

DISTRICT: SONITPUR

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS,
SONITPUR, TEZPUR

C.R. Case No. 117/2012

***U/S. 36 (1) of the Legal Metrology Act, 2009 r.w. Rule 6(1) (e)
of the Legal Metrology (Packaged Commodities) Rules, 2011.***

SH. ABHINASH BAJAJ

S/O SH. OM PRAKASH BAJAJ

VILL: CIVIL HOSPITAL ROAD, TEZPUR

P.S: TEZPUR

DISTRICT: SONITPUR

ASSAM

- ACCUSED

VERSUS

STATE OF ASSAM

- PROSECUTOR

PRESENT: JAYASHREE BORA, AJS

JUDICIAL MAGISTRATE FIRST CLASS

SONITPUR, TEZPUR

ADVOCATES APPEARED

FOR THE PROSECUTION: Sh. Ashok Sharma, APP

FOR THE ACCUSED: Sh. Sudesh Singh

OFFENCE EXPLAINED ON: 31/07/12

EVIDENCE RECORDED ON: 25/09/14, 25/02/15, 29/06/15

ARGUMENT HEARD ON: 17/08/15, 31/08/15

JUDGMENT DELIVERED ON: 11/09/15

JUDGMENT

1. The prosecution case is that on 19/07/11, when the Inspectors of Legal Metrology, Tezpur, visited the premises of A- one Trading Company, situated at Civil Hospital Road, Tezpur, it was found that the accused had exhibited for sale some packets of locks under the brand name "Gopal lock regd" side shutter lock 6 levers manufactured by Gopal Metal Industries, Chhapeti, Aligarh- 202001, India, bearing no declaration of retail sale price on the body of the packets. 2 pieces of these packets were seized for violation of Rule 6(1) of the Legal Metrology Packaged Commodities Rules 2011. Accordingly prosecution against the accused was launched by filing a complaint against him in the Court of the Learned Chief Judicial Magistrate, Sonitpur, Tezpur.
2. In due course, the accused entered his appearance in response to the process issued. Copies of relevant documents were furnished to the accused. Particulars of offence for violation of Rule 6(1) (e) of the Legal Metrology (Packaged Commodities) Rules, 2011 and Sec. 36 of the Legal Metrology Act, 2009, were explained to the accused to which he pleaded not guilty and claimed to be tried.
3. During trial, the prosecution examined 3 numbers of witnesses, exhibited 4 documents and closed its evidence. After the closure of prosecution evidence, the statement of the accused u/s. 313 CrPC was recorded. Defence did not adduce any evidence.

4. Upon hearing both the parties and perusal of the records, the points for determination have been formulated as follows-

(i) Whether the accused on 19/07/11, at his shop, namely M/S A-one Trading Company at Civil Hospital Road, Tezpur exhibited for sale packets of locks under the brand name "Gopal lock regd" side shutter lock 6 levers manufactured by Gopal Metal Industries, Chhapeti, Aligarh- 202001, India, bearing no declaration of retail sale price on the body of their packets, which is a violation of Rule 6(1) (e) of the Legal Metrology (Packaged Commodities) Rules, 2011, and thereby committed an offence u/s. 36 (1) of the Legal Metrology Act, 2009?

5. I have heard the learned counsels on both sides and have gone through the evidence on record.

EVIDENCE

6. In his examination in chief PW1 deposed that on 19/07/11, he was working as the Inspector of Legal Metrology at Tezpur. On that day he along with Sh. C.R. Saikia, Inspector of Legal Metrology, Tezpur went for inspection at Tezpur town. On that day they visited a shop namely M/S A-one Trading Company at Civil Hospital Road, Tezpur. In that shop they met Avinash Bajaj. They disclosed their identity to him and shared their purpose of visit. They noticed some packets of lock and key at the shop. During the inspection they seized 2 pieces of Gopal lock regd, side special shutter lock, 6 levers manufactured by Gopal Metal Industries, Chhapeti, Aligarh 202001, India. The seized articles were kept on exhibition for sale and those items did not bear declaration of retail sale price on the body of the packets and so the 2 packets were seized as that is a violation of Rule 6(1) of the Legal Metrology Packaged Commodities Rules 2011. The seizure was made by Sh. Chenaram Saikia, Inspector of Legal Metrology, Tezpur, in the presence of the witnesses. After the

seizure, as per the provisions of law, they prepared the offence report and obtained sanction from the Controller of Legal Metrology, Assam, Guwahati. The authority concerned had accorded its sanction authorizing the complainant to lodge a complaint against the accused under the provisions of the Legal Metrology Act 2009. Thereafter, they launched the prosecution by lodging the complaint before the learned Chief Judicial Magistrate. Exhibit 1 is the complaint. Exhibit 1(1) is the signature of the complainant Sh. Chenaram Saikia, Inspector of Legal Metrology, Tezpur which he knows. Exhibit 2 is the sanction letter for the prosecution. Exhibit 2(1) is the signature of Controller of Legal Metrology, Assam, Guwahati, which he knows. Exhibit 3 is the seizure certificate. Exhibit 3(1) is the signature of Sh. Chenaram Saikia, Inspector of Legal Metrology, Tezpur who carried out the seizure of the articles and which he knows. Exhibit 3(2) is his own signature as a witness to the seizure. Exhibit 3(3) is the signature of Sh. Avinash Bajaj from whom the seizure was made. Exhibit 3(4) is the signature of another witness Sh. Deben Chandra Nath which he knows. Exhibit 4 is the offence report. Exhibit 4(1) is the signature of the complainant Sh. Chenaram Saikia.

7. In his evidence PW2 stated that he knows the complainant Sh. Chenaram Saikia. He is the Inspector. He also knows the accused. In the year 2012, he along with the complainant had visited the shop of the accused for the purpose of inspection. Sh. Prabhat Chandra Bhuyan, Assistant Controller also accompanied them during the visit. The Inspector seized 2 locks from the shop of the accused as those locks did not bear the declaration as to their retail sale price. He had signed on Exhibit 3- the seizure list. Exhibit 3(4) is his signature thereon.

8. In his examination-in-chief PW3 stated that he is the complainant. He knows the accused. Around 3 to 4 years ago, he

along with his colleague, Sh. Prabhat Chandra Bhuyan, Inspector of Legal Metrology, Tezpur and Sh. Deben Chandra Nath, Manual Assistant, visited the shop premises of the accused for inspection of packaged commodities weighing and measuring instruments. At the relevant time, he was working as the Inspector of Legal Metrology, Tezpur. During the aforesaid visit they met the accused in the shop. They viewed the items in the shop. From amongst those items, they picked up 2 pieces of "Gopal lock regd" side shutter lock 6 levers manufactured by Gopal Metal Industries, Chhapeti, Aligarh- 202001, India. During the inspection of the aforesaid locks, it was found that there was no declaration of retail sale price on the body of the packets. The said locks were displayed in the shop for sale by the accused. Thereby the accused was found to violate Rule 6(1) of Legal Metrology (Packaged Commodities) Rules, 2011 and other relevant Acts and Rules. He seized the said 2 locks in the presence of 2 witnesses, namely, Sh. P.C. Bhuyan and Sh. Deben Chandra Nath by preparing a seizure certificate. Exhibit 3 is the seizure certificate and Exhibit 3(1) is his signature. One copy of the said seizure certificate was given to the accused. On the detection of the anomalies, he asked the accused about his introduction and the accused introduced himself as the shopkeeper of the said shop. Thereafter, he and his colleagues introduced themselves and disclosed their official identities before carrying out their official formalities. They instructed the accused not to violate the provisions of law in future and then they left the shop with the seized articles. He prepared the offence report and the same was forwarded along with the seizure list to the Controller Legal Metrology, Guwahati-7 for grant of sanction for launching prosecution against the accused. Exhibit 4 is the said offence report and Exhibit 4(1) is his signature. Exhibit 2 is the sanction letter of Controller Legal Metrology, Guwahati. Exhibit 2(1) is the signature of the

sanctioning authority, Controller Legal Metrology, Guwahati, Sh. J.K. Hazarika. After receiving the requisite sanction, he prepared the complaint against the accused which was forwarded to the CJM, Sonitpur, Tezpur along with Exhibits 2,3, and 4 for trial. The seized articles, that is, the seized 2 locks, have been brought by him in court that day. Material Exhibit 1(1) and Material Exhibit 1(2) are the said locks. The provisions of law in the present case that he followed for this particular offence did not permit compromise of the offence.

APPRECIATION OF EVIDENCE

9. Before embarking upon the task of analyzing the evidence on record, pertinent it is to mention at the very outset that the defence has not disputed the visit of the Inspector of Legal Metrology to the business premises of the accused on the relevant date and the seizure of the locks displayed for sale in the said premises. Non-mentioning of retail sale price on the body of the packets of the seized locks is also not under challenge. Hence I deem it fit to scrutinize the evidence on record in the light of the admitted facts on the part of the defence.

10. The defence has primarily launched a two pronged attack on the case built up by the prosecution. Firstly, the complaint is barred by limitation. Secondly- the locks displayed for sale were part of units for shutters thereby excluding them from the applicability of Rule 6(1) (e) of the Legal Metrology Packaged Commodities Rules 2011.

11. Let me determine whether the first and foremost defence plea as regards the complaint being time barred holds any water. Learned defence counsel has strenuously contended that the alleged offence against the accused being the first offence u/s. 36(1) of the Legal Metrology Act, 2009, is punishable only with

fine which may extend to Rs. 25,000/- and as per Sec. 468 (2) (a) CrPC, the period of limitation for taking cognizance of an offence punishable with fine only is 6 months. It is vehemently urged that the instant complaint was lodged after the expiry of the period of limitation and the court took cognizance of the same in the absence of any explanation for such delay in terms of Sec. 473 CrPC.

12. To determine the validity of the defence contention, let me look at the relevant provisions of law. Rule 6(1) (e) of the Legal Metrology (Packaged Commodities) Rules, 2011 lays down that every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this Chapter as, to the retail sale price of the package. The penal provision for violation of Rule 6(1) (e) of the Legal Metrology (Packaged Commodities) Rules, 2011 is Sec. 36 (1) of the Legal Metrology Act, 2009 which reads as follows-

“Whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to Rs50,000 and for the subsequent offence, with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 1 lakh or with imprisonment for a term which may extend to one year or with both.”

13. Sec. 468 (2) (a) CrPC lays down that the period of limitation for taking cognizance of an offence would be 6 months if the

offence is punishable with fine only. The period of limitation as per Sec. 469(1) (a) CrPC in relation to the offence would commence on the date of the offence. Further, according to Sec. 469(2) CrPC, in computing the period of limitation, the day from such period is to be computed is to be excluded.

14. Perusal of the evidence on record shows that the inspection visit to the business premises of the accused was undertaken on 19/07/11 and the Material Exhibits marked as 1(1) and 1(2) were seized on the same day. In his cross examination PW1 stated that the date of offence was 19/07/11, the day on which the inspection was conducted and the complaint was formally lodged on 23/04/12 in the court of the learned CJM, Sonitpur, despite the fact that the complaint petition was prepared by the complainant Sh. C.R. Saikia (PW2) on 22/03/12. PW1 also stated that as per his knowledge there is no legally permissible time limit within which the complaint has to be lodged and that the complaint has not become time barred.

15. As per the facts of the present case, the accused has been alleged to commit an offence u/s. 36(1) of the Legal Metrology Act, 2009 for first time and hence, as per the mandate of Sec. 468(2) (a) the period of limitation for taking cognizance of the offence is 6 months. The date of the alleged offence is 19/07/11. The period of limitation as per Sec. 469(2) CrPC is to be computed from 20/07/11. Thus the complaint ought to have been filed within 20/01/12. The complaint came to be lodged on 23/04/12. Apparently there has been a delay of more than 3 months in lodging the complaint.

16. It has been sought to be raised, on behalf of the prosecution that though no explanation was furnished regarding the delay which led to the filing of the complaint, the same ought to have been taken to be condoned in the interest of justice as per Sec.

473 CrPC. Learned APP also submits that objection regarding the complaint being time barred ought to have been raised by the defence at the earliest opportunity and the defence having failed to do the same, the objection due to its belated nature must be taken to have been waived.

17. I have taken note of the rival submissions raised at the bar. In this regard let me look at the decision of the Hon'ble Supreme Court in ***Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and Ors.*** relied on by the defence counsel. Though in this case the Hon'ble Supreme court primarily dealt with the law regarding the relevant date for the purpose of computing the period of limitation u/s. 468 CrPC, a brief reference to Sec. 473 CrPC was also made. In paragraph number 26 of the judgment it has been observed as follows-

"If the date on which complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time barred. If it is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 of the Code of Criminal Procedure. The Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. "

18. Admittedly no formal application was filed by the complainant seeking condonation of the delay in preferring the complaint. When the materials on record are scrutinized in terms of the legislative intent as expressed in Sec. 473 CrPC, it is forthcoming that they do not by themselves reflect any reasonable explanation for the delay especially when one takes note of the fact that the complaint petition was prepared on 22/03/12 itself. Learned APP has submitted that even in the absence of a formal

application, the court can *suo moto* condone the delay if it is satisfied that it is necessary so to do in the interest of justice. I concede to the view of the learned APP that the power of the court to extend the period of limitation u/s. 473 CrPC would apply to a case if the Court forms the view that giving of such extension is necessary in the interest of justice and such a view may be formed even in the absence of any formal application or prayer made by the complainant. However, the expression "in the interest of justice" occurring in Sec. 473 CrPC does not mean "in the interest of prosecution". When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the Court may take cognizance of an offence after the expiry of the period of limitation in the interest of justice. In the facts and circumstances of the instant case and the nature of the alleged offence, I am of the opinion that it is not a fit case for *suo motu* condonation of delay by the court by taking recourse to the expression "in the interest of justice".

19. As regards the submission of the learned APP regarding deemed waiver of objection, I am of the opinion that the submission is without substance taking into account the fact that neither the complainant had applied for condonation of delay nor had any notice been issued to the accused before condoning the delay and before taking cognizance of the offence. It would be an injustice to deprive the accused of his valuable right to be heard on the matter when he has raised the objection at this stage simply on the ground that he ought to have done so immediately after his appearance in court in response to the process issued.

20. Adverting to the testimonies of the PWs it is seen that there is nothing on record to show that the Inspector, Legal Metrology has undertaken any further visits to the business premises of the

accused post 19/07/11 and that the accused had been found to continue with his disobedience to Rule 6(1) (e) of the Legal Metrology Act, 2009. Thus, the date of offence being 19/07/11 and the complaint having been filed on 24/04/12, is clearly hit by Sec. 468(2) (a) CrPC and is time barred.

21. Let me now turn to the second defence plea which is to the effect that the seized locks were shutter locks and parts of industrial unit. When cross examined on this score, PW1 stated that the seized locks were meant for using on iron shutters and that they did not carry out any investigation in any shutter industry nearby to verify as to whether the seized locks were a part of units of shutters as the necessity for such investigation was not felt. He also stated that he has no idea about shutter industry and he did not make any enquiry as to whether the locks were used anywhere other than shutter industry. In his cross examination PW2 admitted that the seized locks are used on shutters, that no other parts of the shutter were seized and that Exhibit 3 does not mention the number of locks and shutters that were available.

22. In his examination u/s. 313 CrPC, responding to the question whether he had anything else to say, the accused stated that the seized locks were not general locks, but were sold as parts of rolling shutters. The explanation furnished by the accused when considered in conjunction with the testimonies of the PWs, lends probability to the defence plea that the seized locks were not displayed for sale as isolated pieces but were sold as parts of rolling shutters. This probability coupled with the absence of any forth coming explanation as to why the seizure was confined to the locks and no seizure was effected as regards the shutters along with its other parts, casts a reasonable doubt on the case of the prosecution.

23. The cumulative effect of the above discussions is that the prosecution has failed to prove beyond reasonable doubt that the accused has committed the offence punishable u/s. 36 (1) of the Legal Metrology Act, 2009 read with Rule 6(1) (e) of the Legal Metrology (Packaged Commodities) Rules 2011. The point for determination thus stands answered in the negative in favour of the accused.

ORDER

24. In view of the discussion made above and the decisions reached in the foregoing point for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused has committed the offence punishable u/s. 36 (1) of the Legal Metrology Act, 2009 read with Rule 6(1) (e) of the Legal Metrology (Packaged Commodities) Rules 2011. As such the accused is acquitted of the charge u/s. 36 (1) of the Legal Metrology Act, 2009 read with Rule 6(1) (e) of the Legal Metrology (Packaged Commodities) Rules 2011 and he is set at liberty forthwith.

25. The bail bonds of the accused and his surety shall remain in force for six months from today in compliance with Sec. 437-A, CrPC.

26. Case is disposed of on contest.

Given under my hand and the seal of this court on this 11th day of September, 2015 at Tezpur.

Jayashree Bora
Judicial Magistrate First Class
Sonitpur, Tezpur

APPENDIX

PROSECUTION EXHIBITS:

Exhibit 1: Complaint

Exhibit 2: Sanction letter

Exhibit 3: Seizure certificate

Exhibit 4: Offence report

Material Exhibit 1: Locks

DEFENCE EXHIBITS:

NONE

PROSECUTION WITNESSES:

PW1- Sh. Prabhat Chandra Bhuyan

PW2- Sh. Deben Chandra Nath

PW3- Sh. Chenaram Saikia

DEFENCE WITNESS:

NONE

Jayashree Bora
Judicial Magistrate First Class
Sonitpur, Tezpur