

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ::::: BONGAIGAON.

CR CASE NO. 217/2011.

*U/S.39 of Standards of Weights & Measures
(Packaged Commodities) Act, 1977.*

State of Assam.

.....Complainant.

-Vs-

Sri Kamal Kumar Banthia.

.....Accused person.

Present: **Smt. N. Talukdar, AJS**
Chief Judicial Magistrate,
Bongaigaon.

Advocates appeared:

For the Prosecution : **Mr. T. Bhowmik.**

For the Defence : **Mr. D. J. Mukherjee.**

Argument heard on: **05.07.2014.**

Judgment pronounced and delivered on: **18.07.2014.**

J U D G M E N T

1. The prosecution case in brief is that, on 25.03.2011 the informant Sri Baben Das, who is an Inspector of Legal Metrology, Bongaigaon inspected the business premises of M/s. Kamal Kumar Banthia & Sons and during the course of inspection, he found that the owner of the shop Sri Kamal Kumar Banthia has realized Rs.72/- against the actual Maximum Retail Price of Rs.60/- printed on a packet of 'Chocobar Large' Ice-cream by the Retail Voice (cash memo) No.6058 dated 12.02.2011. The complainant

Contd....P/

2.

No.217/11.

seized the Retail Invoice book containing Sl. No.5801-6400 and decided to launch a prosecution case against the accused Sri Kamal Kumar Banthia for violation of Rule 23(2) of the Standards of Weights and Measures(packaged commodities) Rules, 1977, which is punishable under Rule 39 of the said rules and accordingly submitted a written complaint against the accused. Hence, this case has come up.

2. On completion of appearance of the accused person, initially my learned predecessor in Court explained particulars of the offence U/S.63 of Standards of Weights & Measures Act to the accused to which the accused pleaded not guilty and claimed to be tried.
3. After completion of trial, the accused was convicted U/S.63 of the Standards of Weights & Measures Act, 1976 and he was sentenced to pay fine of Rs.500/- i/d S.I for 1(one) month. Against the said Judgment & Order the accused person preferred appeal being C.A No.31(3)/12 before the Hon'ble Sessions Court, Bongaigaon. In C.A. No. 31(3)/2012 the Hon'ble Addl. Sessions Judge(FTC), Bongaigaon vide Judgment dated 24.09.2013 set aside the impugned Judgment dated 31.08.2012 passed by the Learned Trial Court with direction to decide the case afresh from the stage of explanation of offence as per appropriate provisions of law. The Hon'ble Appellate Court observed that in the instant case there is specific allegation against the accused that he violated the provision of Rule 23(2) of the Standards of Weights & Measures (packaged commodities) Rules, 1977. Rule 39 of the Standards of Weights & Measures (packaged commodities) Rules, 1977 is the penal provision

Contd....P/

3.

CR.No.217/11.

of contravention of any Rules. In the instant case, it is clear that the complaint has been filed for contravention of Rule 23(2) which is punishable under 39(2). But the Ld. Trial Court has explained the offence to the accused U/S.63 of the of the Standards of Weights & Measures Act, 1976 and convicted him under the said provision.

4. In view of the Judgment & Order passed in connection with Criminal Appeal No.31(3)/12 by the Hon'ble Addl. Sessions Judge (FTC), Bongaigaon, my learned predecessor in Court explained the particulars of the offence U/S.39 of the Standards of Weights & Measures (packaged commodities) Rules, 1977 to the accused to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution had examined as many as 2(two) prosecution witnesses in support of its case. The accused person has been examined U/S.313 CrPC. The plea of defence is to total denial. The defence side had examined also 2(two) defence witnesses in support of its case.

6. -: **POINT FOR DETERMINATION** :-

(a) Whether the accused person violated the Rule 23(2) of the Standards of Weights & Measures (packaged commodities) Rules, 1977 by selling Chocobars which in packaged form at the price exceeding retail sale price thereof which is punishable under Rule 39 of the Standards of Weights & Measures (packaged commodities) Rules, 1977 ?

-: **DECISION & REASONS THEREOF** :-

7. I have heard the Ld. Counsel for the prosecution and Ld. Defence Counsel. The counsel for the prosecution has submitted that

Contd....P/

4.

CR.

No.217/11.

the prosecution has prove the case beyond all reasonable doubts. On the other hand, Ld. Defence Counsel has submitted that in the instant case cognizance was taken by the Court beyond the period of limitation. Hence, the case is barred by limitation. Ld. Defence Counsel has also submitted that the accused sold the Chocobar to the customer ht a price less than the MRP. The evidence adduced by the defence side has clearly revealed that the price of the Chocobar is Rs. 20/- outside Guwahati, but the accused had received Rs.18/- for each Chocobar.

8. It is at this stage expedient to caste a glance of evidence of prosecution witnesses. The prosecution to prove the case examined two witnesses. PW1 is the complainant Sri Baben Das. In his evidence, PW1 has deposed that on 25.03.2011 he was working as Inspector in the O/o Legal Metrology, Bongaigaon. On that day, at 4:30 PM he visited the shop of the accused namely M/s. Kamal Kumar Banthia & Sons situated at Paglasthan, Bongaigaon and during inspection of Retail Invoice Book, he found that Invoice No.6058 dated 12.02.2011 "Chocobar" Ice-cream was sold taking 20% additional charge as service charge on MRP. Hence, PW1 found that the accused person violated Rule 23(2) of the Standards of Weights & Measures (packaged commodities) Rules, 1977. Thereafter, he seized the Book of Invoice by preparing seizure list.

Ext-1 is the seizure list and Ext-1(1) is the signature of accused Kamal Kumar Bantia. Ext-1(2) is the signature of PW1. PW1 served notice upon the accused requesting him for compounding the case, but the accused did not turn up. Thereafter, he lodged offence report U/S.23(2) of the Standards of Weights & Measures(packaged

Contd...P/

5.

CR.

No.217/11.

commodities) Rules, 1977. Ext-2 is the offence report and Ext-2(1) is the signature of PW1. Mat.Ext-1 is the Retail Invoice Book and Mat.Ext-1(1) is the Invoice No.6058.

In cross-examination, PW1 has revealed that as per Rule of 23(2), no dealer can impose charge on MRP. The accused sold one Chocobar Ice-cream having MRP price of Rs.60/- at the cost of Rs.72/-. PW1 verified the packet of the alleged Chocobar in the shop of the accused and found that the MRP of the said Chocobar is Rs.60/-. PW1 could not say about the weight of the alleged Chocobar. PW1 has not noticed the weight of other Chocobars. He has also deposed that as per Rule of the Standards of Weights & Measures (packaged commodities) Rules, 1977, it is mandatory that every packet must bear name and address of the manufacturer. PW1 has not mentioned the name of the manufacturer of the alleged Chocobar in Ext-1. He has not seized the packet of the alleged Chocobar. PW1 has also deposed that he has submitted the offence report of the case on 26.09.2011. The cash memo was issued on 12.12.2011. PW1 has also revealed that he did not receive any complaint from the person to whom the Mat.Ext-1(1) was issued. He has not cited the person to whom

Mat.Ext-1(1) was issued as a witness. He has also revealed that he did not cite any outsider as a seizure witness in Ext-1 though he requested the customers available in the said shop to stand as a witness. He has not requested the owner of the shops nearby the shop of the accused person to be seizure witnesses. PW1 has denied the suggestion that he has submitted the offence report without proper investigation of the case. He has also denied the suggestion that excessive charge other than MRP charge was taken by the accused person. He has also denied the suggestion that the accused person sold the alleged packet less

Contd...P/

6.

CR.

No.217/11.

than the MRP for local market.

9. PW2 is Tridib Singh. In his evidence, PW2 has deposed that on 25.03.2011, he was attached to the O/o the Legal Metrology, Bongaigaon as an Inspector. On that day, at about 3:30/4:00 PM, he along with PW1 visited the shop of the accused. They inspected the articles kept for sale and the cash memos maintained by the accused. During inspection, they found from the cash Retail Invoice that the accused person took 20% excessive price along with MRP price. Then PW1 seized one Invoice book i.e. Mat.Ext-1 from the accused person through Ext-1(seizure list). Ext-1(3) is the signature of PW2. PW2 has deposed that Mat.Ext-1 is the Retail Invoice Book and Mat.Ext-1(1) is the alleged Invoice .

In cross-examination, PW2 has revealed that while he visited the shop of the accused person, there was no customer in the shop. At that time one shop situated nearby the shop of the accused was closed and they did not find any literate person in the shop

situated near the shop of the accused to stand as a witness. PW2 denied the suggestion that he did not visit the shop of the accused along with PW1 on 25.03.2011. PW2 has denied the suggestion that he deposed falsely.

10. In the instant case, accused has adduced evidence of two witnesses in his defence. DW1 is Sri Manoj Dey Tarafdar, Marketing Executive, Nestor Nutritions (P) Ltd., Guwahati. In his evidence, DW1 has deposed that he has been serving as a Marketing Executive, Nestor Nutritions (P) Ltd., having its head office at Guwahati since the year 2010. His Company is the manufacturer of

Contd....P/7.

CR.

No.217/11.

Nipples Brand Ice-Cream. DW1 has deposed that he is entrusted to look after the sale of products in Assam. The alleged "Chocobar" is the product of his Company. DW1 has revealed that Chocobar is a kind of Ice-cream which is not quoted with Vanilla and Choco and the size of each Chocobar is 60 ML which is equal to 30 grams. Their Company is maintaining wholesale price list and retail sale price list of products. DW1 has also deposed that as per their company, the price of each Chocobar is Rs.15/- within Guwahati and Rs.20/- outside Guwahati. For the purpose of special convenience MRP price of each Chocobar outside Guwahati has been fixed at Rs.20/-. Their distributor at Bongaigaon is M/s. Kamal Kumar Banthia & Sons owned by the accused himself. Mat.Ext-i is the specimen cover of the said Chocobar of their company which bears the name and price of the company and its price, weight etc. The MRP of Chocobar outside Guwahati as

mentioned in Mat.Ext-i(1) is Rs. 20/-. Any distributor outside Guwahati can sell one piece of Chocobar less than Rs.20/- but he can not sell the same more than MRP. The MRP of their product is inclusive of all taxes and vat.

In cross-examination, DW1 has revealed that he could not say the ingredients of the product Chocobar. The product Chocobar can be kept for sale for one year. He also revealed that he could not say when M.Ext-1 was printed out and when the packet of the Chocobar in question was printed. DW1 has denied the suggestion that he deposed falsely for the interest of the accused person.

11. DW2 is the accused Sri Kamal Kumar Bantia. In his evidence, DW2 has deposed that Nestor Nutritions (P) Ltd. is the

Contd....P/

6.

CR.

No.217/11.

manufacturer of only one size of Chocobar having weight of 30 Grams/60 ML. The Maximum Retail Price of the said Chocobar is Rs.20/- outside Guwahati and Rs.15/- within Guwahati. DW2 has been selling all the products of the aforesaid company by cash memo. The MRP is inclusive of all taxes and vat. DW2 can sell the product of the aforesaid company at less than MRP rate but not more than MRP. DW2 has deposed that Mat.Ext-1 is used cash memo of his shop and Mat.Ext-1(1) is his written memo. He has also deposed that the prices of Chocobar has not been changed for the last 3/4 years. Through Mat.Ext-1(1) he sold four nos. of Chocobar @ Rs. 15/- each along with 20% transportation charge

totaling Rs.72/-. DW2 has deposed that he is entitled to sell the aforesaid Chocobar @ Rs.20% each but he sold them @ 18/- each.

In cross-examination, DW2 has revealed that he has not submitted any documents showing that there is 30% charge for transportation. In Mat.Ext-1(1), he wrote Rs.60/- against the four nos. of Chocobars. The packet of the Chocobar does not show that one can take additional charge as service charge. DW2 has also revealed that he took 20% for service charge from the MRP for Guwahati. He has denied the suggestion that he took 20% of MRP for Guwahati as service charge illegally.

12. I have gone through the evidence on record and argument put forward by the Ld. Counsels for both sides. Initiating the argument, the Ld. Defence Counsel has submitted that the case is barred by limitation as per provision of Section 468 of the CrPC.

13. I have perused the materials on record. It is found

Contd....P/9.

CR.

No.217/11.

from the complaint lodged by the Inspector of Legal Metrology, Bongaigaon that, he visited the business premises of the accused on 25.03.2011. On inspection, he found that on 12.03.2011 the accused sold four nos. of Chocobars to one customer violating the provision of Rule 23(2) of the Standards of Weights and Measures (packaged commodities) Rules, 1977. Finally, on 26.09.2011 the complainant lodged the complaint before the Court against the

accused alleging violation of the Rule 23(2) of the Standards of Weights and Measures (packaged commodities) Rules, 1977. I have gone through the relevant provisions of CrPC relating to limitation of taking cognizance of offence. Section 468 of the Code of Criminal Procedure reads as follows :

468. Bar to taking cognizance after lapse of the period of limitation.- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

14. Thus, under the provisions of law, the period of

Contd....P/1

0.

CR.

No.217/11.

limitation shall be six months if the offence is fine only. In this instant case, it is alleged that the accused violated Rule 23(2) of the Standards of Weights and Measures (packaged commodities) Rules,

1977 which is punishable under Rule 39 of the said rule. Rule 39 provides punishable with fine which may extend to Two thousand rupees for contravention of provision of the Rules.

15. Thus, in the instant case the offence is punishable with fine only and the period of limitation is six months. With regard to the commencement of the period of limitation, I have gone through the relevant provisions of the Code of Criminal Procedure as inunciated in section 469 of the said Act. Section 469 of the Code of Criminal Procedure reads as follows :

469. Commencement of the period of limitation.- (1) The period of limitation, in relation to an offence, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In compounding the said period, the day from which such period is to be computed shall be excluded.

16. Thus, under the provisions of Section 469-1(b) CrPC, where the commission of the offence was not known to the

Contd....P/11.

CR.

person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier, the period of limitation in relating to the offence was commenced. In the instant case, the commission of the offence was come to the knowledge of the Inspector of Legal Metrology on 25.03.2011 on his inspection at the business premises of the accused. Thereafter, on 26.09.2011 he lodged the complaint against the accused. Under Sub-section (2) of the 469 CrPC, in compounding the said period of limitation, the date from which the said period is computed shall be excluded. Thus, the first day on which the offence was detected is to be computed from the period of limitation. Thus, in the instant case, it is found that the complaint was lodged within six months from the date of commission of the offence. Though the Court took cognizance of the offence on 29.09.2011, but the computed period of limitation relating the date must be considered such date of filing of complaint or initiating criminal proceeding and not date of taking cognizance by a Magistrate or issuance of process by a Court. In this regard, I have gone through the decision reported in **2007(7) SCC 394 / MANU SC/3080/2007 in *Japani Sahoo Vs. Chandra Sekhar Mohanty*** wherein the Hon'ble Supreme Court held that, *“for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not filing of complaint or initiation of criminal proceedings”*.

Contd....P/12.

No.217/11.

17. In view of aforesaid discussion, it is found that this case is well within the period of limitation and as such, not barred under the provisions of Section 468 of the CrPC.
18. I have also gone through the materials exhibited by the prosecution side. Mat.Ext1 is the Retail Invoice Book and Mat.Ext-1(1) is the Invoice No.6058. It is found from Mat.Ext-1(1) that on 12.02.2011 four Chocobars Large were sold by the accused to one customer at Rs.60/- with additional 20% service charge amounting to Rs.12/-. It is clear from Mat.Ext-1(1) that the price of four Chocobars Large is Rs. 60/-. There is no dispute that Chocobar is a commodity in packaged form bearing MRP on it. The defence case is that he sold the Chocobar at a price less than the Maximum Retail Price. In this regard, defence has exhibited one packet of Chocobar and Mat.Ext-i being specimen cover of the said Chocobar. It is found from the Mat.Ext-i that the MRP of the Chocobar outside Guwahati is Rs.20/- and within Guwahati is Rs.15/-. It is not clear from Mat.Ext-i that the MRP of the Chocobar sold through Mat.Ext1(1) i.e. Invoice No.6058 is same with the specimen cover of Chocobar exhibited as Mat.Ext-i by the defence side. Though DW2 has deposed that for the last 3/4 years the price of Chocobar has not been changed, but DW1 the Marketing Executive of the concerned company has not adduced any evidence that there is no change in the price of Chocobar for the last 3/4 years. Moreover, it is crystal clear from the Mat.Ext-1(1) that the seller received Rs.60/- as price of four Chocobars large and he added 20% as service charge. There is no evidence from the defence side that he is entitled to take 20% service charge from a packet product in addition to MRP on such product.

3.

CR.No.217/11.

Sub-rule 2 of Rule 23 of the Standards of Weights & Measures (packaged commodities) Rules, 1977 clearly stated that no retail dealer or other person can make any sell or commodity in packaged form at the price exceeding retail price thereof. Thus, law is clear that the accused can not add additional service charge on a commodity in packaged form which bears Maximum Retail Price.

19. In view of the above discussion, I found the accused person Kamal Kumar Banthia violated the Rule 23(2) of the Standards of Weights & Measures (packaged commodities) Rules, 1977. Therefore, I found the accused person guilty U/S.39(2) of the Standards of Weights & Measures (packaged commodities) Rules, 1977 and accordingly he is convicted.

20. On the point of sentence the accused person is heard. The accused person has pleaded innocence. Considering nature of the offence, I am of the opinion that the accused person is not entitled to get the benefit of probation U/S.360 CrPC or under the probation of offenders Act.

21. In the result, the accused person Sri Kamal Kumar Banthia is hereby sentenced to pay a fine of Rs. 2000/- (Rupees Two thousand) i./d S.I for 1 (one) month. Let the seized articles, if any be returned to the accused person in due course of law.

22. Let a copy of the judgment be furnished to the accused persons at free of cost.

Contd....P/1

4.

CR.

No.217/11.

23. The Judgment is given under my hand and seal of this Court on this **18th day of July, 2014.**

Sd/-
(Smt. N. Talukdar)
**Chief Judicial Magistrate,
BONGAIGAON.**

Dictated and Corrected by me.....

Sd/-
(Smt. N. Talukdar)
**Chief Judicial Magistrate,
BONGAIGAON.**
