

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

CRIMINAL APPLICATION NO.1393 OF 2018

Anand s/o Kripalu Thirumalachar,
Age 60 years, Occ. Service,
R/o. Spring Leaf, Flat No. G, Third
Floor, No. 6, First Cross, Brunton
Cross Road, Bangalore 560025.

... Applicant.

VERSUS

1. The State of Maharashtra,
Through Government Labour
Officer and Inspector, Under
Minimum Wages Act, 1948.
2. The Government Labour Officer
& Inspector Under Minimum Wages
Act, 1948, C/o. Dy. Commissioner
of Labour Office, S.T. Stand Road,
Madjipura, Aurangabad.

... Respondents.

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Senior Advocate for Petitioner : Mr. R. N.Dhorde,
h/f Mr. Sagar S. Vidwauns
APP for Respondents : Mr. S.B. Joshi.

CORAM : MANGESH S. PATIL, J.

DATE : 13/09/2019

JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. Learned
APP waives service of notice for the respondents. With the consent of
both the sides the matter is heard finally at the stage of admission.

2. In this proceeding under section 482 of the Code of Criminal

Procedure the applicant who is the accused in S.C.C. No. 8683/2017 for allegedly committing an offence punishable under section 18(3) Rule 27(2) and Rule 31(A)(II) of the Minimum Wages Act, 1948 is praying to quash and set aside the proceeding itself.

3. The learned Senior Advocate Mr. Dhorde, for the applicant submits that he has merely been shown to be a Managing Director of the Company. Apart from that there is absolutely no averment in the complaint as to in what capacity he has a control over the company particularly the day to day affairs of its establishment at Aurangabad. Being sought to be charged vicariously, for violation of provision of Minimum Wages Act, it was imperative for the complainant to come out with specific averments to show that he was in charge of the day to day affairs of the Company's establishment at Aurangabad. Merely because he is the Managing Director of the Company one cannot straight way draw any inference of his being in charge of the day to day affairs.

4. The learned senior advocate referring to the decision of the Supreme Court in the cases of **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another**, (2005) 8 Supreme Court Cases 89 and **Pepsico Indian Holdings Pvt. Ltd. Vs. Food Inspector**, LEX (SC) 2010 11 70 submits that whether a person who is sought to be prosecuted

vicariously is in fact concerned with the day to day affairs is a matter of fact which needs to be established during the course of trial. For that purpose there should be some allegations in the complaint to point out as to in what manner he is involved in the day to day affairs of the Company. In the absence of such allegations, the applicant being the Managing Director of the Company could not have been prosecuted.

5. The learned APP submits that it is only during the course of the trial that it could be expected of the prosecution to demonstrate by leading evidence as to in what manner the applicant is responsible for the day to day management of the affairs of its establishment at Aurangabad. It would be premature to say that he had no concern. Therefore an opportunity be extended to the prosecution to substantiate the fact.

6. I have carefully gone through both the decisions of the apex Court and the complaint in the matter in hand. In connection with a similar provision contained in the Negotiable Instruments Act a liability of Managing Director has been considered by the Supreme Court in the case of **S.M.S. Pharmaceuticals Ltd. (supra)**. Even the Supreme Court had considered it in the case of **Pepsico Indian Holdings Pvt. Ltd. (supra)**.

7. Apparently, the applicant is being charged vicariously for commission of some offences under the Minimum Wages Act. Even according to the complaint, the alleged violation has taken place in the company's establishment at Aurangabad. It was expected of the complainant to have alleged in the complaint itself as to how and to what extent the applicant plays any role in the day to day affairs of the company's establishment at Aurangabad. He is being merely sought to be prosecuted by showing his designation as a Managing Director of the Company. It has been laid down by the Supreme Court (supra) that for implicating a Director or Managing Director of a Company there should be a foundation in the complaint in the form of an allegation that such a Managing Director or Director is responsible for day to day affairs of the Company. That being not the case in the matter in hand, the complaint is devoid of such allegations. Consequently the applicant cannot be allowed to be prosecuted in the absence of such allegations.

8. The application is allowed. The complaint is quashed to the extent of applicant.

(MANGESH S. PATIL, J.)

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