

Kimberly Clark Liver Ltd. Vs. State

Kimberly Clark Liver Ltd. Vs. State

SooperKanoon Citation : sooperkanoon.com/437627

Court : Andhra Pradesh

Decided On : Mar-10-2006

Reported in : 2006CriLJ2438

Judge : Ramesh Ranganathan, J.

Acts : [Standards of Weights and Measures Act, 1976](#) - Sections 9, 29(1), 39(2), 72 and 73; Standards of Weights and Measures (Packaged Commodities) Rules, 1977 - Rules 6(1), 10, 23 and 39(2); Code of Criminal Procedure (CrPC) , 1974 - Sections 200, 468(2), 469 and 471

Appeal No. : Cri. Petn. No. 3572 of 2003

Appellant : Kimberly Clark Liver Ltd.

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : E. Manohar, Sr. Counsel and ;S. Leo Raj, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ramesh Ranganathan, J.

1. In this criminal petition, the petitioner seeks to have the proceedings in S.T.C. No. 114 of 2003 on the file of the Judicial Magistrate of First Class, Mahabubabad, quashed.

2. The Inspector, Mahabubabad, (respondent/complainant herein) filed a complaint in Case No. 88/PC/2002-2003 against two accused, the petitioner herein and Veena Fancy and Kangan Hall, Mahabubabad. The contents of the complaint are that on 4-9-2002, the Inspector accompanied by L.W.2, visited the trading premises of the second accused, where various packages were displayed for sale and when the Inspector inspected some of the packages, he found that 'Two Retail Packages of Kotex regular size, Net. Qt. 8 belt less sanitary pads, packed on 29-1-2001, did not bear the complete address of the manufacturer as required under Rule 6(1)(a) read with Rule 10 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (for short 'the Rules'). This contravention is said to be in violation of Section 39(2) of the Rules. It is also alleged that the accused contravened Rule 23(i) punishable under Rule 39(2) of the Rules. The Inspector seized two retail packets under panchanama and a notice was sent to the first accused by ordinary post informing him of the offence committed by him, and that could be compounded departmentally under Section 73 of the [Standards of Weights and Measures Act, 1976](#) (for short 'the Act') if they wish to do so. Notice was sent to the second accused. However, both the accused failed to respond to the notice. It is this complaint, filed under Section 72 of the Act, which is sought to be quashed in the present petition.

3. Sri E. Manohar, learned Senior Counsel appearing for the petitioner, would contend that the proceedings in S.T.C. No. 114 of 2003, are liable to be quashed on the following grounds:

1. Since the punishment liable to be imposed for the offence alleged against the petitioner is only fine, and under Section 468(2)(a), Cr. P.C. the period of limitation is six months and since the complaint filed on 3-3-2003, which was taken cognizance on 10-3-2003, taking cognizance of the offence beyond the period of limitation of six months from the date of seizure i.e. on 4-9-2002. Learned Senior Counsel would place reliance on the judgment of Krishna Pillai v. T.A. Rajendran

1990 (Supp) SCC 121 in this regard.

2. Section 39(2) of the Rules, merely requires the package to bear the name of the manufacturer and since the name of the manufacturer is mentioned in the package, the petitioner could not be said to have violated the conditions prescribed thereunder. Learned Senior Counsel would submit that the requirements of furnishing the address of the manufacturer, as prescribed in Rule 6(1)(a) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 was ultra vires of the provisions of the [Standards of Weights and Measures Act, 1976](#) and as such, was liable to be ignored.

3. Since the power to inspect the entire premises under Section 29(1) of the Act is only on the formation of the opinion that the concerned officer has any reason to believe that an offence punishable under the Act appears to have been, or likely to be, committed in any premises, he is entitled under Clause (a) thereof, enter into such premises and search for or inspect any goods. Learned Senior Counsel would submit that the complaint does not reflect formation of such an opinion nor does it indicate the fact that the Inspector had reason to believe that an offence had been committed in the premises and since the very search and seizure was contrary to the mandatory requirements of Section 29(1) of the Act, search and seizure is illegal and all proceedings consequential thereto, are liable to be quashed.

4. Learned counsel would place reliance on : [1967]1SCR898 : : 1960 CriLJ286 and AIR 2001 SC 137 : 2001 Cri LJ 165 in this regard. Learned Senior Counsel would submit that by furnishing the name of the manufacturer, there has been substantial compliance with the requirements of Section 39(2) of the Act read with Rule 6(1)(a) of the Rules and since the product was well known in the market, non furnishing of the address was an offence, which is technical in nature, for which criminal proceedings ought not to have been instituted, more so, which is the punishment liable to be imposed for a technical punishment is only Rs. 500/-. Learned counsel would place reliance on Caron Ltd. v. Union of India 1999 (1) FAC 36 and Pertech Computers v. Controller of Legal Metrology Weights & Measures Department Hyderabad 1998 AIHC 2978. in this regard.

5. Learned Public Prosecutor, on the other hand, would contend that the period of limitation is from the date of seizure till the date of the complaint and since the complaint was filed on 3-3-2003, which was well within six months limitation period from 4-9-2002, the date of seizure, the mere fact that the Magistrate had taken cognizance subsequent thereto was of no consequence inasmuch as the complaint was filed within the period of limitation. He would rely on *Bharat Damodar Kale v. State of A.P.* : 2003 CriLJ4543 in this regard.

6. In *Krishna Pillai* 1990 (Supp) SCC 121 (supra), the three-Judge Bench of the Supreme Court held as under:

It is not disputed that cognizance has been taken by the Court more than a year after the offence was committed. Counsel for the respondents has stated that since the complaint had been filed within a year from the commission of the offence it must be taken that the Court has taken cognizance on the date when the complaint was filed. In that view of the matter there would be no limitation.

Taking cognizance has assumed a special meaning in our criminal jurisprudence. We may refer to the view taken by a five Judge Bench of this Court in *A.R. Antulay v. Ramdas Srinivas Nayak* : 1984 CriLJ647 of the reports this Court indicated.

When a private complaint is filed, the Court has to examine the complainant on oath save in the cases set out in the proviso to Section 200, Cr. P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the Court to judicially determine whether a case is made out for issuing process. When it is said that Court issued process, it means the Court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the Court.

The extract from the Constitution Bench judgment clearly indicates that filing of a complainant in Court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complainant. Since the magisterial action in this case was beyond the period of one year from the date of the date of the

commission of the offence the Magistrate was not competent to take cognizance when he did in view of the bar under Section 9 of the Act. We accordingly allow the appeal and quash the prosecution. The writ petition is permitted to be withdrawn as not pressed.

7. It is clear therefrom that the limitation prescribed is for taking cognizance and not for filing of the complaint and in case where cognizance is taken beyond the period of limitation, the prescription is liable to be quashed.

8. Subsequently, however, the two-Judge Bench of the Supreme Court without noticing the earlier three-Judge Bench judgment in Krishna Pillai 1990 (Supp) SCC 121 (supra), held as under in Bharat Damodar Kale 2003 Cri LJ 4543 (supra) Para 10 & 11 of Cri LJ:

On facts of this case and based on the arguments advanced before us we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to delay in instituting the prosecution or to delay in taking cognizance. As noted above according to learned Counsel for the appellants the limitation prescribed under the above Chapter applies to taking of cognizance by the concerned Court therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the Chapter Heading of Chapter XXXVI of the Code which reads thus : 'Limitation for taking cognizance of certain offences.' It is primarily based on the above language of the Heading of the Chapter the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the Court from taking cognizance of an offence where the complaint is filed before the Court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period

of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 471 indicates while computing the period of limitation, time taken during which the case was being diligently prosecuted in another Court or in appeal or in revision against the offender should be excluded. The said Section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the Court was closed will also have to be excluded. All these provisions indicate that the Court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the Court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of Court. The legal phrase '*actus curiae neminem gravabit*' which means an act of the Court shall prejudice no man, or by a delay on the part of the Court neither party should suffer, also supports the view that the Legislature could not have intended to put a period of limitation on the act of the Court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the early decision of this Court in the case of *Rashmi Kumar* (1997) 2 SCC 397 (*supra*).

In this interpretation of Chapter XXXVI of the Code is to be applied to the facts of the case then we notice that the offence was detected on 5-3-1999 and the complaint was filed before the Court on 3-3-2000 which was well within the period of limitation, therefore, the fact that the Court took cognizance of the offence only on 25-3-2000, about 25 days after it was filed, would not make the complaint barred by limitation.

9. It is necessary to note that the earlier three-Judge Bench judgment of the Supreme Court in Krishna Pillai 1990 (Supp) SCC 121 (supra) was not brought to the notice of the two-Judge Bench of the Supreme Court in Bharat Damodar Kale 2003 Cri LJ 4543 (supra).

10. On the question as to which of these two judgments of the Apex Court, the High Court was required to follow, Sri E. Manohar, learned Senior Counsel, would submit that in case of a clear conflict in the judicial dicta of two judgments of the Supreme Court, the High Court would be bound by the judgment of a larger bench as compared to a bench with lesser number of Judges. Learned senior counsel would place reliance on *Mattulal v. Radhe Lal* : [1975]1SCR127 ; *State of U.P. v. Ram Chandra Trivedi* : (1977)ILLJ200SC ; *Union of India v. Raghubir Singh* : [1989]178ITR548(SC) and *Chandra Prakash v. State of U.P.* : (2002)ILLJ841SC .

11. In *Mattulal* : [1975]1SCR127 (supra), the Supreme Court noticing the contrary views taken by a Bench of four judges of the Supreme Court in *T.B. Sarvate v. Nemichand* 1966 MPLJ 26 and *Smt. Kamla Soni v. Rup Lal Mehara* AIR 1969 NSC 186 a Bench of three Judges, held that since the earlier judgment of a Bench of four Judges of the Supreme Court in *T. B. Sarvate* (supra) was not noticed by the subsequent three Judge Bench of the Supreme Court in *Smt. Kamla Soni* (supra), the decision in *T. B. Sarvate* 1966 MPLJ 26 (supra) must be followed as against the decision in *Kamla Soni* (supra) as the former was a decision of a larger bench.

12. In *State of U.P. v. Ram Chandra Trivedi* : (1977)ILLJ200SC (supra) the Supreme Court held thus:

It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in *Union of India v. K.S. Subramanian* Civil Appeal No. 212 of 1975, decided on July, 30, 1976 to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller

benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself.

13. In *Raghubir Singh* AIR 1989 SC 1933 (supra), the Constitution Bench of the Supreme Court held thus:

28. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges.

29. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court.

14. Following the judgment in *Raghubir Singh* AIR 1989 SC 1933 (supra), the Supreme Court in *Chandra Prakash* AIR 2002 SC 1652 (supra) held thus (Para

23):

A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghbir Singh held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges.

15. In view of the authoritative pronouncement of the Supreme Court in the aforesaid cases, the pronouncement of law by a Division Bench of the Supreme Court is binding on a Division Bench of the same or smaller number of Judges. In cases where the High Court finds any conflict in the views expressed by larger and smaller benches of Supreme Court, it cannot disregard the views expressed by the larger bench of the Supreme Court and must follow the law laid down therein and not what has been laid down by a Division Bench consisting of lesser number of Judges.

16. As noted above in Krishna Pillai 1990 (Supp) SCC 121 (supra), the Supreme Court held that filing of a complaint in the Court did not amount to taking cognizance, that taking cognizance was different from filing of a complaint and since the magisterial action of taking cognizance was beyond the period of limitation calculated from the date of commission of the offence, the Magistrate was not competent to take cognizance of the offence under after the period of limitation. In Bharat Demodar Kale 2003 Cri LJ 4543 (supra), a two Judge Bench

of the Supreme Court, took a contrary view, and held that a cumulative reading of various provisions of Chapter XXXVI of the Cr. P.C. clearly indicated that the limitation prescribed therein was only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. The law laid down by the Supreme Court in *Bharat Damodar Kale* 2003 Cri LJ 4543 (supra) is in conflict with the law laid down in *Krishna Pillai* 1990 (Supp) SCC 121 (supra) and since the earlier three Judge Bench judgment in *Krishna Pillai* (supra) was not noticed by the subsequent two Judge Bench of the Apex Court in *Bharat Damodar Kale* (supra), the law laid down in *Krishna Pillai* (supra) is binding on this High Court, and as a result cognizance taken by the Magistrate, beyond the prescribed period of limitation, i.e., the period commencing from the date on which the offence is said to have been committed till the date on which the learned Magistrate had taken cognizance, must be held as beyond limitation and in view of the bar under Section 468(2)(a), Cr. P.C. the proceedings in STC No. 114 of 2003 is required to be quashed on this ground.

17. As the proceedings in S.T.C. No. 114 of 2003 are being quashed on the ground of limitation, it is wholly unnecessary for this Court to examine the other contentions raised by Sri E. Manohar, learned Senior Counsel appearing on behalf of the petitioners.

18. The criminal petition is allowed and the proceedings in S.T.C. No. 114 of 2003 on the file of the Judicial Magistrate of First Class, Mahabubabad, is quashed.