

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 2708 OF 2014

Anand G. Mahindra and 6 Others. ... Petitioners.

V/s.

State of Maharashtra & Ors. ... Respondents.

Mr. A. P. Mundargi i/by Amol J. Phoujdar, Advocate for the
Petitioners.

Smt. V. S. Mhaispurkar, APP for the State.

Mr. H. E. Pimple, Advocate for the BMC.

CORAM : M.L.TAHALIYANI, J.

DATE : 13 JANUARY, 2015

P.C. :

1 Heard.

2 Admit. By consent, taken up for final hearing.
Heard finally.

3 The Petitioners are facing trial for the offence under sections 52 of Maharashtra Shops and Establishments Act, 1948 (for short, hereinafter referred as 'the said Act'). Petitioners have allegedly violated certain rules framed under the said Act. It is alleged that though the Leave Card in Form 'N' is provided to all the employees, wrong entries have been found to be made in Leave Cards. The leave book in form 'M' was maintained and it was not produced for inspection on demand.

4 Petitioner No.1 and others are holding various posts in the management of M/s. Mahindra First Choice Wheel Ltd., , situate at 10th Road, DLH Park, S.V.Road, Goregaon. The Company had allegedly violated the rules. The details of which have already been recorded herein above.

5 Learned counsel Mr. Mundargi appearing for the Petitioners has submitted that the prosecution for the alleged offences against the Petitioners could not have been instituted without previous sanction of the Municipal Commissioner, Deputy Municipal Commissioner or Assistant Municipal Commissioner. In the present case, the compliant was filed in the court of Metropolitan Magistrate some time in the month of May, 2013. The exact date of filing of the complaint is not mentioned in the compliant. However, it is very clear from the complaint that it was filed in the court in the month of May, 2013. The docket of the complaint also shows that the date of filling of the compliant was May 2013.

6 Though it is stated in the compliant that the Competent Authority had accorded sanction under section 60 (1) of the Act to institute the prosecution, the sanction accorded by the Assistant Municipal Commissioner shows that it was accorded in the month of 7th June, 2013. It is thus obvious that there was no sanction on the date of institution of

the complaint. What is interesting to note is that the complainant, who is employee of the Municipal Corporation of Greater Bombay and who is Respondent No.2 in the present petition, has stated in his complaint, that the Competent Authority had accorded sanction to institute the prosecution. As such, the statement in the complaint that the sanction was accorded by the Competent Authority before the institution of the complaint is found to be not correct. It is thus obvious that the prosecution launched against the Petitioners by Respondent No.2 for the alleged violation of the Rules framed under the said Act, punishable under section 52 of the Act, is bad in law. As such the prosecution cannot be allowed to be continued. Hence, I pass the following order.

- i. The prosecution pending against the Petitioners in the court of Metropolitan Magistrate 26th Court / Morning Court No.2, Borivali, Mumbai (as the case may be) vide Criminal Complaint No. 1764/SMM/2013 shall stand quashed.
- ii. Bail bond, if any, of the Petitioners shall stand cancelled.
- iii. Petition stands disposed of accordingly.

(JUDGE)