

M/S Hindustan Unilever Limited vs The State Of Ap. , 2 Others on 22 February, 2022

Author: Chillakur Sumalatha

Bench: Chillakur Sumalatha

HIGH COURT FOR THE STATE OF TELANGANA:
HYDERABAD

CRIMINAL PETITION No.14914 of 2013

Between:

M/s. Hindustan Unilever Limited

Represented by its Executive Director,

Mr. Pradeep Banerjee

.....

PETITIONER

VERSUS

The State of Andhra Pradesh

through Public Prosecutor

High Court Buildings, AP, and others

.....

RESPONDENTS

JUDGMENT PRONOUNCED ON : 22.02.2022

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local : Yes
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes
may be marked to Law
Reporters/Journals
3. Whether Their Ladyship/Lordship : Yes
wish to see the fair copy of
judgment

Dr. JUSTICE CHILLAKUR SUMALATHA

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.14914 of 2013

ORDER :

%Dated 22.02.2022 # M/s. Hindustan Unilever Limited PETITIONER VERSUS \$ The State of Andhra Pradesh Through Public Prosecutor High Court Buildings, AP, and other RESPONDENTS ! Counsel for Petitioner : Sri Leo Raj ^ Counsel for Respondents : Public Prosecutor < GIST :

> HEAD NOTE :

? Cases referred : 1 (2015) 8 SCC 519 2 (1998) 5 SCC 749 Dr.CSL , J HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA CRIMINAL PETITION No.14914 of 2013 ORDER:

Heard the submission of Sri Leo Raj, learned counsel appearing for the petitioner, as well as learned Assistant Public Prosecutor, who is representing respondent Nos.1 and 2.

2. This Criminal Petition is filed under Section 482 Cr.P.C seeking the Court to quash the proceedings in C.C.No.7 of 2013, which are pending on the file of the Court of VI Additional Judicial Magistrate of First Class, Warangal, against the petitioner, who is arrayed as accused No.1 therein.

3. The details of the proceedings, if narrated in seriatim that ultimately led to the present proceedings, are as under:

(a) On 29.03.2012, the In-charge District Inspector, Legal Metrology, Warangal-II inspected the premises of M/s. Reliance Fresh Limited, Hanamkonda, Warangal District, along with his staff. On verification of different products, he found two retail packages in violation of the Dr.CSL , J Legal Metrology (Packaged Commodities) Rules, 2011.

Those two packages pertain to Modern Milk Classic Milk Bread. The net weight of the products is 400 grams. The Maximum Retail Price is shown as Rs.18/- (inclusive of all taxes) with a further mention "Use by date: 3-4-12". The said Inspector found that the manufacturer failed to declare the month and year of packaging on the said Milk Bread packages. On that, the said products were seized under a cover of panchanama.

(b) The act of violation was informed to the petitioner- accused No.1 through a notice.

(c) The petitioner-accused No.1 through letter dated 04.09.2012 informed that the provision of law mentioned in the notice is not applicable to the seized products and instead Prevention of Food Adulteration Act, 1954 and the Rules made thereunder are applicable. He requested to give an opportunity of personal hearing. However, the opportunity of personal hearing could not be given due to time limitation.

Dr.CSL , J

(d) Accused Nos.2 and 3 responded to the notice issued and they accepted to compound the offence departmentally, but they did not do so.

(e) The appeal was preferred by the petitioner-accused No.1 on 25.10.2012 under Section 50 of the Legal Metrology Act, 2009.

(f) On 26.10.2012, the Controller, Legal Metrology, Hyderabad addressed a letter to accused No.2 to approach the District Inspector, Legal Metrology, Warangal-I and pay the compounding fee.

(g) On 01.11.2011, the Controller, Legal Metrology, Hyderabad, addressed a letter to the petitioner-accused No.1 that his appeal was examined and was rejected as per the contents of the letter dated 26.10.2012 that was addressed to accused No.2.

(h) Ultimately, the petitioner is before this Court seeking to quash the proceedings.

4. Thus, in the light of the aforementioned factual scenario, the point that emerges for consideration is:

Whether there exists any justifiable grounds to invoke the powers granted under Section 482 Dr.CSL , J Cr.P.C and to quash the proceedings that are pending against the petitioner-accused No.1 through C.C.No.7 of 2013, which is pending on the file of the Court of VI Additional Judicial Magistrate of First Class, Warangal, as prayed for.

5. Arguing at length in respect of the merits of the case, learned counsel for the petitioner submits that neither the provisions of Legal Metrology Act, 2009 nor the Rules regarding the Packaged Commodities are applicable to the facts of the case and, despite bringing the same to the notice of the concerned authorities, they failed to drop the proceedings and unjustifiably a complaint was lodged, hence, the petitioner is constrained to approach this Court seeking to quash the proceedings. Learned counsel further submits that the violation as projected, will not fall within the purview of the provisions of Legal Metrology Act, 2009. The next objection/stand taken by the learned counsel for the petitioner is that without following the principles of natural justice, the appeal was dismissed and therefore, the complaint lodged is not maintainable. Final submission is that though a complaint was lodged by the Department of Metrology, the learned Magistrate ought to have applied Dr.CSL , J his mind while taking cognizance of the offence projected in the complaint, but without doing so, in a routine manner, he had taken cognizance of the offence and therefore, the said act of taking cognizance and issuing summons to the petitioner-accused No.1 are liable to be quashed.

6. Thus, having regard to the above points highlighted and the pleas taken, this Court considers desirable to deal with each of the following aspects in detail.

(i) Whether basing on the facts of the case and the circumstances projected, the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 are applicable to the case on hand.

(ii) Whether there is violation of principles of natural justice, and if so, whether the same would vitiate the proceedings.

(iii) Whether taking cognizance of offence by the Magistrate in the light of the deviations of the legal principles as envisaged under the enactments projected by the respondents in the complaint itself, is bad under law.

(i) Whether basing on the facts of the case and the circumstances projected, the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 are applicable to the case on hand.

Dr.CSL , J

7. The description of the commodities seized, as narrated in the complaint, is as follows:

"Two Retail packages of Modern Milk Classic Milk Bread, Net Weight: 400 grams.
M.R.P. Rs.18=00 (incl. of all taxes), Use by date: 3-4-12."

8. The violation, which is also projected in the complaint, is as under:

"The manufacturer has failed to declare the month and year of packing on the Modern Milk Class Milk Bread Packages."

9. Learned counsel submits that even as per the version of complainant, 'use by date' is mentioned over the packages, but the month and year of packing is not mentioned and indeed there is no requirement to mention those details. The learned counsel also submits that Legal Metrology Act, 2009 has no application to the alleged deviation even if it is taken into consideration that the said non-mention of date and year of manufacturing over the package is a deviation as such.

10. Legal Metrology Act, 2009, as could be seen from the statements and objects, is an Act to establish and enforce standards of weights and measures, regulate trade and Dr.CSL , J commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto. Thus, the main object and purpose of the Act is to enforce the standards of weights and measures and to regulate trade and commerce in weights and measures.

11. Learned counsel brought to the notice of this Court Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011, which envisages the declarations to be made on every package. This Rule is present in Chapter II, which deals with the provisions applicable to packages intended for retail sale. The said Rule envisages that every package shall bear thereon or on the label securely affixed thereto, a definite, plain and conspicuous declaration with regard to the details mentioned in the said chapter. For the purpose of this case, Rule 6 (1) (d) is relevant.

12. Rule 6 (1) (d) reads as under:

"The month and year in which the commodity is manufactured or pre-packed or imported shall be mentioned in the package.

Provided that for packages containing food articles, the provisions of the Food Safety and Dr.CSL , J Standards Act, 2006 (34 of 2006) and the rules made there under shall apply."

13. Thus, as per the above proviso, for packages containing food articles, the provisions of the Food Safety and Standards Act, 2006 and the Rules made thereunder shall apply. The violation as projected in the complaint, as discussed earlier, is that the manufacturer failed to declare the month and year of packing on the Modern Milk Classic Milk Bread packets, which were seized. In case there is such a deviation, as per the proviso to Rule 6 clause (1) sub-clause (d), the provisions of the Food Safety and Standards Act, 2006 and the Rules made thereunder are applicable. Therefore, as rightly submitted by the learned counsel for the petitioner, taking note of the said fact, the Department of Legal Metrology ought to have dropped its proceedings at the initial stage itself, however it did not do so.

14. As per the version of the respondents, the petitioner- accused No.1 has violated Section 18 of Legal Metrology Act, 2009 read with Rule 4 and Rule 6 (1) (d) of Legal Metrology (Packaged Commodities) Rules, 2011. Section 18 Dr.CSL , J deals with declarations on pre-packaged commodities. Rule 4 deals with Regulation for pre-packing and sale etc., of commodities in packaged form. Rule 6, as earlier discussed, deals with declarations to be made on every package. Before holding that the violation is covered under Rule 6 (1)

(d) of the Legal Metrology (Packaged Commodities) Rules, 2011, the District Inspector of the Department of Legal Metrology or the Controller of the Department of Legal Metrology ought to have gone through the proviso to the said Rule, which clearly envisages that for the alleged violation which was noticed by the District Inspector, the provisions of the Food Safety and Standards Act, 2006 alone are applicable. When a specific mention is made that the provisions of another legislation apply, it implies that the said legislation, where such mention is made, does not apply. Therefore, this Court considers that the plea taken by the petitioner in this regard is justifiable.

(ii) Whether there is violation of principles of natural justice, and if so, whether the same would vitiate the proceedings.

Dr.CSL , J

15. Learned counsel for the petitioner-accused No.1, in this regard, submits that when an appeal was preferred by the petitioner, an opportunity of hearing ought to have been accorded to him to submit his contentions and to explain the legal position, but without doing so, on the very next day of preferring the appeal, orders were passed, which is unjustifiable and which is in violation of the principles of natural justice.

16. Learned counsel has brought to the notice of this Court certain dates for establishing his version. The appeal, as submitted by learned counsel for the petitioner, was preferred on 25.10.2012. On 26.10.2012, a letter was addressed by the Controller, Legal Metrology, Hyderabad, to accused No.2 that the case was booked as per the provisions of Legal Metrology (Packaged Commodities) Rules, 2011 and therefore, he may approach the District Inspector and pay the compounding fee within the time limit. It is also mentioned in the said letter that in case the matter is not compounded, a case would be filed in the Court of law. On 01.11.2012, the Controller, Legal Metrology, Hyderabad addresses a letter to the petitioner- accused No.1 vide letter No.2149/T2/2012 that the appeal was examined and the contention of the firm was rejected vide the letter dated 26.10.2012 that was addressed to accused No.2. Thus, as rightly submitted by the learned counsel for the petitioner, decision on the appeal was taken on the very next day of presentation of the appeal. Learned counsel for the petitioner submits that this act of the respondents is in violation of Section 50 of Legal Metrology Act, 2009.

17. Section 50 of Legal Metrology Act, 2009 deals with appeals. Section 50(1) deals with the decisions from which appeals lie. Section 50 clause (1) sub-clause (d) lays down that from every decision given or order made under Sections 15 to 18, Sections 23 to 25, Sections 27 to 37, Sections 45 to 47 or any Rule made under sub-section (3) of Section 53 by any Legal Metrology Officer appointed under Section 14, an appeal shall lie to the Controller. The violation, as projected by the respondents, is under Section 18. Therefore, appeal lies to the Controller.

Dr.CSL , J

18. By the material available on record, it is clear that the appeal was filed before the Controller. Section 50 (2) envisages that the appeal shall be preferred within 60 days from the date on which the impugned order was made. However, the proviso gives relaxation for a further period of 60 days in case sufficient cause is shown. Clause (3) is highlighted and projected by the learned counsel for the petitioner. The said provision i.e., Section 50 (3) reads as under:

"On receipt of any such appeal, the appellate authority shall, after giving the parties to the appeal, a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying or reversing the decision or order appealed against or may send back the case with such direction as it may think fit for a fresh decision or order after taking additional evidence, if necessary".

19. Thus, the said provision lays down that before deciding the appeal by the appellate authority, it shall give the parties to the appeal a reasonable opportunity of being heard and, after making such enquiry as it deems proper, it can make an order either confirming or modifying or reversing the decision. However, in the case on hand, as Dr.CSL , J rightly projected by the learned counsel for the petitioner, no such opportunity was given to the petitioner. When the appeal was preferred on 25.10.2012, the decision was taken on the very next day. Stating that in such circumstances i.e., in case of violation of the said right which affects the principles of natural justice as the personal hearing is lost, the continuation of proceedings are unsustainable, learned counsel for the petitioner relies upon the decision of the Honourable Apex Court, which is rendered in the case between DHARAMPAL SATYAPAL LIMITED vs. DEPUTY COMMISSIONER OF CENTRAL EXCISE, GAUHATI AND OTHERS¹, wherein their Lordships, at para 25, observed as follows:

"25. This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as "hearing the other side". Prof. D.J.Galligan [On "Procedural Fairness" in Birks (Ed.), the Frontiers of Liability, Vol. I (Oxford 1994)] attempts to provide what he calls "a general theory of fair treatment" by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasising that taking of correct decisions would demonstrate that the system is working well. On the other hand, if (2015) 8 Supreme Court Cases 519 Dr.CSL , J mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham (A Treatise of Judicial Evidence (London 1825), who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision-making as well".

20. Further, the Honourable Apex Court, at para 35, held as under:

"35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi- judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K. Kraipak case (A.K. Kraipak v. Union of India, (1969) 2 SCC 262) that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In Menaka Gandhi v. Union of India ((1978) 1 SCC 248) also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving

of hearing to the noticee is required".

Dr.CSL , J

21. Catena of decisions project and envisage that principles of natural justice are applicable even though those principles are not separately enunciated in the statutes. The well settled principle of law is that the procedure followed by the Courts of Law or the quasi judicial authorities must be just, fair and reasonable. While the law as projected in Section 50 (3) of the Legal Metrology Act, 2009 envisages hearing before disposal of the appeal and when the said provision i.e., the principle of audi alteram partem has been violated, this Court is the view that the Department has to take the responsibility and the consequences have to be faced. The doctrine of procedural fairness is time and again enunciated by different Courts of law starting from the Honourable Apex Court.

22. In the case on hand, there is clear violation of the principles of natural justice, which ultimately requires the interference of this Court exercising the power granted under Section 482 Cr.P.C.

Dr.CSL , J

(iii) Whether taking cognizance of offence by the Magistrate in the light of the deviations of the legal principles as envisaged under the enactments projected by the respondents in the complaint itself, is bad under law.

23. Coming to the third aspects, learned counsel for the petitioner-accused No.1 submits that though the complaint was filed by the respondents in a routine manner, the learned Magistrate before taking cognizance ought to have gone through the contents of the complaint and ought to have observed whether the provisions of law, which are mentioned therein, are applicable to the facts of the case or not and thereafter ought to have taken cognizance of the offence and issue summons to the accused, but in the case on hand, the learned Magistrate proceeded in a routine manner and took cognizance which is wholly unjustifiable.

24. By the discussion that went on supra, it is clear that the provisions of Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011 are not applicable to the deviations as projected by the Dr.CSL , J complainant who has filed the complaint. Therefore, the learned Magistrate, considering the same, ought not to have taken cognizance. However, cognizance was taken.

25. Making a submission that taking cognizance and summoning of the accused without application of mind is improper, learned counsel for the petitioner-accused No.1 relied upon the decision of the Honourable Apex Court in the case of PEPSI FOODS LTD. AND ANOTHER vs. SPECIAL JUDICIAL MAGISTRATE AND OTHERS², wherein their Lordships, at para 28 and 29 of the judgment, observed as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to

bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully (1998) 5 SCC 749 Dr.CSL , J scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants."

26. By the bare reading of the provisions of law under which the complaint is filed, it is clear that the said enactments are not applicable to the facts of the case. Had the learned Magistrate gone through at least the provisions of law, which as per the version of the complainant, applies prima facie to hold that the accused have committed offences, the decision of the learned Magistrate would have been otherwise. However, the learned Magistrate, may be in a routine manner or due to pressure of work, had taken Dr.CSL , J cognizance of the offences. Yet one thing to be observed is that only because cognizance was taken and summons were issued, the accused cannot be mandated to appear before the Court of Law and to wait for disposal of the case, which ultimately would result in acquittal, as the non-application of the legislations is apparent on the face of the record. The net result would be nothing, but acquittal. Therefore, this Court is of the view that the case need not be permitted to continue as taking cognizance of the offence is due to non- application of mind.

27. The submission of the learned Assistant Public Prosecutor is that the petitioner and other accused ought to have compounded the offences when an opportunity was accorded, but they did not do so and therefore, continuation of proceedings against them is desirable.

28. This Court is not inclined to accept or agree with the said proposition. When the stand taken by the petitioner or any other person is that he has not committed any offence, only because a via media approach is provided under law and only because the said person can move away from the Dr.CSL , J clutches of law by getting the offence compounded, he is not required to compound the offence. Failure on part of the petitioner to come forward to compound the offence does not mean

that he has to face the consequences. In the case on hand, if the Magistrate had scrutinised the material produced by the complainant to satisfy himself whether the complaint stands to test of application of law, the result would have been otherwise, but the Magistrate did not do so. Before that, the Department of Legal Metrology ought to have examined the matter after lifting of samples to verify whether it has got the power to initiate proceedings in the light of the deviations noticed, but the Department did not do so. When the petitioner-accused No.1 has preferred an appeal, the Controller of the Department of Legal Metrology, before whom the appeal is preferred, at least ought to have given an opportunity to the petitioner to project his contentions. This is the basic principle of natural justice and though it is reiterated under Section 50 of Legal Metrology Act, 2009, such an opportunity was not given. If such an opportunity was afforded, the petitioner ought to have projected his version, as projected before this Court.

Dr.CSL , J Hence, even the principles of natural justice were not followed. Having regard to all these aspects, this Court is of the view that there exist justifiable grounds to invoke the power of this Court to prevent abuse of process of law and ultimately to quash the proceedings, as sought for by the petitioner-accused No.1.

29. Resultantly, the Criminal Petition is allowed. The proceedings that are pending against the petitioner-accused No.1 in C.C.No.7 of 2013 before the Court of VI Additional Judicial Magistrate of First Class, Warangal, are hereby quashed.

30. Interim order granted by this Court dated 16.12.2013 stands vacated.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

22.02.2022 Note: LR copy to be marked B/o vv