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Raman & Weil Pvt. Ltd. and others

versus

State of Haryana and another

Present: Mr. R.S. Rai, Senior Advocate, with
Mr. Gurmandeep Singh Sullar, Advocate,
for the petitioner.

Mr. Munish Bansal, DAG, Haryana.

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

Though a very detailed order had been passed on 16.06.2020, today an issue with regard to the maintainability of the FIR has obviously been raised, with Mr. Bansal, learned State counsel submitting that as per Section 10-A of the Essential Commodities Act, 1955, it is very much maintainable and therefore the contention to the contrary is wholly unsustainable.

The other essential question which then arises is as to whether, even if the petitioner has a license to manufacture the product in question, could the maximum retail price as have been displayed to be above Rs.250/- for 500 mls., in the face of the notification of the Central Government, dated March 21, 2020, stipulating that all hand sanitizers shall not be priced at more than Rs.100/- per 200 mls.?

Hence, if it is established that any of the products stated to have been seized/purchased by the Drugs Control Office, Hisar, show a maximum retail price of more than Rs.500/-, the question that next arises is, would that also amount to cheating the public and therefore, would an offence punishable under the relevant provisions of the IPC consequently be made out, or not.

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Prima facie at least, in my opinion, it would.

However, since both learned counsel to seek time to address arguments in detail, with the matter having been passed over in the morning and it already being 8:45 p.m. now (due partly to constant breaks in the online link), adjourned to 30.06.2020.

Interim order to continue till the next date of hearing only and specifically.

The affidavit of petitioner no.2, dated June 15, 2020, as is stated to have been filed, with a copy thereof received by the State counsel, is ordered to be taken on record, with Mr. Bansal very fairly submitting that he has no objection if the same is taken on record, though of course he would have something to state on the merits thereof. The reply of respondent no.2, to the petition, is also ordered to be taken on record.

Having said the above, this court is also taking suo-motu notice of the fact that most companies manufacturing and selling hand sanitizers, even after March 21, 2020, are showing the maximum retail price of such products to be far above Rs.250/- for 500/- mls., and consequently the Additional Chief Secretaries/ Principal Secretaries/Secretaries in the Departments of Health, and Food and Supplies, of the States of Haryana, Punjab and U.T. Chandigarh, are directed to have 'raids' conducted at chemist shops and manufacturing units, to obtain samples of hand sanitizers/hand disinfectants; and wherever those are manufactured after March 2020, showing a maximum retail price above Rs.250/- for 500 mls./more than Rs.100/- for 200 mls., proceedings as per law shall be initiated against all such manufacturers. If the shops selling the products also are so selling at prices above what is stipulated in the notification of March 21, 2020, then action would be taken against them too, as per law.

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Similarly, it has been seen by this court that a large number of brands of facial masks as have been purchased, are of highly sub-standard quality, where even while tying the masks, the strings attached break off immediately, thereby making the masks unusable.

Consequently, in the 'raids' to be conducted, boxes of masks/individual masks shall also be collected by those of the 'raiding party', with the masks to be tested as regards this basic issue of breaking of strings, and if such breaking is found, or the masks are otherwise found to be of sub-standard quality, proceedings as per law shall be taken against all concerned.

The Additional Chief Secretaries/Principal Secretaries/Secretaries concerned, of both the States and of the Union Territory, Chandigarh, shall file their own affidavits alongwith a report on the raids conducted and the results thereof.

For that purpose, this case be listed on 06.07.2020.

Mr. Rai, learned senior counsel, has submitted that he would be in some difficulty qua the suo motu notice issued in this case by this court, in view of the fact that he is the Public Prosecutor for the U.T. Chandigarh, and therefore while he may be permitted to appear in the present petition, naturally, he would not be able to appear as the Public Prosecutor on the issues taken up suo motu, as there would be a conflict of interest over which obviously he had no control, this court having issued this order today only, much after he was engaged as senior counsel for the petitioner in this petition.

That contention is, naturally, logical, and though he would not be able to appear as the Public Prosecutor in the case for the U.T., he would, however, immediately inform the Advisor, and the Secretaries concerned in the U.T. Administration, of this order, so that immediate action can be taken by them.

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Similarly, learned State counsel appearing for the States of Punjab & Haryana, would inform the Chief Secretary of each State, as also the Additional Chief Secretary/Principal Secretary concerned, to take immediate action.

June 19, 2020
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(AMOL RATTAN SINGH)
JUDGE

