K. Joy,Adv.

Mr. Alim Anvar,Adv.

Mr. Shaji J. Kodankandath,Adv.

Mr. Gauhar Mirza,Adv.

Ms. Avlokita Rajvi,Adv. Mr. S.S. Shroff,Adv.

Mr. Binay Kumar Tiwari,Adv. Mr. Hitesh Kumar Sharma,Adv. Mr. Akhileshwar Jha,Adv. Mr. Dipak Namdhari,Adv.

Ms. Kaveeta Wadia,Adv. Mr. Rohit Prasad,Adv.

Mr. C.K. Sasi,Adv.

Ms. Nayantara Roy,Adv.

Mr. Abdulla Naseeh,Adv.

Ms. Somya Gupta,Adv.

Mr. Nishant Ramakantrao Katneshwarkar, AOR Ms. Asha Gopalan Nair, AOR Ms. Bina Madhavan, AOR Mr. B.V. Balaram Das, AOR Mr. Shivaji M. Jadhav, AOR Mr. Joseph Aristotle S., AOR Mr. A.N. Arora, AOR Mr. Sanjeeb Panigrahi, AOR Mr. Aditya Narain,Adv. Mr. Arnav Narain,Adv.

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Mr. Abhivandana Chowdhury,Adv. Mr. C.S. Ashri,Adv.

UPON hearing the counsel the Court made the following O R D E R CIVIL APPEAL NO(S). 1117/2010 The appeal is allowed in terms of the signed order.

The State Of Maharashtra Through The ... vs Subhash Arjundas Kataria. M/S. Liberty ... on 23 January, 2020
REST OF THE MATTERS List on 28.01.2020.

(NARENDRA PRASAD)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

(Signed order, as above, is placed on the file)