

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3345 OF 2015

Blue Dart Express Limited and another

.....Petitioners

V/s.

D. S. Pawar and another

....Respondents

Mr. Ravi Kadam, Senior counsel a/w Mr. Kiran Bapat a/w Mr.

Narayan Sahu i/b M/s Legasis partners for Petitioners

Mr. B. S. Mahamulkar a/w Mr. Rahul Oak for respondent no. 1

Mrs. A.A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 1, 2015.

PC :

Heard respective counsel.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein questions the validity of the order issuing summons to the accused i.e. present petitioner in complaint (MHWA) No. 30 of 2013 dated 06/01/2014.
- 4) It is the case of prosecution that Shri. D. S. Pawar Inspector under Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 filed a complaint under section 2 (d)

before 10th Labour Court, Mumbai in October 2013 alleging therein that accused no. 1 happens to be an establishment and accused no. 2 who is responsible for the contravention of clause 14 of the said Act did not comply for registration with the Board and thereby committed contravention of clause 14 of the said scheme which is punishable under section 44 of the said scheme. Learned Magistrate, upon perusal of the complaint had issued summons to the accused person by an order dated 06/01/2014. Accused were required to appear in person before 10th Labour Court on 17/01/2014.

5) Petitioners appeared before the Magistrate in September 2014 and filed an application before 10th Labour Court and requested the Court to stay the proceedings or defer the proceedings in view of the fact that accused intend to move an application under section 5 of the said Act to the State Government with regard to the applicability of the Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and the scheme formulated there under. It was prayed that plea should not be recorded in view of the aforesaid pending application which was filed by the accused to the Secretary, Labour Department, Government of Maharashtra on 21/08/2014. Learned Magistrate by an order dated 10/07/2015 was pleased to

reject the application and had declined to stay the proceedings during the pendency of application filed by the accused under section 5 of the said act which was filed before State Government only after issuance of the summons in the present case. Learned Magistrate had observed that

“Once complaint is filed, it is not open for the accused to challenge the applicability of the scheme. Why the accused has not approached the State Government earlier after receiving the show cause notice. According to learned Magistrate, the onus was upon the complainant to prove the applicability of the scheme.”

6) It is true that only after issuance of summons, accused had approached the State Government challenging the very applicability of the scheme under section 5 of the said Act.

7) Learned senior counsel appearing for the petitioner submits that it is true that application was filed after receipt of summons in the the present case, however, it is pertinent to note that the said application is still pending adjudication by the State Government. In the course of hearing of this petition, learned senior counsel submits that present petitioners intend to file writ petition before Hon'ble Division Bench of this court seeking directions to

the State Government to dispose off the application within a limited period as it would go to the root of the matter in the present matter. As on today, the plea is not recorded. Learned Magistrate has rejected the application seeking stay to the proceedings. Learned senior counsel submits that in fact, petitioners were challenging the very maintainability of the complaint and were not intending to only stay the proceedings.

8) Be that as it may, petitioners deserve a fair opportunity of putting their defence before Magistrate challenging the very maintainability of the petition in the absence of adjudication by the State Government in respect of applicability of section 5 of the said Act.

9) Section 251 of Code of Criminal Procedure, 1973 contemplates as follows:

“When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.”

10) In the case of **Bhushankumar Vs. State (NCT of Delhi)** reported in **2012 (5) Supreme Court Cases 424** Hon'ble Apex Court has held that:

“A summons is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. A person who is summoned is legally bound to appear before the Court on the given date and time.”

11) In the present case, petitioners have appeared before the Court and have abided by summons issued to them. However, as on today, they are challenging the maintainability of the complaint which can be considered by the learned Magistrate.

12) The Hon'ble Apex Court in the case cited supra has held:

“ It is inherent in [Section 251](#) of the Code that when an accused appears before the trial Court pursuant to summons issued under [Section 204](#) of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and **if the answer is in the affirmative**, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per [Section 239](#) of the Code. ”

13) In view of the above guidelines of the Apex Court, accused has an

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opportunity to appear before learned Magistrate and agitate/make out a defence that complaint itself is not maintainable or that proceedings initiated at the behest of the complainant would be an abuse of process of law. Learned Magistrate shall consider the defence and then determine as to whether the case is made out for recording the plea. Magistrate shall not record the plea on the same day on which the defence is rejected and shall give time to the accused to question the validity of the order as to whether a case is made out for recording a plea or not.

ORDER

- (i) The proceedings in complaint (MHWa) No. 30 of 2013 pending before learned Magistrate are stayed for a period of 8 weeks from today.
- (ii) Petitioner/accused shall take appropriate steps in accordance with law.
- (iii) Rule is made absolute in above terms.
- (iv) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)