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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 825 OF 2014

1. Smt. Sulbha S. Khadke,
Director of M/s Maharashtra State
Co-operative Consumer Federation Ltd.
87-A, Raj Chambers, 5th floor,
Deoji Ratanshi Marg, Danabazar,
Mumbai-400009
2. Sukhdev N. Chugule,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
3. Madhavrao K. Patil,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
4. Vinayakrao C. Patil
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
5. Babasaheb S. Vasade,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
6. Rambhau R. Satav,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
7. Kisanrao B. Patil,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above

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8. Prakashrao P. Bodanre,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
9. Anil B. Mundada,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
10. Arun S. Kapse,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
11. Virendra Sinh,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
12. Ashok V. Jagtap,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
13. Kishor D. Patankar,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
14. Pratap G. Hogade,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
15. Kishor R. Sawant,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
16. Vijaykumar D. Sonawane,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above

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17. Suresh T. Tavde,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
18. Ramesh S. Higankar,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
19. Shobhatai V. Core,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
20. Padminidevi M. Shinde,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
21. Charushila J. Suryawanshi,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
22. Pramod P. Belekar,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
23. Ravindra Patil,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
24. R. N. Parab,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above
25. A. R. Mhatrey,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above

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26. M. A. Aref,
Director of M/s Maharashtra State
Co-operative Consumers Federation
Ltd. Address as above ..PETITIONERS

VERSUS

1. The State of Maharashtra

2. Pradnya Pramod Surase,
Age: 31 years, Occu: Service as
Food and Safety Officer, Food &
Drugs Administration (M.S.),
Jalna ..RESPONDENTS

Mr D. B. Bharuka, Advocate for petitioners;
Mr R.V. Dasalkar, A.P.P. for respondent/State

CORAM : N.W. SAMBRE, J.

DATE : 27th OCTOBER, 2016

ORAL ORDER :

The Food Safety Officer, Food and Drug
Administration, Jalna, on 2nd January, 2014
initiated complaint being Criminal Case No. 8 of
2014 in the Court of Judicial Magistrate, First
Class, (Court No.2), Ambad alleging that on 3rd
January, 2013 at about 13-00 hours, the incident of
food poisoning was reported because of consumption
of Dal-Bhat, which was cooked and supplied by

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accused No.1 to the students while implementing Mid Day Mill scheme floated by the State Government. The said officer claimed that samples of Tur Dal was drawn after purchasing 2000 gms. of Tur Dal from open unlabelled gunny bag for the purpose of analysis. The analysis report of sample drawn was received on 25th January, 2013, wherein it is certified that Tur Dal bearing Code No. JLN/Do/045 and Serial No. 0189 contains weevilled grains and damaged grains more than the prescribed standards and as such, does not conform to the standards of Split pluse (Dal) Ahar as per Regulation No. 2.4.6(10) of Chapter 2 of the Food Products Standards and Food Additives) Regulations 2011, resulting into initiation of the prosecution.

2. It is claimed that present petitioners, who are accused Nos. 2 to 28 have sold unsafe food article and contravened Section 26(2)(i) read with Section 27(1) read with Section 3(1)(zz)(ix) Regulation 2.4.6(1) of Chapter 2 of Food Safety and Standards (Food Products Standards and Food

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Additives) Regulation 2011 punishable under Section 59 of the Act.

3. Learned Judicial Magistrate, First Class, (Court No.2) Ambad, on 20th June, 2014 ordered issuance of process. As such, present criminal writ petition at the behest of said accused Nos. 2 to 28 praying therein quashing of the complaint to the extent of petitioners and also order of issuance of process dated 20th June, 2014.

4. Mr. Bharuka, learned Counsel for the petitioners submits that only allegation in the complaint against present petitioners would be read in paragraph-4 as under :

"4. That the accused no. 2 to 27 are the Directors of the firm M/s. Maharashtra State Co-Op. Consumers Federation Ltd., 87-A, Raj Chambers, Fifth floor, Devji Ratanshi Marg, Danabnander, Mumbai-400 009 and have supplied the food article 'Tur Dal' to accused no. 1 vide Invoice No. 7014 dated 26/12/2012."

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5. Apart from above, according to him, there is another statement against the petitioners, which could be read as under :

" Also accused no. 2 to 28 have sold unsafe food article & contravened Sec. 26(2)(i) r/w Sec. 27(1) r/w Sec 3(1)(zz)(ix) Regulation 2.4.6(10) of Chapter 2 of Food Safety & Standards (Food Products Standards and Food Additives) Regulation 2011 punishable under Sec. 59 of the Act."

6. According to him, as such, sale of the food article to accused No.1 was already completed by M/s. Maharashtra State Co-operative Consumers Federation Ltd., of which, the petitioners are directors and as such, the petitioners cannot be vicariously held responsible in absence of specific role attributed to them in the complaint. He would rely upon the judgment of the Apex Court in the matter of Municipal Corporation of **Delhi vs. Ram Kishan Rohtagi and others** reported in **A.I.R. 1983 SC 67**, particularly paragraphs-10 and 15 thereof,

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which read thus :

"10 It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting any thing, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under s. 482 of the present Code.

15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be

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vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

7. Mr. Bharuka, learned Counsel for the petitioners would then rely upon the judgment of the Apex Court in the matter of **Nalin Thakur and others vs. State of Maharashtra** reported in **2004(1) FAC 68** so as to submit that in absence of any allegations in the complaint, particularly if do not stated in the complaint that the appellants during relevant time are directors, are responsible to the company for the business of the company, the complaint filed is not sustainable. He would also rely upon the judgment of the Apex Court in the matter of **M/S. Pepsi Foods Ltd., and another vs. Special Judicial Magistrate and others** reported in **1998 Cr.L.J. 1** so as to submit that in criminal cases, summoning accused is serious matter and

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merely law cannot be set in motion merely for asking. Unless the complainant demonstrate before Magistrate satisfying ingredients of section under which offence is punishable and specific role of the accused persons, the magistrate in a mechanical manner should not take cognizance. It is for the magistrate to examine the nature of the allegations, apply his mind to the facts including that of documents and if required may discharge the accused at any stage of the trial. However, it is always open for an accused to approach before appropriate Court under Section 482 of the Code of Criminal Procedure for quashing the complaint.

8. He would then rely upon the judgment of the Apex Court in the matter of ***Pepsico India Holdings Pvt. Ltd., vs. Food Inspector and another reported in 2011 Cri.L.J. 1012,*** particularly paragraph-39 thereof, so as to submit that merely a bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make him liable in

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absence of specific allegation.

9. Per contra, learned A.P.P. submits that the entire Food Safety and Standards Act, 2006 and rules framed thereunder is comprehensive enactment formed with an object of maintenance, standards of articles of food and to regulate their manufacture, storage, distribution and sale and import to ensure availability of the safety and wholesome food for human consumption. According to him, Section 18(2) (a)(ii) of the Act cast duty on the authority of prevention of unsafe or sub standard food. According to him, provisions of Section 66 and 67 of the Act are wide enough to cover offences by the Corporation/Association/Company. According to him, the petitioners are covered within the meaning of 'Director' as defined under the said provisions. He would rely upon the express provisions of Section 66 of the Act so as to submit that in case of offence by Company committed under the said Act, every person, who at the time offence was committed, was in-charge of, is responsible to the

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company for the conduct of the business of the company as well as company shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly. In the explanation (a) word 'Company' means any body, corporate and includes a firm, or other association of individuals and (b) 'Director' in relation to a firm, means a partner in firm. According to him, present Federation, a co-operative society is covered within meaning of company. According to him, in view of above there is no substance in the submission of petitioners as they are very much liable in the light of above provision hence, petition is liable to be rejected.

10. After having considered the rival submissions, what is required to be noted is only reference to the present petitioners-accused in the complaint, particularly in paragraph-4 is they are Directors of M/s. Maharashtra State Co-op. Consumers Federation Limited. Apart from above, there are hardly any direct attributions or role

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attributed to each of the petitioners. The federation which is a co-operative society is not impleaded as an accused in the said complaint. The crux of the allegations as reproduced herein above speaks of attribution of supplying food article by the State Consumer Federation.

11. In the complaint, in no specific words it is mentioned or even in vague manner has not mentioned about the role of directors/petitioners in the supply of adulterous food article. It also does not speak of how the directors are involved in supply of adulterated food article which is not fit for human consumption.

12. In the back ground of pleadings, the law as is cited before me is required to be taken note of. In the matter of ***Municipal Corporation of Delhi*** (supra), the Apex Court has observed that from the allegations in the complaint as they are without adding or subtracting anything, if no offence is made out then the Court is justified in

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exercising jurisdiction for quashing the proceedings. There is hardly any material on record against the petitioners in the complaint. There is no material on record or reference as regards the responsibility of the directors in the matter of company which has supplied Tur Dal to accused No. 1. Paragraph-10 of the said judgment is worth reproducing.

"10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under s. 482 of the present Code."

13. The Apex Court, in the matter of **M/s. Pepsi Foods Ltd.** (supra), has considered the claim as regards exercise of powers under Articles 226

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and 227 of the Constitution of India or under Section 482 of the Code of Criminal Procedure in the matter of moving a prayer for quashing, when the magistrate merely for asking summon an accused without application of mind to the facts of the case and law applicable thereto. It was incumbent for the magistrate to examine the nature of allegation made in the complaint and the evidence both oral and documentary in support thereof and to form an opinion whether it would be sufficient for the complainant to succeed in bringing charge home against the accused.

14. The observations of the Apex Court in ***M/s. Pepsi Foods Ltd.*** (supra) in paragraphs-26, 28, 29 and 30 are worth referring, which read thus :

"26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court

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find that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Cod. it ay not however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary

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in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

29. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. it was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should

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be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants, If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed under section 245 of the code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against

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the appellants. if we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegation. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as accused No.3. The preliminary evidence on which the 1st respondent relied in issuing summon to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section

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3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short, the "Fruit Order"), It is not disputed that the beverage in the question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, making and labeling of containers of fruit products. One of such requirement is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacture to be displayed on the top or neck of the bottle. The licence number of manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the

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manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in *The Hamdard Dawakhana (WAKF) Delhi & Anr. vs. The Union of India & Ors.* [AIR 1965 SC 1167 = (1965) 2 SCR 192], an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

30. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in the Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the

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preliminary evidence recorded makes out no case against the. it is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising its jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."

15. In this back ground, what could be noted that even though Section 66 of the Act in question deals with an issue as regards offence by companies and it speaks of responsibility of the directors for the conduct of the business of the company, there is hardly any material on record to infer that the petitioners were responsible for the business of federation of which they are directors to be responsible for the supply of adulterated food article which was not fit for human

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consumption.

16. Even if the contents of the complaint are taken to be correct at its face value, still, in my opinion, no case as has been alleged could be proved against the petitioners in the capacity of the directors in absence of specific role of the directors/petitioners in the crime in question.

17. Furthermore, the Apex Court, in the matter of ***Pepsico India Holdings Pvt. Ltd.*** (supra), has observed that criminal liability on the directors cannot be fastened for an offence by the company merely on the basis of bald statement that the accused persons were directors of the company in absence of any specific allegation.

18. In view of above, in my opinion, the case for showing indulgence is made out.

19. Criminal Writ Petition stands allowed.

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The complaint being Summary Triable Case No. 8 of 2014 pending on the file of learned Judicial Magistrate, First Class (Court No.2), Ambad, is quashed to the extent of present petitioners.

(N.W. SAMBRE, J.)

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