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2025:AHC:186439

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 3900 of 2018

Laxmi Kant Pandey .....Applicant(s)

Versus

State of U.P. and Another .....Opposite Party(s)

Counsel for Applicant(s)	:	Ami Tandon, Kamlesh Shukla, Raj Mohan Saggi
Counsel for Opposite Party(s)	:	G.A.

AFR
Reserved on 4.9.2025
Delivered on 17.10.2025

Court No. - 76

HON'BLE VIKRAM D. CHAUHAN, J.

1. Heard Sri Ami Tandon, Advocate, learned counsel for Applicant and Sri Om Prakash Dwivedi, learned AGA for State.

2. The present application is preferred by applicant under Section 482 of Criminal Procedure Code, 1973 for quashing charge-sheet dated 6.9.2017 being No. 90 of 2017 arising out of Crime No. 0111 of 2017 under Sections 265, 266, 419 and 420 of Indian Penal Code and 3/7 of Essential Commodities Act, Police Station-Badausa, District-Banda and summoning order dated 25.10.2017 passed by Ist Additional Chief Judicial Magistrate, District-Banda in Case No. 1660/IX/17.

3. The Applicant is a dealer of Hindustan Petroleum Corporation having its retail outlet in the name and style of Pandey Filling Station,

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Badausa, District-Banda. An inspection at the site of the retail outlet of the applicant was conducted on 14.6.2017 by a team of sales officer of Indian Oil Corporation, Kanpur, Weights and Measure Inspector, Nayab Tehsildar and Police Administration. The inspection team found that nosal no. 2 is giving out air and nosal would not be checked but the wire in the pulser seal of the unit was found to be broken at the time of inspection.

4. A first information report dated 19.7.2017 was lodged by Supply Inspector at Police Station-Badausa, District Banda which was registered as Case Crime No. 0111 of 2017 under Sections 265, 266, 419, 420 of Indian Penal Code and under Section 3/7 of Essential Commodities Act, 1955. The prosecution case arising out of the above-mentioned first information report is to the effect that the Chief Secretary, Government of Uttar Pradesh, Lucknow by letter dated 2.5.2017 instructed to conduct inspection/raid at diesel/petrol retail outlet by forming a team. In pursuance thereof, the District Magistrate by order dated 3.5.2017 constituted an investigating team. The aforesaid team conducted inspection on 14.6.2017 at Pandey Filling Station, Badausa, Tehsil-Attara. As per the report of the inspection team, dispensing units were found installed at the pump. In the letter dated 15.6.2017 of the Chief Secretary it was directed that in respect of petrol/diesel pumps where irregularities were found during inspection/raid, case should be registered under the relevant section of various acts and action should be taken as per various procedures. In the Pandey Filling Station, Badausa, the wire of the seal of the head of the pulser assembly nosal no. 2 dispensing unit was found broken. Since the wire of the pulser was found broken, the same was seized by the Investigating Team. Tehsil-Attara, giving less quantity to consumers by breaking the wire of the pulse seal of the pulse assembly of nosal no. 2 of the dispensing unit installed at the pump and thereby earning unfair profit by selling diesel saved from less measurement is clear violation of various provisions of Government Order dated 5.8.2008 and U.P. High Speed And Light Diesel Oil (Maintenance of Supply and Distribution) Order 1981 as

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amended and Motor Spirit And High Speed Diesel (Regulation of Supply Distribution and Prevention of Malpractice) Order 2005 which is punishable offence under Section 3/7 of Essential Commodities Act, 1955 and relevant section of Indian Penal Code.

5. Learned counsel for applicant submits that applicant was running a petrol pump where a raid was conducted by the officials. As per the prosecution case, the dispensing unit seal was found tampered and as a result of the same first information report was lodged under Sections 265, 266, 419 and 420 of Indian Penal Code and Section 3/7 Essential Commodities Act, 1955. Learned counsel for applicant further submits that offence in respect of Sections 265 and 266 of Indian Penal Code would not be attracted in the facts and circumstances of the present case, more particularly, in view of Section 51 of the Legal Metrology Act, 2009 which stood fortify by the judgement of the Supreme Court in **State of Uttar Pradesh Versus Aman Mittal (2019) 19 SCC 740.** Learned counsel for the applicant further submits that applicant had made a complaint dated 03.06.2017 with regard to the dispensing unit, which is annexed at page no.76 of the affidavit filed in support of the present application, and the same was resolved on 08.06.2017. Learned counsel for the applicant further submits that raid was conducted on 14.06.2017. Learned counsel for the applicant further submits that applicant had bonafidely raised a complaint before the Corporation and as such the applicant cannot be prosecuted in respect of any failure of the dispensing unit. Learned counsel for the applicant further submits that applicant has suffered civil consequences as a result of termination of the dealership and as such the criminal proceedings would not be tenable under law.

6. Learned A.G.A. for the State has submitted that seal was found to be tempered on inspection by the Inspection Team in respect of the petrol pump of the applicant. Learned A.G.A. could not dispute the fact that provisions of Sections 265 and 266 of Indian Penal Code could not be the ground for prosecution of the applicant in view of the judgement of the Supreme Court in **Aman Mittal (supra).** However, learned A.G.A.

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submits that other sections being Sections 419 and 420 of Indian Penal Code and Section 3/7 of Essential Commodities Act, 1955 would be attracted as there is no bar proceeding in respect of the same. Learned A.G.A. further submits that on inspection it was found that applicant was selling the fuel while the dispensing unit seal was broken which is against law.

7. The applicant is being prosecuted under Sections 265, 266, 419, 420 of Indian Penal Code and under Section 3/7 of Essential Commodities Act, 1955. As per the prosecution case, the raid was conducted on 14.6.2017 at the petrol pump of applicant where the wire of seal of the head of the pulser assembly nosal no. 2 of dispensing unit was found broken. Since the wire of the pulser was found broken, the said was seized by the Investigating Team. It is also alleged in the first information report that the consumers are being given less quantity by breaking the wire of the pulser seal of the pulser assembly nosal no. 2 of the dispensing unit installed at the pump and tampering with it and thereby earning unfair profit. The applicant in paragraph 19 of the affidavit filed in support of the Application under Section 482 Cr.P.C. has admitted that the dealership agreement entered into between the applicant and the Petroleum Corporation has been terminated by order dated 24.7.2017. The aforesaid termination order records that the seal wire of nosal no. 2 was found broken and no possible explanation has been provided for the irregularities observed at the outlet.

8. Learned counsel for applicant has submitted that the provisions of Section 265 and 266 of the Indian Penal Code would not be applicable in the facts and circumstances of the case, more particularly, in view of the provisions of Legal Metrology Act, 2009. The provision of Section 265 and 266 of Indian Penal Code are as follows :-

> *"**265. Fraudulent use of false weight or measure**.—Whoever, fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what*

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> *it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.*
>
> ***266. Being in possession of false weight or measure**.— Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**"*

9. The Legal Metrology Act, 2009 is promulgated to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto.

10. Section 2(g) of the Legal Metrology Act, 2009 defines "Legal Metrology" as under :-

> *"Legal Metrology" means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements."*

11. Section 3 of Legal Metrology Act, 2009 provides that provisions of Legal Metrology Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

12. Further, Section 26 of Legal Metrology Act, 2009 provides whoever tampers with, or alters in any way, any reference standard, secondary standard or working standard or increases or decreases or alters any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be

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deceived thereby, except where such alteration is made for the correction of any error noticed therein on verification, shall be punished with fine which may extend to fifty thousand rupees and for the second and subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine or with both.

13. Section 28 of Legal Metrology Act, 2009 provides that whoever makes any transaction, deal or contract in contravention of the standards of weights and measures specified under section 10 shall be punished with fine which may extend to ten thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both.

14. Section 30 of Legal Metrology Act, 2009 further provides penalty for transactions in contravention of standard weight or measure. The provision of Section 30 of the Legal Metrology Act, 2009 is quoted herein below :-

> ***"30. Penalty for transactions in contravention of standard weight or measure.***—*Whoever—*
>
> *(a) in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or*
>
> *(b) in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or*
>
> *(c) in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or*
>
> *(d) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for, shall be punished with fine which may extend to ten thousand rupees, and; for the second or subsequent*

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offence, with imprisonment for a term which may extend to one year, or with fine, or with both."

15. Section 51 of Legal Metrology Act, 2009 further provides that provisions of Indian Penal Code and the Criminal Procedure Code, 1973 insofar as such provision relating to offences with regard to weight or measure, shall not apply to any offence which is punishable under the Legal Metrology Act, 2009.

16. The Legal Metrology Act, 2009 is a special act providing for offences and penalties for violation of provisions of Act of 2009. Section 3 of Legal Metrology Act, 2009 provides that provisions of Legal Metrology Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

17. The Supreme Court in **Aman Mittal (supra)** has considered the effect of Section 51 of Legal Metrology Act, 2009 in terms of Indian Penal Code and observed as under :-

*"**32.** The question required to be examined is whether all the offences under IPC are excluded in view of Section 3 of the Act or only the offences relating to the weights and measures as are contained in Chapter XIII IPC alone stand excluded in view of Section 51 of the Act.*

33....

***34.** In the light of principles laid down, we find that Section 3 of the Act completely overrides the provisions of Chapter XIII of IPC in respect of the offences and penalties imposable for violations of the provisions of the Act, it being a special Act. Therefore, if the offence is disclosed to be made out under the provisions of the Act, an accused cannot be charged for the same offence under Chapter XIII of IPC. Reading of Section 51 of the Act makes it clear that the provisions of IPC insofar as they relate to offences with regard to weight or measure, shall not apply to any offence which is punishable under the Act. Therefore, the provisions of IPC which relate to offences with regard to weight and measure as*

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> *contained in Chapter XIII of IPC alone will not apply. No person can be charged for an offence relating to weight or measure falling under Chapter XIII of IPC in view of the provisions of the Act."*

18. Learned A.G.A. for the State could not dispute the fact that provisions of Section 265 and 266 of the Indian Penal Code will not be applicable in the facts and circumstances of the case. Learned A.G.A. further has not disputed the fact that provisions of Legal Metrology Act, 2009 would be applicable. Sections 265 and 266 of Indian Penal Code is contained in Chapter XIII of the Indian Penal Code. In view of the aforesaid law laid down by Supreme Court in **Aman Mittal (supra)** the prosecution of the applicant under Section 265 and 266 of the Indian Penal Code is not tenable under law.

19. Learned counsel for applicant further submits that applicant had made a complaint dated 3.6.2017 with regard to dispensing unit and the aforesaid complaint was restored on 8.6.2017. Learned counsel for applicant submits that defect was a mechanical defect which was rectified.

20. It is to be seen that as per the prosecution case, seal of the dispensing unit was found to be broken. The defence raised by learned counsel for the applicant is a question of evidence. The defence cannot be considered at this stage, more particularly, when the inspection team found the seal of the dispensing unit to be broken. Such an issue can be raised by the applicant in the trial and at this stage, it would not be possible for this Court to hold mini trial.

21. Learned counsel for the applicant further urged that applicant has already suffered civil consequences as a result of termination of the dealership agreement and as such the criminal proceedings not be tenable under law.

22. It is to be seen that the termination of the dealership agreement in pursuance to the contract is a civil consequences, however, where the

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allegations against the applicant also attracts criminal provisions of law then the accused is required under law to be prosecuted for the offence committed. Learned counsel for applicant has not shown any law which bars the criminal prosecution where the accused persons have already suffered civil consequences in respect of the same transaction.

23. It is further to be noted that applicant is also being proceeded under Sections 419 and 420 of Indian Penal Code and under Section 3/7 of Essential Commodities Act. The scheme of Legal Metrology Act, 2009 does not bar the prosecution under the above-mentioned sections. In this respect, the Supreme Court in **Aman Mittal (supra)** has held that the aforesaid offences are not covered by Legal Metrology Act, 2009. Paragraph no. 35 of aforesaid judgement is quoted hereinbelow :-

> *"**35.** The scheme of the Act is for the offences for use of weights and measures which are non-standard and for tampering with or altering any standards, secondary standards or working standards of any weight or measure. The Act does not foresee any offence relating to cheating as defined in Section 415 of IPC or the offences under Sections 467, 468 and 471 of IPC. Similarly, an act performed in furtherance of a common intention disclosing an offence under Section 34 is not covered by the provisions of the Act. An offence disclosing a criminal conspiracy to commit an offence which is punishable under Section 120-B IPC is also not an offence under the Act. Since such offences are not punishable under the provisions of the Act, therefore, the prosecution for such offences could be maintained since the trial of such offences is not inconsistent with any of the provisions of the Act. Similar is the provision in respect of the offences under Sections 467, 468, 471 IPC as such offences are not covered by the provisions of the Act."*

24. It is further to be noted that learned counsel for the applicant has not put to challenge the prosecution of the applicant under Sections 419, 420 of Indian Penal Code and under Section 3/7 of Essential Commodities Act. As such, this Court does not find any legal impediment in prosecution of the applicant in the aforesaid sections.

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25. In view of the aforesaid circumstances and reasons, the prosecution of the applicant under Section 265 and 266 of the Indian Penal Code are not tenable under law and the summoning order dated 25.10.2017 passed by Ist Additional Chief Judicial Magistrate, District Banda is partly set aside to the extent it summons the applicant under Sections 265 and 266 of the Indian Penal Code. In respect of remaining offences under Sections 419, 420 of Indian Penal Code and 3/7 of Essential Commodities Act, the prosecution may go on. It would be open for the Investigating Agency/court concerned to charge the accused for such offences or any other offence by way of supplementary report or at a subsequent stage during trial as considered appropriate by the Investigating Agency.

26. Accordingly, the application under Section 482 Cr.P.C. is **partly allowed.**

(Vikram D. Chauhan, J.)

October 17, 2025
VMA