

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 1010 OF 2015

M/s. Volkswagen Group Sales India
Pvt. Ltd.

... Applicant

Vs.

The State of Maharashtra and another

... Respondents

Mr. M. S. Mohite a/w Mr. Dnyaneshwar Jadhav
i/b M/s Legasis Partners Advocate for Applicant
Ms. A. M. Malhotra APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATED : 19th APRIL, 2017.

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1) Heard.

2) Applicants herein are seeking relief of quashing of proceedings in C.C. No. 248 of 2004 pending before Metropolitan Magistrate. Applicants are being prosecuted in complaint filed by Inspector R. E. Marne of Vashi 1 Division, under sections 18 (1) 36 (1) of Metrology Act, 2009 r/w Rule 18 of Package Commodities Rule 2011 By an order dated 21/10/2015, proceedings in the said case were stayed by this Court. Time and again, the learned APP

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had sought time to take instructions. Today, the learned APP is being instructed by officers of Meteorology Department.

3) It is the case of the prosecution that on 10/01/2014, Inspector R. E. Marne of Vashi Division filed a complaint in the Court of Chief Judicial Magistrate Vashi C.S.D. alleging therein that applicants have committed offence under sections 18 (1) 36 (1) of Metrology Act, 2009 Rule 18 Packaging Commodities Rule 2011. Coloumn no. 2 of the complaint is as follows:

“2. Name of the accused and their address:

All Director of M/s. Volkswagon Group India Pvt. Ltd. S. F. Warehousing and Logistics Farukhnagar, Gurgaon – 123506”.

4) Coloumn no. 6 of the complaint reads as follows:

“6. Particulars of offence:

During the course of inspection at M/s. Motor Car Co. India Pvt. Ltd. Mr. A. G. Naikwad visited the premises and found package of Fiit.Elem.Part No. 9F-898 on which M.R.D. is not mentioned as per

Act and Rules. Hence seized”.

5) In para 7 of the complaint, it is mentioned that accused is owner/partner/director/manager of the shop/stall/factory etc, situated at Farukhnagar, Gurgaon.

6) The learned counsel for the applicant has rightly submitted that prior to filing of the complaint, he was not in receipt of any notice calling upon his explanation.

7) Upon perusal of the complaint, it is clear that complaint does not even give particulars of the directors and hence, directors could not be identified. It is only when the applicants received summons, they have approached this Court for quashing of the complaint on the ground that there are no particulars mentioned in the complaint. While mentioning particulars of offence, there are no specific accusations levelled against the applicants. The learned counsel has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Subhankar Biswas V/s. Sandeep Meta [(2011) 15 Supreme Court Cases 541]**. The Hon'ble Apex Court has held as follows:

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“It has to be borne in mind that in prosecutions in such like cases no roving enquiry was permissible and an obligation rests on the prosecution to give details so that the persons responsible”.

8) Implicit reliance is also placed upon the Judgment of the Karnataka High Court in the case of **Leonard Richard Renaldi and another V/s. State** in **Writ Petition No. 4370 of 2013**. The learned Court had observed that

“The complainant does not specify as to whether, they, at the relevant point of time, when the offence was alleged to have been committed, were incharge of, and responsible to the Company for the conduct of the business of the company as required by sub-clause (ii) of clause (a) of sub-section (1) of Section 49 of the Legal metrology Act, and in the absence of any such averment in the complaint, no prosecution can be proceeded with against them”.

9) It is in these circumstances that since the complaint does not disclose particulars of the offence as well as the identity of person who were responsible in the commission of the offence, if any. The order of issuance of process deserves to be quashed and set aside.

10) The learned counsel for the applicants has submitted that in fact, company had disclosed to the complainant that there was a nomination and in view of that, directors could not have been prosecuted. No case is made out to proceed against the present applicants and prosecution of the applicants for the offence punishable under sections 18 (1) 36 (1) of Metrology Act, 2009 would be an abuse of process of law.

11) Hence, the application is allowed.

12) Prosecution pursuant to the complaint in C.C. No. 248/SS/2014 pending before Metropolitan Magistrate is hereby quashed and set aside.

13) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)