

CRIMINAL MISCELLANEOUS PETITION NO. 636 OF 2003

with

CRIMINAL MISCELLANEOUS PETITION NO. 65 OF 2005

(In the matter of applications under Section 482 of the Code of Criminal Procedure 1973).

1. M/s. K.L. Bhasin & Company (Petrol Pump) Western Avenue,
Naya More, Bokaro Steel City, Bokaro.
2. Dinesh Chaddha
3. Tarun Bhasin
4. S.M. Bhasin Petitioners (in Cr.M.P. No. 636 of 2003)

1. M/s. National Petroleum Service through partnership firm, Petrol Pump for
Bharat Petroleum at Jodhadih, Chas, District- Bokaro.
2. Madhav Chandra Modak
3. Nityanand Modak Petitioners. (in Cr.M.P. No. 65 of 2005)

Versus

1. The State of Jharkhand
2. Inspector, Weights and Measure,
Bokaro Steel City, Bokaro Opposite parties (in both cases)

For the Petitioners : Mr. Rajesh Kumar, Advocate
For the State : Mr. Arun Kumar Pandey,
Mr. V.K. Tiwary, A.P.Ps.

PRESENT : HON'BLE MR. JUSTICE H. C. MISHRA

BY COURT:- As the common questions of fact and law are involved in both these cases, they are taken together and are being disposed of by this common order.

2. Heard learned counsel for the petitioners and the learned counsels for the State, who represent both the opposite parties.

3. The petitioners in Cr.M.P. No. 636 of 2003 are M/s K.L. Bhasin & Company and its proprietors, who are running the petrol pump in Bokaro, and they have challenged the order dated 3.4.2002 passed by the learned Chief Judicial Magistrate, Bokaro, in W.M. Case No. 4 of 2002, whereby the court below has taken cognizance against the petitioners for the offence under Section 39(2) of the Standards of Weights and Measures (Enforcement) Act, 1985, (herein after referred to as the 'Act'), on the basis of the prosecution report submitted against them by the Inspector of Weights and Measures, Chas, Bokaro. The petitioners have also prayed for quashing the prosecution report in the said case.

4. Similarly, in Cr.M.P. No. 65 of 2005, the petitioners are M/s. National Petroleum Service, a partnership firm and its partners, who are the

owners of the petrol pump in Chas, Bokaro and they have challenged the order dated 3.4.2002 passed by the learned Chief Judicial Magistrate, Bokaro, in W.M. Case No. 5 of 2002, whereby the court below has taken cognizance against the petitioners for the offence under Section 39(2) of the said Act, on the basis of the prosecution report filed against them by the Inspector of Weights and Measures, Chas, Bokaro. The petitioners have also prayed for quashing the prosecution report in the said case.

5. The inspection reports of the petrol pumps, on the basis of which, the prosecutions reports have been filed in both these cases, would show that the outfits of the petitioners in both these cases were inspected, in which, short supply of petrol and diesel were found as detailed in the respective inspection reports, and accordingly, the prosecution reports have been submitted in both the cases. The inspection report in Cr.M.P. No. 636 of 2003 shows that the dealer was instructed go get the outfits repaired and only thereafter to operate the same after getting the same verified after depositing the prescribed fee, which direction, according to the learned counsel for the petitioners, was complied with. These inspection reports / prosecution reports show that there is no allegation against the petitioners of tampering with the outfits.

6. The petitioners are running the petrol pumps of the Indian Oil Corporation and Bharat Petroleum Limited, and as per the agreement between the petitioners and their respective oil companies, it is the responsibility of the oil companies, to maintain, inspect, test and repair the outfits. The agreement between the Petrol / HSD Pump dealers and the oil companies have been brought on record, which show that the outfits in the petrol pumps are installed by the oil companies on their own expenses and it is the prime responsibility of the oil companies to maintain the same. Some necessary clauses under the said Petrol / HSD Pump Dealer Agreement reads as follows:-

“13. The corporation has installed at its own expense at and under the premises the outfit described in the Second Schedule hereunder written. The Corporation may install at the premises such other apparatus and equipment from time to time as it may deem necessary for the efficient working of the retail outlet and all such other apparatus and equipment shall be deemed to be and form part of the outfit. Provided that the Corporation shall have the right to remove any particular item or items or apparatus or equipment comprised in the outfit without assigning any reason therefor.

14. The Corporation will maintain the outfit in proper working condition at its own expense.

15. ----- .

16. No repairs to the outfit shall be done by the Dealer unless previously authorized by the Corporation in writing. The Dealer shall not interfere with or attempt to adjust the outfit or any part thereof but shall notify the Corporation immediately of the necessary of any repair or adjustment and thereby ensure that the outfit is in proper working order and delivering full and proper measure at all times. The Dealer shall not operate the outfit while it is out of order.

17. All repairs to the outfit, other than those which are rendered necessary or caused by the negligence or fault of the dealer, shall be done by the Corporation at its own cost. Repairs which are rendered necessary or caused by the negligence or fault of the Dealer shall be done by the Corporation and the cost thereof shall be repaid by the dealer to the Corporation ----- .

18. ----- .

19. The said premises and the outfit shall be and remain the absolute property of the Corporation and the Corporation may at any time enter upon the said premises to inspect, test, repair, add to, reduce and / or remove the outfit ----- ."

7. Learned counsel for the petitioners has submitted that after the inspection report, the outfits were got corrected through their respective oil companies and thereafter they are operating the outfits after getting them verified after depositing the prescribed fee for the same. Learned counsel has also submitted that the petitioners have been falsely implicated in this case and the agreement as discussed above would clearly show that it was the prime responsibility of the oil companies to maintain, inspect, test and repair the outfits and even from the inspection reports / prosecution reports, it would appear that there is no allegation against the petitioners of any tampering with the outfits. It is accordingly, submitted that there was no occasion for lodging the prosecution report against the petitioners, as the outfits were provided and sealed by the respective oil companies. As such, the offence under Section 39(2) of the Act, if any, cannot be said to be applicable against the petitioners, in absence of any allegation of tampering with the seals provided in the outfits. Learned counsel has accordingly, submitted that the impugned order, taking cognizance against the petitioners and the criminal proceedings against them cannot be continued, and the same are fit to be quashed.

8. Learned counsel for the State on the other hand has opposed the prayer submitting that on the basis of the allegation against the petitioners, the offence is clearly made out under Section 39(2) of the Act and there is no illegality in the impugned order, particularly in view of the fact that even under the Petrol / HSD Pump Dealer Agreement, it is the responsibility of the dealers to ensure that the outfit is in proper working order and delivering full and proper measure at all times, which the petitioners failed to do.

9. After having heard learned counsels for both the sides and upon going through the record, I find that there is no allegation against the petitioners in both these cases, of tampering with the outfits. The Petrol / HSD Pump Dealer Agreement between the dealers and the oil companies, clearly shows that the outfits are installed by the oil companies and it is the prime responsibility of the oil companies to maintain and even to inspect, test and repair the outfit for keeping it in proper working condition at their own expense. The said agreement also clearly specifies that no repairs to the outfit shall be done by the dealer, unless previously authorized by the oil company in writing and the dealer shall not interfere with or attempt to adjust the outfit or any part thereof.

10. In view of these clauses under the Petrol / HSD Pump Dealer Agreement, and in view of the fact that there is no allegation against the petitioners to have made any tampering with the outfits, in my considered view, no offence can be said to be made out under Sections 39(2) of the Act against the petitioners and the continuation of the criminal proceedings against the petitioners shall be sheer misuse of law.

11. In view of the aforementioned discussions, the impugned orders dated 3.4.2002 passed by the learned Chief Judicial Magistrate, Bokaro, in W.M. Case No. 4 of 2002, as also in W.M. Case No. 5 of 2002, as also the entire criminal proceedings against the petitioners in both these cases, are hereby, quashed.

12. Both these Criminal Miscellaneous Petitions are accordingly, allowed.

(H. C. Mishra, J.)

Jharkhand High Court, Ranchi

Dated the 31st of July, 2015.

N.A.F.R./ *Amitesh/-*