

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1007 OF 2003

1. M/S. AIRFREIGHT LTD.,

An existing company duly incorporated
under the provisions of
the Companies Act, 1956 having
its registered office at Neville
House, Currimbhoy Road,
Ballard Estate, Mumbai-400 001.

2. SHRI. CYRUS GUZDAR, adult,

Occ. Business, having same,
address as that of Petitioner No.1
(Both the petitioners through their
duly Constituted Attorney, Shri.
Eldred Menezes residing at 403,
Churchview Apartments,
St. Anthony's Street, Vakola,
Mumbai-400 055.

.....Petitioners
(Original Accused)

V/s.

1. SHRI. V.M. SHEVADE, an adult,
an Inspector of Security Guards Board
For Greater Bombay & Thane District,
appointed under S.6(1) of the
Maharashtra Private Security Guards
(Regulation of Employment & Welfare)
Act, 1981, having office at Copper
Rollers Compound, L.B.S. Marg,
Bhandup (W), Mumbai-400 078.

2. THE STATE OF MAHARASHTRARespondents
(Orig. Complainants)

* * * * *

Mr. Kiran Bapat, Advocate for the petitioner.

Ms. Lata S. Desai a/w. Ms. Shraddha Vavhal, Advocate for
respondent no.1.

Ms. N.S. Jain, APP for State, respondent no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED : 7TH MARCH, 2017.

JUDGMENT :-

1). This petition is directed against the concurrent observations of the Courts below as regards the maintainability of the complaint i.e. Case No.31/S/1997 filed by respondent no.1 in the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai.

2). Respondent no.1 is the Inspector appointed under Section 6(1) of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 ("the Act" for short). He filed the complaint herein under Section 175 Indian Penal Code, Section 3(3) of the said Act read with Clauses 26(2) and 39 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare), Scheme, 1981 ('The scheme', for short). The complaint alleges that the petitioners are employers within the meaning of The Act and The Scheme, petitioner no.1 registered with the Security Guards Board for Greater Bombay and Thane District ("The Board" for short). Under Clause-26(2), the petitioners are under obligation to engage registered security guards only allotted to them under Clause-9(e) of The Scheme. Accordingly, the petitioners had engaged the security guards through The Board at the premises situated at Calicat Street and 7, Kumte Street. The Board received oral complaints from certain guards that, the applicants are engaging private security guards through private security agency, namely, M/s. Maharashtra Hind Security Guards Private Ltd. Respondent no.1, then visited

establishment of the petitioners at Air Freight House, Lok Bharati Marol, Andheri (East), Mumbai on 1st February, 1996 and found that 34 private security guards including a Security Supervisor were engaged through M/s. Maharashtra Hind Security Guards Private Limited. Therefore, respondent no.1 made note of the fact and handed over copy of the inspection remarks to the concerned employee of the petitioners directing them to engage registered and duly allotted security guards through The Board within 7 days. When the petitioners failed to comply with the remarks, respondent no.1 issued, show-cause notice dated 16th February, 1996. The petitioners failed to comply with the requisition contained in the show-cause notice also. Thereupon, the petitioners were called before the Chairman of the Board on 6th March, 1996 for a meeting so as to give them one more opportunity to comply with the direction. The petitioners, however, failed to attend the meeting after which complaint came to be filed.

3). As per the complaint, Condition-1 of Notification dated 28th March, 1990 lays down that the exempted security agency mentioned in Coloumn-3 of The Scheme, shall not undertake to supply security guards or any other class of security guards to the registered principal employer who are getting security guards from Security Guards Board. The Maharashtra Hind Security Guards being an exempted security agency has violated the above condition by supplying security guards to the petitioner which is a registered principal employer. Therefore the petitioner has committed offence

under Section 175 Indian Penal Code and Clause 26(2) of The Scheme which is punishable under Clause 39 of The Scheme. Thereupon the Trial Court issued process against the petitioner.

4). The petitioner filed application dated 31st August, 2000 for recalling of the order of issuance of process contending essentially that in view of the orders passed on 11th March, 1996 and 10th May, 1996 by the Apex Court in I.A. No.4 in Civil Appeal No. 2033 of 1992 no criminal proceedings as filed against the petitioners are maintainable before any court of law. It contended therein that, respondent no.2 had issued a Notification No. SGA-2388/1778/LAB-5 dated 28.3.1990 under Section 23 of The Act granting certain private security guards agencies total exemption from the purview of the said Act on certain conditions in the matter of providing security guard to the industrial establishments. The said Notification dated 28th January, 1990 was challenged by certain parties in this Hon'ble Court and it was struck down. The exempted security agencies challenged the said order in the Hon'ble Supreme Court of India. However, during pendency of the proceedings in the Hon'ble Supreme Court, the Notification dated 28th March, 1990 came to an end by efflux of time, as it was operative only for a period of three years from the date of its issuance as stipulated therein. It was brought to the notice of the Apex Court that the relief sought in the said appeal would bear no fruits and the matter had become purely academic. The Apex Court appreciated this fact. In view of a statement of the learned senior counsel of the State of Maharashtra in

the aforesaid civil appeal that the applications for grant of exemption from the purview of the said Act were then pending before the Advisory Committee appointed by the State Government and for final decision of the State Government, it was agreed between both the parties that neither the Principal Employers nor the Security Agencies will be prosecuted for any offence committed by them under the said Act and that they stood protected from any such prosecution till 11.5.1996. The Hon'ble Supreme Court therefore, ruled that for the period up to the date of its order 11th March, 1996 and two months thereafter (i.e. 10th May, 1996), the Principal Employers, as well as, the Security Agencies stand fully protected from any prosecution under the said Act or the said Scheme framed thereunder. By the further order dated 10th May, 1996 the Hon'ble Supreme Court extended the period of immunity till 10th November, 1996.

5). Respondent no.1 opposed the application alleging suppression of material facts and also on merit. He pointed out that the petitioner was registered with the Board on 5th August, 1987 as registered employer with registration no. 838. As such Clause 26(2) of The Scheme makes it obligatory upon it to engage registered security guards from the Board. In fact it has already been allotted registered security guards as per Clause 9(e) of The Scheme. Therefore in view of Clause 26 of The Scheme, if it needed more security guards it ought to have approached the Board for additional requirement. As regards the orders of the Hon'ble Supreme Court,

according to the respondent the same are not applicable to the above facts of the petitioner's case. Besides the offence by the petitioner took place on 11th February, 1996 i.e. prior to the order of the Hon'ble Supreme Court.

6). By its order dated 28th August, 2001 the trial Court rejected the application and permitted the complainant to proceed with the trial. It held that since the petitioner was disputing the contention of respondent no.1 that the petitioner is registered with the Board and has Registration No.838, the fact of registration becomes a disputed fact on which evidence is required to be recorded. Secondly, according to the trial Court, applicability of Condition-II(iv) would be a matter of evidence since it depends upon the fact of registration of the petitioner with the Board. As regards the claim of the petitioner of being protected by the order of the Hon'ble Supreme Court, the trial Court noted that even this aspect depends upon the fact of registration of the petitioner with the Board. Since the protection of the petitioner is for breach of Clause-26 of the Scheme, it was necessary for the petitioner to establish that it is within the ambit of exempted agencies or the employers. This claim is again necessarily dependent upon the fact of registration of the petitioner. The trial Court, opined that, in the circumstances, the application of the petitioner was pre-mature. Being aggrieved by the order, the petitioner had preferred Criminal Revision Application No. 849 of 2001 to the Sessions Court, Mumbai. By its order dated 21st February, 2003 the Sessions Court dismissed the Revision

Application endorsing the view of the trial Court with an observation that, the fact of registration of the petitioner on 5th August, 1987 at Registration No. 838 is a very important fact, for both the sides.

7). Mr. Bapat, the learned Advocate appearing for the petitioner puts an emphasis upon the two orders of the Apex Court for the purpose of taking protection thereunder. The orders of the Apex Court arise out of decision of grant of total exemption to certain Private Security Guard Agencies on certain conditions in the matter of providing security guards in the industrial establishments. The petitioner is not a party to those proceedings. In any case, even for taking benefit of exemption under the two orders, the petitioner needs to establish certain facts, one of which, is its claim that it is not registered with the Board. In the circumstances, the view taken by the Courts below is the correct view of the matter. In the facts of the present case, the respondent must get an opportunity to establish its allegations against the petitioner. It cannot be said that, there is no material whatsoever against the petitioner so as to dismiss the complaint. Hence, the petition is dismissed.

8). At the request of Mr. Bapat, the interim order is extended for a period of 6 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)