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ABC 2019 (III) 231 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY AT GOA
(Prithviraj K. Chavan, J.)
Criminal Application (Main) No 180 of 2016
Decided on 30 July 2019
Panaji Bench

STATE, THROUGH THE INSPECTOR, LEGAL METROLOGY- Appellant(s).

Versus

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M/S BATA INDIA LTD & ORS. - Respondent(s).

Law Covered:- (A) *Code of Criminal Procedure, 1973 – Section 378(4) & 378(1)(b)(B) – Standards of Weights and Measures Act, 1976 – Section 39 r/w 72 – Appeal against acquittal – filed by the Public Prosecutor without authorisation – affidavit of complainant annexed with the memo of appeal – Not sufficient to hold due authorisation to the Public Prosecutor – Incompetent appeal – not maintainable – dismissed. (Para 23 & 25)*

(B) *Code of Criminal Procedure, 1973 – Section 378(2) – Standards of Weights and Measures Act, 1976 – Section 72 – Conjoint reading – Appeal in case of acquittal passed in a case in which offence has been investigated by an agency empowered to make an investigation under any Central Act other than Cr.P.C. – Procedure for – Held, it is for the Central Government to direct the Public Prosecutor to present an appeal. (Para 22)*

Facts:- *The Inspector of Legal Metrology paid a surprised visit to the trading business of respondent no.1 for the purpose of inspection of packages of shoes, sandals etc displayed and exposed for sale. The respondent no.2 was present that time. It was noted by the Inspector that MRP printed on some of the packages of sandals, shoes etc were smudged and the stickers of revised was affixed in place of original on the said packages and the said packages were manufactured by respondent no.1.*

The complainant seized the packages and other relevant material under the seizure report by drawing a panchanama. The complainant handed over the letter to respondent no.2 asking him to furnish names and addresses of the persons/partners responsible for the conduct of business of respondent no.1. By a reply respondent no.1 denied that the footwear sold by them are under the packaged commodities and they are kept in boxes and open to enable the customers to inspect before purchasing, hence footwear does not come under

the definition "Pre-Packed Commodity". It was also contended that company is within its right to enhance the price of footwear sold. Thereafter, Controller of the Legal Metrology served a memorandum upon the respondents since the offence is compoundable. The respondents have acknowledged the memorandum, however, failed to compound the offence on payment of compounding fees of Rs.2000/- each specified in the said memorandum.

The Controller, lodged a complaint before the JMFC against respondent nos.1 to 3 u/s 39 of the Standards of Weights and Measures Act and Rule 23(1),(2),(6) and (7) Standards of Weights and Measures(Packaged Commodities)Rules. The learned CJM found that the prosecution has failed to prove that the respondents were smudging the prices printed on the shoes, sandals and therefore, acquitted them of the offences which was upheld by the honourable High Court in the present appeal.

Law of relief:- *Appeal against acquittal where offence was investigated by an agency empowered to make an investigation under any Central Act other than Cr.P.C. authorization from the Central Government necessary.*

Held:- *A conjoint reading of Section 378(2) of Cr.P.C. read with Section 72 of the Act contemplates that an appeal, in case of acquittal passed in a case in which offence has been investigated by an agency empowers to make an investigation under any Central Act other than Cr.P.C. then it is for the Central Government to direct the Public Prosecutor to present an appeal. (Para-22)*

This appeal, undoubtedly has been filed by the Public Prosecutor without authorisation. It would be far-fetched to say that an affidavit of complainant annexed with the memo of appeal is sufficient to hold due authorisation to the Public Prosecutor. (Para-23)

Counsel:- *For Appellant(s): Mr. S. R. Rivankar, Adv.*

For Respondent(s): Mr. G. Sardesai, Adv.

JUDGMENT

PRITHVIRAJ K. CHAVAN, J.: - 1. By this composite application for leave to appeal under Section 378(4) of Code of Criminal Procedure, 1973 (for short "Cr.P.C.") and appeal under Section 378(1)(b) of Cr.P.C., the State through the Inspector of Legal Metrology Margao, Goa, seeks quashing of impugned judgment and order dated 25.1.2016 passed by the learned Chief Judicial Magistrate by which the accused nos.1 and 2 came to be acquitted.

a 2. At the outset, the learned Counsel appearing for the respondent no.1 raised an issue of very maintainability of this application under Section 378(4) of Cr.P.C.

3. The learned Public Prosecutor, however contended that the appeal is maintainable under Section 378(4) of Cr.P.C.

b 4. Before advertng to the said issue, it would be expedient to refer to a few facts of the case:-

c Appellant had filed a Criminal case no.1140/OA/WM/ 05/A against the respondents under Section 39 of the Standards of Weights and Measures Act, 1976 (for short "the Act") and Rule 23 (1), (2), (6) and (7) of the Standards of Weights and Measures(Packaged Commodities)Rules 1977 (for short "Rules, 1977") and under Section 74 of the said Act.

d 5. The respondent no.1 is the manufacturer of footwear under the brand name "BATA", of which the respondent no.2 is a manager and respondent no.3 is the incharge of the manufacturer of respondent no.1.

e 6. Mr. Arun Panchawadkar, Inspector of Legal Metrology, Margao paid a surprised visit to the trading business of respondent no.1 at Station road, Margao for the purpose of inspection of packages of shoes, sandals etc displayed and exposed for sale on 3.6.2015. The respondent no.2 was present that time. It is noted by the Inspector that MRP printed on some of the packages of sandals, shoes etc were smudged and the stickers of revised MRP Rs.189/- was affixed in place of original MRP of Rs.179/- on the said packages and the said packages were manufactured by respondent no.1.

f 7. On demand respondent no.2 presented 10 packages of "Bata Classic Sandals" in packed form printed with MRP Rs.179/- inclusive of all taxes, manufactured in the month of 1.2.2005.

g 8. It was *inter alia* noticed that said packages were manufactured by BATA India Limited having registered office at 6, A.S.N. Banergie road, Calcutta, having original printed price on the packages as Rs.179/- inclusive of all taxes but same was smudged and altered by affixing sticker on the same having MRP of Rs.189/- and thus, exceeding the retail sale price on the said packages by Rs.10/-.

h 9. Further on inspection of different shoes, sandals, chappals, it was found that the employees of respondent no.1, shoe shop at

Margao were smudging the printed price on shoes, sandals and chappals by using gun for printing the sticker of MRP on sandals, chappals and shoes in contravention of Rule 23(1), (2), (6) and (7) of the Rules of 1977. a

10. The complainant seized the packages of sandals, shoes and chappals alongwith bill book and the gun under the seizure report by drawing a panchanama dated 3.6.2005. b

11. On 6.6.2005, the complainant handed over the letter to respondent no.2 asking him to furnish names and addresses of the persons/partners responsible for the conduct of business of respondent no.1. c

12. By a reply dated 10.6.2005, respondent no.1 denied that the footwear sold by them from their retail outlet at Margao are under the packaged commodities and they are kept in boxes and open to enable the customers to inspect before purchasing, hence footwear does not come under the definition 'Pre-Packed Commodity', as defined under Rule 2(1) of the said Rules and Section 2(b) of the said Act. It is contented that company is within its right to enhance the price of footwear sold, which is revised after receiving price increment circular No.014/2005 with effect from 11.4.2005. The respondent no.1 has also informed the names and addresses of respondent nos. 2 and 3 as the persons, who are responsible for the business of the shop. d
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13. On 17.10.2005, Controller of the Legal Metrology served a memorandum upon the respondents since the offence is compoundable under Section 73 of the said Act. The respondents have acknowledged the memorandum, however, failed to compound the offence on payment of compounding fees of Rs.2000/- each specified in the said memorandum. f

14. By a letter dated 28.10.2005, respondent no.1denied the commission of the offence alleged by contending that it does not fall within the definition of pre-packaged commodity as it could be sold without the package and there are lot of instances for the same. The Respondents, thus, refused to compound the offence. g
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15. On 25.11.2005, the Controller, lodged a complaint before the Judicial Magistrate First Class, Margao against respondent nos.1 to 3 under Section 39 of the Act and Rule 23(1),(2),(6) and (7) of the said Rules of 1977 punishable under Section 63 and Section 39(2) of the said Act.

a 16. The learned Chief Judicial Magistrate after examining two witnesses found that the prosecution has failed to prove that the respondents were smudging the prices printed on the shoes, sandals and therefore, acquitted them of the offences with which they were charged.

b 17. Mr. Rivankar, learned Public Prosecutor submits that appeal is maintainable under Section 378(4) of Cr.P.C. He has pointed out that though the complaint is signed by him as a public Prosecutor, it is annexed with an affidavit of the complainant-Mr. Arun Panchwadkar, who has affirmed factual contents in the paragraphs of the memo of appeal to be true and correct to his personal knowledge.

c 18. It is submitted by Mr. Rivankar that the memo of appeal has been signed by Public Prosecutor in regular course and there is no illegality as it has been a practice being followed since long. It is submitted that the appeal is maintainable.

d 19. The learned Counsel for the respondents, Mr. Sardessai submitted that scheme of the Act is required to be understood in its correct perspective. According to the learned Counsel, Public Prosecutor is not competent to file an appeal and sign it, in view of legal position. It is submitted that Public Prosecutor is only to pursue the appeal by representing the State before the Court. He is merely a representative of the prosecution specifically authorised to do so. The learned Counsel has further contended that statute does not provide a Public prosecutor to file an appeal.

e 20. It is submitted that filing of an affidavit by the complainant does not mean authorisation. He further submits that Section 378 of Cr.P.C. is a complete code in itself and nothing can be looked out of its scope.

f 21. Mr. Rivankar, however, submits that Section 72 of the Act read with Section 2(d) contemplates the definition of the Director who is appointed under Section 28 of the said Act.

Section 72 of the said Act reads thus;-

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h *Cognizance of offences, etc.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*

1 [(a) no court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by-

(i) the Director;

(ii) any other authorised officer;

(iii) any person aggrieved; or

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(iv) a recognised consumer association whether the person aggrieved is a member of such association or not. Explanation. For the purposes of this clause "recognised consumer association" means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force;]

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(b) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(c) an offence punishable under section 50, section 52, section 53, section 56, section 58, section 60, section 61, section 63, section 64, section 65, or section 66, may be tried summarily by a Magistrate and no sentence of imprisonment for a term exceeding one year shall be passed in the case of any conviction for an offence which is summarily tried under this section."

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22. A conjoint reading of Section 378(2) of Cr.P.C. read with Section 72 of the Act contemplates that an appeal, in case of acquittal passed in a case in which offence has been investigated by an agency empowers to make an investigation under any Central Act other than Cr.P.C. then it is for the Central Government to direct the Public Prosecutor to present an appeal.

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23. This appeal, undoubtedly has been filed by the Public Prosecutor without authorisation. It would be far-fetched to say that an affidavit of complainant annexed with the memo of appeal is sufficient to hold due authorisation to the Public Prosecutor.

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24. It is not the contention of the learned Public Prosecutor that complainant has been authorised to issue authorisation in favour of Public Prosecutor to file an appeal. The affidavit reveals that complainant has simply stated that the contents of paragraphs of the appeal are true and correct to his personal knowledge.

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25. In view of the aforesaid legal position, the appeal filed by the learned Public Prosecutor sans authorisation, is incompetent. As such, appeal is not maintainable and hence stands dismissed.

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Result:- Appeal Dismissed
