

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO. 9771 OF 2017

BETWEEN:

M/S SAMSUNG INDIA ELECTRONICS PVT. LTD,
DLF CENTRE, 6TH FLOOR, SANSAD MARG,
REP BY MANAGER
NEW-DELHI 110001
ALSO AT
20TH TO 24TH FLOOR
TWO HORIZON CENTRE, GOLF COURSE ROAD,
SECTOR-43, DLF ROAD, GURGAON
HARYANA STATE-122002.

...PETITIONER

(BY SRI. C.R. MAHENDRA GOWDA, ADVOCATE)

AND:

STATE OF KARNATAKA
THROUGH THE INSPECTOR OF LEGAL METROLOGY
WILSON GARDEN SUB-DIVISION
1ST FLOOR, MINERVA CIRCLE,
CORPORATION BUILDING
BANGALORE-560 004.

...RESPONDENT

(BY SRI. VINAYAK V.S., HCGP)

THIS CRL.P IS FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO QUASH THE COMPLAINT DATED 16.09.2016 FILED BY THE RESPONDENT HEREIN REGISTERED AS C.C.NO.32198/2016 ON THE FILE OF M.M.T.C.-I, BENGALURU AND SET ASIDE THE ORDER OF TAKING COGNIZANCE AND ORDER OF ISSUANCE OF SUMMONS IN C.C.NO.32198/2016 BY THE MAGISTRATE DATED 26.09.2016 AND THE PROCESS ISSUED THEREUNDER AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.05.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed under Section 482 of Cr.P.C. seeking the following reliefs:

- "a) Call for records.*
- b) Quash the complaint dated 16.09.2016 filed by the respondent herein registered as C.C.No.32198/2016 in the Court of the 1st Traffic Metropolitan Magistrate at Bangalore (Mayo-Hall).*
- c) set aside the order of taking cognizance and order of issuance of summons by the learned Metropolitan Magistrate, Traffic Court-I dated 26.09.2016 in C.C.No.32198/2016 and the process issued thereunder and consequently quash the entire proceedings.*

d) Pass any other or further order or direction as deemed fit and proper in the facts and circumstances of the present case in the interest of justice."

2. The petitioner is a company organized and existing under the Companies Act, 1956 having its registered office at New Delhi. The petitioner claims to be a leading consumer and household electronics and appliances company in India. The petitioner is in the business of manufacture, import, marketing and selling of consumer durable electronic products, home appliances and cellular mobile phones through its distributors and retailers.

3. The complainant who is the Inspector, Department of Legal Metrology is alleged to have inspected M/s. ABM Tele Mobiles India Pvt. Ltd., Bengaluru who is the distributor of petitioner. During inspection, the complainant inspected one pre-packed Samsung Galaxy Tab-4 manufactured by the petitioner and found the maximum retail price printed as Rs.14,000/- and on inspection, found that the maximum retail

price is not in conformity with Rule 4(2) of the Legal Metrology (Numeration) Rules, 2011 (hereinafter referred as "Numeration Rules, 2011") read with Section 6(2) and (3) of the Legal Metrology Act, 2009 (hereinafter referred as "Metrology Act, 2009"). The complainant also alleged violation of Section 11 read with Section 29 of Metrology Act, 2009.

4. The complainant further has alleged to have inspected one pre-packed (wholesale packaged product) containing 20 individual packages which does not have qualifying symbol 'N' for indicating the quantity as provided under Rule 13 sub-clause (5)(ii) of Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter referred as "Packaged Commodities Rules, 2011") and therefore, claimed that mere mentioning of Numeral '20' without qualifying unit 'N' amounts to violation of Packaged Commodities Rules, 2011.

5. Though petitioner issued a detailed reply to the show cause notice issued by the Department, a final notice

was issued by the respondent directing the petitioner to appear before him for compounding, failing which it was indicated that a complaint would be lodged under the provisions of the Metrology Act, 2009. Hence, the present complaint is lodged with the jurisdictional Magistrate alleging violation of the provisions of Metrology Act, 2009 as well as Rule 4(2) of Numeration Rules, 2011.

6. The jurisdictional Magistrate on registering the private complaint has taken cognizance and summons is issued to the petitioner. The captioned petition under Section 482 of Cr.P.C. is filed alleging that very initiation of prosecution is illegal and the alleged violation indicated in the complaint, even if accepted, would not constitute an offence.

7. Learned counsel appearing for the petitioner has extensively argued and has taken this Court through Rule 4(2) of Numeration Rules, 2011. He has also referred to Section 52(2) of Metrology Act, 2009, more particularly Section

52(2)(f). Referring to Section 52(2)(f), he would vehemently argue and point out that the said section relates only to weight, measure or number and not to price. Referring to the first offence as indicated in the complaint, he would contend that combined reading of Section 52 and Section 10 of Metrology Act, 2009, he would contend that it is quite clear that Numeration Rules, 2011 would apply only for weight, measure or number as detailed in Section 52(2)(f) of Metrology Act, 2009 and therefore, it is not at all applicable for price/MRP of packaged goods.

8. Referring to Rule 2(m) of Packaged Commodities Rules, 2011, he would point out that the product in question is in conformity with the provisions of law and therefore, complainant has misinterpreted the provisions and rules and has arbitrarily issued notice for compounding the alleged offences without following the principles of natural justice. Learned counsel referring to Section 18, 52(1) and 52(2)(j) of Metrology Act, 2009 and Rule 2(m) of Packaged Commodities

Rules, 2011, would point out that it is quite clear that MRP on pre-packaged goods should be as per Packaged Commodities Rules, more particularly Rule 2(m) and not as per Numeration Rules, 2011.

9. He would further advert to the second offence indicated in the complaint. Referring to Rule 13(5)(ii), he would vehemently argue and contend that Rule is applicable for retail packages and wholesale packages are governed under Chapter-III of Packaged Commodities Rules, 2011 as well as Rule 24 of Packaged Commodities Rules. Referring to Rule 24(c), he would vehemently argue and contend that the second alleged violation relates to pre-packaged wholesale packaged product. Therefore, he would contend that the entire complaint registered by the complainant before the jurisdictional Magistrate is found to be baseless and without proper application of mind. He would contend that the authority has virtually misread the provisions contained under Metrology Act, 2009 as well as Numeration Rules, 2011 and

Packaged Commodities Rules, 2011. He would conclude his arguments by contending that even if the allegation made in the complaint are accepted, no offence is constituted as Rules applicable to retail packages are applied to wholesale packages and therefore, the complaint is liable to be quashed.

10. Learned counsel for the petitioner in support of his contention has placed reliance on the following judgments:

1) *Eureka Forbes Limited vs. Union of India and Other - 2003 SCC Online AP 141.*

2) *Cargill India P. Ltd. vs. State & Ors. - 2013 SCC Online Del 707.*

3) *State of Haryana and Others vs. Bhajan Lal and Others - 1992 Supp (1) SCC 335.*

11. Per contra, learned HCGP repelling the contentions canvassed by the learned counsel for the petitioner would contend that the petitioner was offered sufficient opportunity to offer his explanation for compounding the offences. As petitioner has failed to offer satisfactory explanation, the complainant was compelled to register the complaint against

the petitioner and therefore, the grounds urged in the captioned petition cannot be entertained. These grounds are to be tested only during trial and therefore, this is not a fit case to exercise jurisdiction under Section 482 of Cr.P.C.

12. Heard learned counsel for the petitioner and learned HCGP for the State.

13. The Department has registered a complaint alleging that the petitioner herein is guilty of two offences. Let me deal with both the offences indicated in the complaint separately. The first offence indicated in the complaint reads as under:

"(1) One Pre-packed Samsung Galaxy Tab4 (SM-T23 INYKAINS), manufactured by M/s. Samsung India Electronics Pvt. Ltd. 20th to 24th Floor, Two Horizon Centre, Golf Course Road, Sector-43, DLF Road, Gurgaon, Haryana State 122 002, on these packages MRP is declared as Rs.14,000/-, but the declaration of MRP is not as per Rule 4 (2) of the Legal Metrology (Numeration) Rules 2011 r/w section 6(2) and (3) of the Legal Metrology Act 2009,

which amounts to violation of section 11 r/w section 29 of the Legal Metrology Act 2009."

14. On combined reading of Section 52 and 10 of Metrology Act, 2009, it is clearly evident that Numeration Rules, 2011 would apply only for weight, measure or number as detailed in Section 52(2)(f) of Metrology Act, 2009. Therefore, I find some force in the submission made by the learned counsel for the petitioner that the offence No.1 as indicated in the complaint is not at all made out as it does not apply for price/MRP of packaged goods. Therefore, I am of the view that Rule 4(2) of Numeration Rules does not apply for price/MRP and therefore, no offence is made out as there is no violation of Section 11 read with Section 29 of Metrology Act, 2009.

15. The price/MRP of packaged goods is regulated under Packaged Commodities Rules, 2011 and Rule 2(m) of the said Packaged Commodities Rules is a relevant Rule which

would govern the price of packaged goods which reads as under:

"2(m). "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the consumer inclusive of all taxes."

16. Therefore, on bare reading of the above said Rule, this Court would find that the Department/complainant has virtually misinterpreted the law applicable to price/MRP and has arbitrarily issued notice for compounding the alleged offence. As per Section 18 of Metrology Act, 2009, no one can manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in the prescribed standard quantity and a procedure is also prescribed under Section 52(2)(j) of Metrology Act, 2009. Therefore, what is evident from the above said Rule is that the MRP of pre-packaged goods has to be in terms of Packaged Commodities Rules, 2011 and more particularly, as per Rule 2(m) of Packaged Commodities Rules, 2011 and not as per Numeration Rules, 2011. Therefore, the

first offence is not made out in the light of discussion made supra.

17. Now let me deal with the second offence indicated in the complaint which reads as under:

"(2) One Pre-packed wholesale package product: SM-G531FZWDINS (color-white) containing 20 individual packages which does not have the qualifying symbol 'N' for indicating the quantity as provided under Rule 13(5)(ii) of the Legal Metrology (Packaged Commodities) Rules-2011. Just mentioning the numerals i.e., 20 without the qualifying unit 'N' amounts to violation of Legal Metrology (Packaged Commodities) Rules-2011."

18. As per the second offence as indicated in the complaint, the complainant has registered the complaint indicating that the item sold by number does not carry a prefix of alphabet 'N' or 'U'. Before I advert to the averments in the complaint, it would be useful for this Court to cull out Rule 13(5)(i) and 5(ii) which reads as under:

"5. Symbol of Units:- (i) No system of units other than the International System of Units shall be used in furnishing the net quantity of the package;

(ii) For items sold by number the symbol should be N or U.

(Explanation: For the purposes of this sub-rule, it is clarified that for indicating the unit for litre, the letter 'L' may be adopted to avoid confusion with the letter 'I' and figure '1')"

19. On plain reading of the above said Rule, it is clearly evident that the said provision is applicable only for retail packages and are not applicable to wholesale packages. The provisions applicable to wholesale packages is enumerated in Chapter-III of Packaged Commodities Rules, 2011. Rule 24 which is applicable to wholesale packages reads as under:

"24. Declarations applicable to be made on every wholesale package-*Every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration as to-*

(a) The name and address of the manufacturer or importer or where the manufacturer or importer is not the packer, of the packer,

(b) the identity of the commodity contained in the package; and

(c) the total number of retail package contained in such wholesale package or the net quantity in terms of standard units of weights, measures or number of the commodity contained in wholesale package:

Provided that nothing in this rule shall apply in relation to a wholesale package if a declaration similar to the declarations specified in this rule, is required to be made on such wholesale packages by or under any other law for the time being in force."

20. On examining Rule 24(c), it is clearly evident that the second offence indicated in the complaint is wrongly applied. The said provisions are applicable to retail packages and not to wholesale packages. Under Rule 24(c), only number of quantity is to be disclosed without adding a prefix 'N' or 'U' as indicated in Rule 13(5)(ii) of Packaged Commodities Rules, 2011.

21. The complaint is also not sustainable as it is registered against all the Directors when the company has clearly nominated a person in terms of Section 49 of the Metrology Act, 2009. Now if the averments made in the complaint are examined in the background of the above culled out sections of Metrology Act, 2009 and Rules, this Court is of the view that the complaint does not disclose any offence.

The offences indicated in the complaint are applicable to retail packages and not to wholesale packages and therefore, on meticulous examination of the allegations made in the complaint, it is clearly evident that the complaint is tainted with malafides. The allegations made in the complaint are found to be totally frivolous and vexatious. Even if the allegations in the complaint are accepted in entirety, the same does not constitute any substantive offence and prima-facie the allegations are found to be frivolous.

22. This Court is of the view that on reading the complaint and its accompaniments, the same does not disclose any of the offence alleged and these aspects are not dealt with by the Magistrate while taking cognizance. This Court would also find that the complaint itself is contradictory and there is total misinterpretation of relevant Sections of Metrology Act, 2009, Rule 2(m) and Rule 24(c) of Packaged Commodities Rules, 2011.

23. If the material does not indicate that prima-facie offence in question is made out, the same would amount to abuse of process, if permitted to continue against the petitioner. Therefore, to serve the ends of justice, this Court is of the view that this is a fit case where interference is warranted under Section 482 of Cr.P.C.

24. For the reasons stated supra, I pass the following:

ORDER

- (i) The criminal petition is allowed;
- (ii) The proceedings pending in C.C.No.32198/2016 on the file of the learned Metropolitan Magistrate, Traffic Court-I, Bengaluru, is hereby quashed.

Sd/-
JUDGE

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