

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.1643 OF 2004****WITH****CRIMINAL APPLICATION NO.1644 OF 2004**

1. Shri Bharat Puri of Mumbai]
Indian Inhabitant, the]
Managing Director of]
Cadbury India Ltd; having]
his office at 19, Bhulabai]
Desai Road, Mumbai 400 026.]
2. Shri G.M. Bhat of Mumbai]
Indian Inhabitant, Executive]
Director of Cadbury India Ltd.]
Having his office at 19,]
Bhulabhai Desai Road,]
Mumbai 400 026.]
3. Mr. Radhakrishnan Menon]
of Mumbai, Indian Inhabitant,]
Executive Director of Cadbury India Ltd.]
Having his office at 19,]
Bhulabhai Desai Road,]
Mumbai 400 026.]
4. Shri Jaiboy Philips of Mumbai]
Indian Inhabitant,]
Executive Director of Cadbury India Ltd.]
Having his office at 19,]
Bhulabhai Desai Road,]
Mumbai 400 026.]
5. Shri Prashant Chhaya of Mumbai]
Indian Inhabitant,]
Executive Director of Cadbury India Ltd.]
Having his office at 19,]
Bhulabhai Desai Road,]
Mumbai 400 026.]

- | | | | |
|----|--|---|-------------|
| 6. | Shri Vidyut Arte of Mumbai |] | |
| | Indian Inhabitant, |] | |
| | Executive Director of Cadbury India Ltd. |] | |
| | Having his office at 19, |] | |
| | Bhulabhai Desai Road, |] | |
| | Mumbai 400 026. |] | |
| | | | |
| 7. | Cadbury India Limited |] | |
| | Cadbury House, 19, |] | |
| | Bhulabhai Desai Road, |] | |
| | Mumbai 400 026. |] | Petitioners |

Vs.

State of Maharashtra at the	]	
Instance of Mr. S.A. Patil,	]	
Food Inspector having his office at	]	
Food & Drug Administration, Ekta	]	
Marg, Udyamnagar, Ratnagiri, Dist.	]	
Ratnagiri.	]	Respondent

....

Ms. Kirti Parekh i/b Prem Ranga, for the Applicants.
 Ms. P.P. Shinde, A.P.P, for the Respondent-State.

.....

CORAM : REVATI MOHITE DERE, J.
DATE : 6TH NOVEMBER, 2019.

COMMON JUDGMENT :

As the facts involved in both these applications are similar, they are being disposed of by a common order.

2. By these applications preferred under section 482 of the Code of Criminal Procedure, 1973, the applicants seek quashing and setting aside of the orders of issue process dated 19th January, 2004 passed by the learned Chief Metropolitan Magistrate, Dapoli in R.C.C No.66 and 67 of 2003.

3. Learned Counsel for the applicants submits that in identical cases, this Court (Coram: A.K. Menon, J.) vide order dated 3rd August, 2017 was pleased to allow the applications filed by the very same applicants. He submitted that observations made in the said judgment dated 3rd August, 2017 would clearly apply to the facts of the present case. He submits that even in the present case, there are no allegations made by respondent No.1-Food Inspector, Food and Drug Administration that the applicants are engaged in the day-to-day affairs of the Company i.e of manufacturing/distribution/ storage of the product i.e. Cadbury Chocolate.

4. Learned A.P.P does not dispute the fact, that the applicants are, squarely covered by the judgment passed by this Court (Coram: A.K. Menon, J.) on 3rd August, 2017 in Criminal Application Nos.5503 of 2004 and 5505 of 2004.

5. Perused the papers. On 14th October, 2003, the Food Inspector- S.A. Patil visited M/s. Suyog Sweets retail vendor selling food product at Bazar Peth, Dapoli. The Food Inspector in the presence of the Panchas purchased assorted chocolates manufactured by Cadbury India Limited in their factory at Induri, Talegaon, Tal. Maval, Dist. Pune. The said samples containing the assorted pack of chocolates were sent to the public analyst on 15th October, 2003 and the report of the public analyst dated 11th November, 2003 reported that the Cadbury

Dairy Milk Chocolates contained cobwebs, grubs and living insects and as such did not conform to the standard of chocolates, being unfit for human consumption. The report received by the Local Health Authority was sent to the Food Inspector who received the same on 25th November, 2003. Thereafter, the Food Inspector submitted the documents to the Joint Commissioner Konkan Division, Food & Drugs Administration (MS). After obtaining consent, prosecution was lodged as against the applicants and several others. Thereafter, the Food Inspector filed complaints as against the applicants and others in the Court of the Learned Judicial Magistrate, 1st Class at Dapoli, pursuant to which, the learned Magistrate vide order dated 19th January, 2004, issued process as against the applicants in both the said cases. The cases were numbered as R.C.C No.66 of 2003 and 67 of 2003. Being aggrieved by the said orders issuing process, the applicants approached this Court under section 482 of the Cr. P.C for quashing and setting aside the said orders issuing process. Both the aforesaid applications along with other applications were admitted by this Court and the proceedings before the trial Court were stayed i.e. R.C.C. No. No.66 of 2003 and 67 of 2003. It appears that all the five cases were directed to be tagged and heard together, however, it appears that two Criminal Applications- i.e Criminal Application Nos.5503 and 5505 of 2004 were listed separately and as such heard finally. By judgment and order dated 3rd August, 2017, this Court (Coram: A.K. Menon, J.) was pleased to allow Criminal Application Nos. 5503 of 2004 and 5505 of 2004 also preferred by the

applicants herein, inasmuch as the orders issuing process as against the applicants therein were quashed and set aside. The very same applicants in the applications are the applicants in the present two applications. The observations made by this Court vide judgment and order dated 3rd August, 2017 in particular, paragraphs 17 to 22 are squarely applicable to the applicants in the present case. The same is also not disputed by the learned A.P.P.

6. A perusal of the complaints in R.C.C No.66 and 67 of 2004 reveals that there are no allegations made in the said complaints that the present applicants were concerned with the day-today activities on regular basis. A mere bald statement that the persons are Directors of the Company is not sufficient to make the Directors liable unless there are specific allegations regarding their role in the management of the Company. Admittedly, the Company and its nominee (original accused No. 3 to 9 in R.C.C No.66 and 67 of 2003) are facing prosecution.

7. In view of the aforesaid discussions, both the applications are allowed and the impugned orders issuing process dated 19th January, 2004 in R.C.C No.66 and 67 of 2003 pending on the file of the Learned Chief Metropolitan Magistrate, Dapoli and consequently the proceedings/complaints are quashed and set aside as against the applicants.

8. Rule is made absolute in the aforesaid terms and the applications are disposed of.

[REVATI MOHITE DERE, J.]