



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF SEPTEMBER, 2022**



**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**CRIMINAL PETITION NO. 5119 OF 2017**

**BETWEEN:**

1. ASIAN PAINTS LIMITED  
A COMPANY INCORPORATED UNDER  
PROVISIONS OF THE COMPANIES ACT, 1956,  
HAVING ITS REGISTERED  
OFFICE ADDRESS AT 6A,  
SHANTINAGAR, SANTACRUZ (EAST)  
MUMBAI 400055.  
AND ITS REGIONAL OFFICE AT  
PLOT NO. 183 TO 187 & 254 TO 258 JIGANI  
BOMMASANDRA LINK ROAD,  
BOMMASANDRA, NEAR OMAXE BUS STOP,  
BANGALORE 562106

2. MR. KANWAR BIR SINGH ANAND  
S/O. JAGATJIT SINGH,  
AGED ABOUT 61 YEARS,  
IN HIS CAPACITY AS DIRECTOR,  
ASIAN PAINTS LIMITED ,.  
A COMPANY INCORPORATED UNDER  
PROVISIONS OF THE COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE ADDRESS AT 6A,  
SHANTINAGAR, SANTACRUZ (EAST) MUMBAI 400055.

...PETITIONERS

(BY SRI AJITH A SHETTY., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THE DEPARTMENT OF WEIGHTS &  
MEASURES BY THE INSPECTOR,  
PUTTUR SUB DIVISON,

Digitally signed by  
POORNIMA  
SHIVANNA  
Location: HIGH  
COURT OF  
KARNATAKA



PUTTUR 574201.  
DAKSHINA KANNADA DISTRICT

...RESPONDENT

(BY SRI MAHESH SHETTY, HCGP)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 14.06.2016 PASSED BY THE ADDL. CIVIL JUDGE AND JMFC, PUTTUR, D.K., IN AS MUCH AS TAKING COGNIZANCE OF AN OFFENCE ALLEGED U/S 36 OF THE LEGAL METROLOGY ACT, VIDE PRIVATE COMPLAINT NO.9 OF 2016 AND REGISTERING OF A CRIMINAL CASE AS C.C.NO.353/2016 AND ETC.

THIS CRL.P. COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioners are before this Court for the following reliefs:

- 1.1. *"Call for records;*
- 1.2. *to quash the impugned order dated 14th June, 2016, passed by the Hon'ble Additional Civil Judge and JMFC, Puttur, Dakshina Kannada, in as much as taking cognizance of an offence alleged under Section 36 of the Legal Metrology Act, vide Private Complaint No.9 of 2016 and registering of a criminal case as C.C.No.353 of 2016;*
- 1.3. *to quash all further proceedings in C.C.No.353 of 2016 on the file of the Hon'ble Additional Civil Judge and JMFC, Puttur, Dakshina Kannada; and*
- 1.4. *to grant such other relief/s as this Hon'ble Court would be pleased to grant under the facts and circumstances of the present case in the interest of justice."*



2. A private complaint under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for short) came to be filed in the Court of the Additional Civil Judge, JMFC, Puttur and came to be numbered as PCR.No.9/2016, alleging that when a raid was conducted in the premises of M/s. Laxmi Decors being a proprietary concern of one Mr.Gourav Nayak, there were certain products, namely sealants, which were found in the said premises which were not properly described in terms of Rule 12(2)(a) of the 'Legal Metrology (Packed Commodities) Rules, 2011 (hereinafter referred to as the 'Packaging Rules' for short).
3. The allegation was that the product being liquid in nature. The same would have to be described by mass and the weight would have to be declared on the package. Since the weight was not declared and volume in terms of millilitres, which was declared,



there is a violation of the provisions of Rule 12(1)(a) of the Packaging Rules.

4. On the complaint being filed, cognizance was taken for the offences under Section 36 of the Legal Metrology Act, 2009 and summons were issued by the Magistrate on 14.06.2016. It is aggrieved by the same, the petitioner is before this Court.
  
5. Sri Ajith A Shetty, learned counsel appearing for the petitioners would submit that the product in question being a liquid, firstly, in terms of Rule 12(2)(d) of the Packaging Rules, a commodity which is a liquid can be described by volume even otherwise in terms of fourth schedule, wherever there is a doubt as regards the exceptions covered under Rule 12(2) of the Packaging Rules in terms of Sl.No.16 thereof, liquid chemicals could be described either by weight or volume.



6. Both the options being available, the petitioners having described the commodity by volume. There is no offence which could be said to have been committed in terms of Section 12(1)(a) of the Packaging Rules.
7. Since, firstly, it is 12(1)(d) of the Packaging Rules, which is applicable, even otherwise, in terms of exception in terms of sub-Section 1 of Section 12 as per the fourth schedule, the petitioners have been provided an option to declare the weight or volume.
8. His other submission is that petitioner No.1 is a Company registered with a Registrars of Companies having its registered office at Mumbai and petitioner No.2 is a resident of Mumbai. As such, before the issuance of summons, the Magistrate ought to have complied with the requirement of Section 202 of Cr.P.C., and only upon recording of evidence and reasons as to why summons ought to be issued to a



person residing outside the territorial jurisdiction of the Magistrate could a summons be issued.

9. Both the above aspects not having been taken note of by the learned Magistrate, the order of summons as also the order of cognizance, issuance of summons and the FIR having been filed are to be quashed.
10. Sri Mahesh Shetty, learned High Court Government Pleader for respondent would, however, submit that the dealer, namely M/s.Lakshmi Decors represented by Sri Gourav Nayak has compounded the offence by making payment of Rs.5,000/- as a compounding fee. The same amounts to an admission on the part of the dealer of an offence having been committed, and therefore, it is open to the petitioners to also compound the offence and not seek for quashing.
11. Heard Sri Ajith A shetty, learned counsel appearing for the petitioners and Sri Mahesh Shetty, learned



High Court Government Pleader for respondent and perused the papers.

12. The points that would arise for determination are:

12.1. ***When a commodity in liquid form is sold, is it required to be described in terms of weight/mass or could the description being in terms of volume?***

12.2. ***Whether the compounding of the offence by one of the accused would disentitle the other accused from filing a proceeding under Section 482 of the Cr.P.C?***

12.3. ***Whether the Magistrate could have issued summons to an accused residing outside the jurisdiction without complying with the requirement of Section 202 of Cr.P.C?***

12.4. ***What order?***

13. I answer the above points as under

14. ***Answer to Point No.1: When a commodity in liquid form is sold, is it required to be described in terms of weight/mass or could the description being in terms of volume?***

14.1. Rules 12(1) and 12(2) of the Packaging Rules

are reproduced hereunder for easy reference:

***"12. Manner in which declaration of quantity shall be.—***

***(1) The declaration of quantity shall be expressed in terms of such unit of weight, measure or number or a combination of***



*weight, measure or number as would give an accurate and adequate information to the consumer with regard to the quantity of the commodity contained in the package.*

*(2) Except in the cases of commodities specified in the Fourth Schedule, the declaration of quantity shall be in terms of the unit of –*

*(a) mass, if the commodity is solid, semi-solid, viscous or a mixture of solid and liquid;*

*(b) length, if the commodity is sold by linear measure;*

*(c) area, if the commodity is sold by area measure;*

*(d) volume, if the commodity is liquid or is sold by cubic measure; or*

*(e) number, if the commodity is sold by number"*

14.2.A perusal of sub Rule 2 of Rule 12 of the Packaging Rules provides that except in the case of commodities specified in the Fourth Schedule, the quantity have to be declared in terms of the unit as stated in Rule 12(a) to (e) of the Packaging Rules.

14.3.Rule 12(a) of the Packaging Rules mandates that the description is to be in terms of the





mass/weight, if the commodity is solid, semisolid, viscous or mixture of solid and liquid.

14.4. In terms of Rule 12(2)(d) of the Packaging Rules the description is to be in terms of volume, if the commodity is liquid or sold by cubic measure.

14.5. In the present case, the commodity which is sold is stated to be a liquid, as regards which there is no dispute by the learned HCGP. Thus, the Inspector of the Department of Legal Metrology ought to have considered the provision of Rule 12(2)(d) of the Packaging Rules which would be applicable to a liquid and not 12(2)(a) of the Packaging Rules which deals with solids, semisolid, viscous or a mixture of a solid and liquid.

14.6. Be that as it may, Rule 12(2) of the Packaging Rules states that it is except in the case of



commodities prescribed in the Fourth Schedule, the units would have to be in terms of 12(2)(a) to (e) of the Packaging Rules, Thus, in the event of the commodities being specified in the Fourth Schedule, Rules 12(2)(a) to (e) would not be applicable. Item No.16 of the Fourth Schedule deals with liquid chemicals in terms of column 3 thereto, as regards which the declaration could be expressed in terms of either weight or volume.

14.7.The petitioners having chosen to describe the same by volume in terms of Fourth Schedule. I am of the considered opinion that the petitioners have made a choice and the said choice being legally permissible and provided for the cannot be faulted with.

14.8.Thus, I answer point No.1 by holding that when there is a liquid chemical or liquid which has been sold, the declaration in terms of



weight/measures could be done either by weight or volume in terms of item No.16 of the Fourth Schedule as also in terms of Rule 12(2)(d) of the Packaging Rules.

15. **Answer to Point No.2: Whether the compounding of the offence by one of the accused would disentitled the other accused from filing a proceeding under Section 482 of the Cr.P.C?**

15.1.The contention of Sri Mahesh Shetty, learned HCGP is that since the retailer has compounded the offence, the petitioners cannot file proceedings under Section 482 for quashing of the criminal proceedings.

15.2.It is trite law that even a confession of a co-accused cannot implicate the other accused, if it is a false confession.

15.3.In the present case, having come to the conclusion that there is no violation which has been committed by the petitioners of the Packaging Rules and the description of the



product in terms of volume is proper and correct. The compounding of the alleged violation and the payment of the compounding fee thereon by one of the accused cannot be said to come in the way of the petitioners challenging the proceedings which ought not to have been initiated in the first phase.

15.4.I answer to point No.2 by holding that even if one of the accused were to compound an offence in the event of any grounds being available, the other accused could always approach this court in a proceeding under Section 482 of Cr.P.C.

16. **Answer to Point No.3:- Whether the Magistrate could have issued summons to an accused residing outside the jurisdiction without complying with the requirement of Section 202 of Cr.P.C?**

16.1.Admittedly, the first petitioner is a Company registered in Mumbai and the second petitioner is residing in Mumbai.



16.2. Section 202 of Cr.P.C which is reproduced hereunder for easy reference:

***"202. Postponement of issue of process.***

*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--*

*(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*

*(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*

*(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

*(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant."*



16.3.A perusal of the above provision would indicate that whenever a person resides outside its jurisdiction, the Court ought to be slow in issuing summons and ought to satisfy itself that there is a requirement for the issuance of summons in a particular case. This could be ascertained by holding an enquiry and passing a reasoned order.

16.4.In the present case, neither an enquiry is held nor a reasoned order is passed as to why summons ought to be issued to the petitioners. As such, I am of the considered opinion that there is a violation of Section 202 of Cr.P.C.

**17. Answer to point No.4: What Order?**

17.1.In view of my above findings, I am of the considered opinion that the above petition is required to be allowed. Hence, I pass the following:



**:ORDER:**

- a) The petition is allowed.
- b) The impugned order 14.06.2016 passed by the Additional Civil Judge, JMFC. Puttur, Dakshina Kannada in PCR.No.9/2016 registered in criminal case in CC.No.353/2016 and all further orders passed therein are hereby quashed.
- c) Private complaint in PCR.No.9/2016 and C.C.No.353/2016 arising there from are hereby quashed.

**Sd/-  
JUDGE**

KTY  
List No.: 1 SI No.: 15