

SUPREME COURT OF INDIA

Subhankar Biswas

Vs.

Sandeep Meta

(2011) 5 SCALE 0137

(Harjit Singh Bedi and Chandramauli Kr. Prasad,JJ.,)

07.04.2011

ORDER

1. This order will dispose of all the appeals referred to above. The facts have been taken from criminal appeal No. 1129/2006. The matter arises out of a complaint under Section 19 of the Standards of Weights and Measures Act, 1976. In the complaint it has been urged that Rules 2,4,6, 8, 9 and 23 of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 had been violated. In the meantime the appellant also filed an application for the compounding of the offence and the appropriate authority directed that the offence be compounded. This however could not go through for the reason that as per the allegation several similar offences had been committed by the Company within three years. An application under Section 482 was thereafter filed by the Chairman of the Company Mr. H.B.Lal and the appellant Subhankar Biswas the then Deputy General Manager raising several pleas, one of being based on Section 74 of the Act and the averments made in the complaint which did not identify as to who was the person responsible and incharge of the affairs of the Company.

2. It was pointed out that in the complaint the bare language of Section 74 had been reproduced without naming any body as being responsible for the day-to-day affairs of the Company. The averment made in the complaint which is relevant to the matter is reproduced below: "That the persons committed this offence are companies. So every person at the time of offence was in charge of and was responsible to the companies for the business of the companies as well as the companies shall be liable to be proceeded against the punished accordingly as per section 74 of the Standards of Weights and Measures Act, 1976." It was accordingly argued in the High Court that the complaint itself was not maintainable as it did not indicate as to who was responsible for the day-to-day affairs of the Company. After hearing both sides the High Court by its order of 24th March 2005 quashed the proceedings qua the Chairman Mr. H.B.Lal with the following observations:

"Therefore in the absence of any specific averment regarding the role played by petitioner No.1 M.B.Lal, who is the Chairman of the Corporation and there is nothing to indicate that he was in charge of and responsible to the Corporation relating to its

day-to-day affairs of the Corporation at the time of commission of the alleged offence, the present application deserves to be allowed in part and the proceeding against the said petitioner No.1 M.B.Lal is to be quashed."

4. Today, before us, Mr. Pradeep Ghosh, the learned senior counsel for the appellant, has argued that the allegations against the Chairman of the Company and the appellant before us were identical and there was no distinction whatsoever between the two and the High Court having quashed the proceedings against the Chairman, a similar order ought to have followed for the appellant as well. Mr. Avijit Bhattacharjee, the learned counsel for the respondent-State, has however pointed out that the question as to the identity of the person(s) in charge of the day-to-day affairs of the Company was a matter of evidence and it was therefore imperative that the trial go on.

5. We have considered the arguments advanced by the learned counsel for the parties. We find absolutely no distinction between the case of the Chairman and the appellant and the High Court has not brought out any distinction between the two.

6. It has to be borne in mind that in prosecutions in such like cases no roving enquiry is permissible and an obligation rests on the prosecution to give details so that the persons responsible so that the trial can proceed against them. We are therefore of the opinion that the appeal qua the present appellant ought to succeed. We accordingly allow these appeals; set aside the order of the High Court insofar it goes against the appellant and direct that the proceedings against the appellant shall also stand quashed in all cases.