

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

Criminal Application No. 2190 of 2004

District : Aurangabad

Ashok Arvind Kulkarni, Age : 59 years, Occupation : Joint Managing Director, M/s. Kulkarni Power Tools Ltd., resident of Plot No.40, Mali Plots, Warnali Road, Vishrambagh, Sangli - 416 415.	.. Applicant (Original accused no.5)
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versus

The State of Maharashtra.	.. Non-applicant.
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Mr. K.C. Sant, Advocate, for the applicant.

*Mr. P.N. Kutti, Addl. Public Prosecutor, for
the non-applicant.*

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CORAM : Z.A. HAQ, J.

DATE : 30TH NOVEMBER 2016

ORAL JUDGMENT :

Heard Mr. K.C. Sant, learned Advocate for the applicant, and Mr. P.N. Kutti, learned Addl. Public Prosecutor for the non-applicant - State of Maharashtra.

02. The applicant has challenged the order

passed by the Sessions Court dismissing his Revision Application and maintaining the order passed by the learned Magistrate directing issuance of process for breach of Rule 6(1)(d) and (f) of the Standards of Weights & Measures (Packaged Commodities) Rules, 1977 and for breach of Section 33 punishable under Section 51 of the Standards of Weights & Measures (Enforcement) Act, 1985.

03. The Inspector of Legal Metrology filed complaint against eight accused in which relevant allegations are found in paragraph No.06 as follows :-

" During my surprise visit on 04.07.2002 at about 14.40 to the shop of M/s. Madhukar General Stores, City Chowk, Aurangabad, I found that Mr. Kamlesh Trilokchand Jain was present in the shop and he was running the business at that time. I have inspected packaged commodities which was kept for sale in the shop. Out of the above mentioned commodities which is not conforming the above mentioned provision of the Acts and Rules. Therefore, I have seized the above mentioned packaged commodities vide seizure Receipt No. 24467 dated 14.05.2002, and drawn the Panchanama before the Panchas.

The accused Nos.1 to 7 have manufactured the above mentioned commodities and he has not written the month and year and maximum retail price on the package. Hence, he has

breached Rule 6(1)(d) & (f) of the Standards of Weights & Measures (Packaged Commodities) Rules, 1977 and Section 33 read with Section 51 of the Standards of Weights & Measures (Enforcement) Act, 1985.

The accused No.8 sold the above mentioned commodity to M/s. Madhukar General Stores, Lohar Galli, Chowk, Aurangabad, vide his cash memo No. CS 269 dated 09.05.2002. Hence, he has breached Rule 23(1) of the Standards of Weights & Measures (Packaged Commodities) Rules, 1977 and Section 33 read with Section 51 of the Standards of Weights & Measures (Enforcement) Act, 1985."

On getting satisfied that prima facie case exists against the eight accused, the learned Magistrate directed issuance of process against them. 07 out of 08 accused (including the present applicant) filed Criminal Revision No. 205/2003 before Sessions Court challenging the order passed by the learned Magistrate. The learned Addl. Sessions Judge by the impugned judgment concluded that the other 06 accused except the present applicant are not liable for prosecution and set aside the order passed by the Magistrate directing issuance of process against them. The prayer of the present applicant for setting aside the order passed by the learned Magistrate directing issuance of process against him is dismissed. The applicant being aggrieved in the matter, has filed this application.

04. The learned Addl. Sessions Judge relied on a document dated 26th September, 1996 which was produced by the accused before the Sessions Court and which show that the present applicant was Joint Managing Director of M/s. Kulkarni Power Tools Ltd., and was responsible for the business of the Company for all purposes, to set aside the order passed by the learned Magistrate directing the issuance of process against other 06 accused. Relying on the same document dated 26th September, 1996 the learned Addl. Sessions Judge concluded that the order passed by the learned Magistrate directing issuance of process against the present applicant cannot be set aside.

05. The learned Advocate for the applicant has submitted that the subordinate Courts have failed to appreciate that the averments in the complaint are not sufficient to enable prosecution of the applicant and the order passed by the learned Magistrate and maintained by the learned Addl. Sessions Judge is liable to be set aside and the complaint against the applicant has to be dismissed. It is argued that the learned Addl. Sessions Judge has committed an error in maintaining the order passed by the Magistrate directing issuance of process against the applicant relying on the document dated 26th September, 1996 overlooking the fact that there are no averments in

the complaint that the applicant is responsible for the business of the Company for all purposes and unless there are averments in the complaint, the document which is produced by the accused before the Sessions Court could not have been relied upon. To support the argument, learned Advocate for the applicant has relied on the following judgments :-

[1] Judgment given by Hon'ble Apex Court in the case of **State of A.P. Vs. Goloconda Linga Swamy & another** (AIR 2004 SC 3967).

[2] Judgment given by Hon'ble Apex Court in the case of **Monaben Ketanbhai Shah & another Vs. State of Gujarat & others** (AIR 2004 SC 4274).

[3] Judgment given by Hon'ble Apex Court in the case of **Pepsi Foods Ltd. & another Vs. Special Judicial Magistrate & others** (1998(1) Mh.L.J.(S.C.) 599)

[4] Judgment given by Calcutta High Court in the case of **Indian Oil Corporation Ltd. Vs. S.A. Neyazi** (1998 Cri.L.J. 2281)

06. The learned Addl. Public Prosecutor has supported the impugned judgment.

07. On going through the complaint, I find that the basic averments to cull out prima facie case for issuance of process exist in paragraph No.06 of the

complaint. The complainant has made accusations against 07 accused including the applicant, however, the accused relied on the document dated 26th September, 1996 and submitted that the other 06 accused except the applicant are not responsible for the business of the Company and, therefore, they are not liable to face the prosecution. This representation was made before Sessions Court by all the 07 accused including the applicant. Therefore, now it is not open for the applicant to contend that the learned Addl. Sessions Judge committed an error in relying on the document dated 26th September, 1996 to maintain the order passed by the learned Magistrate directing issuance of process against him.

08. The judgments relied upon by the learned Advocate for the applicant are not of any assistance to the applicant in the facts of the present case.

09. The Criminal Application is **dismissed**. In the circumstances, parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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