

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.460/2019

1. MURARI LAL RAMSUKH MITTAL

Aged about 61 years,
residing at 1601, Marathan Heights
Jai Bharat Oil Mills Compound,
Budhakar Marg, Mumbai-400 013

2. RENUKA RAMNATH

Aged about 57 years
residing at D 4701/02 D Wing
Ashok Towers, Dr.SS road,
Parel, Mumbai-4000 12.

3. ARUN RAUNAQ RAM KUMAR

Aged about 78 years
residing at B-603, Stellar Kings
Court, Sector 50, NOIDA,
Uttar Pradesh – 201 305

.... APPLICANTS.

VERSUS

1.THE STATE OF MAHARASHTRA

2.MUMBAI MUNICIPAL CORPORATION

OF GREATER MUMBAI,
G/South Ward, N.M.Joshi Marg
Mumbai-400 013

..... RESPONDENTS.

Mr. I.J. Nankani, Mr. Karan Kadam and Deepa Shetty i/b M/s Nankani and Associates for the applicants.

Mr.Abhijit Kadam i/b Kunal Waghmare for Respondent No.2.

Mr.A.R. Kapadnis, APP for the State.

WITH

CRIMINAL APPLICATION NO.756/2019

1.M/s WELSPUN INDIA LIMITED

incorporated under the provisions
of the Companies Act, 1956 having
Corporate office at Welspun House,
6th floor, Kamala Mills Compound
Senapati Bapat Marg, Lower Parel,
Mumbai-400 013.

2.Balkrishan Goenka

Aged about 52 years, Indian Inhabitant
Chairman of Welspun Group having
office at Welspun House, 7th floor,
Kamala Mills Compound, Senapati
Bapat Marg, Lower Parel,
Mumbai – 400 013.

3. Rajesh R. Mandawewala

Aged about 57 years, Indian
Inhabitant, Managing Directors Welspun
India Limited having officer at
Welspun House, 7th floor,
Kamala Mills Compound, Senapati
Bapat Marg, Lower Parel,
Mumbai – 400 013.

.... APPLICANTS.

VERSUS

1.THE STATE OF MAHARASHTRA

**2.MUMBAI MUNICIPAL CORPORATION
OF GREATER MUMBAI,
G/South Ward, N.M.Joshi Marg
Mumbai-400 013**

..... RESPONDENTS.

Senior Counsel Mr. Vikram Nankani, Mr.I.J. Nankani and Deepa Shetty i/b M/s Nankani and Associates for the applicants.
Mr.A.R.Kapadnis, APP for the State.

CORAM : A. M. BADAR, J.

DATE : 18TH DECEMBER 2019.

ORAL JUDGMENT:

1. By these applications under Section 482 of the Criminal Procedure Code, the applicants/accused in C.C.No.4103693/SS/2018 pending on the file of learned Metropolitan Magistrate 41st Court at Shindewadi, Dadar, Mumbai, are praying for quashing the proceedings of the said complaint.

2. Heard.

3. Rule. Rule made returnable forthwith.

4. Learned Counsel for the applicants/original accused argued that the complaint as framed and filed alleging an

offence punishable under Section 394 (1)(a)(ii) of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as 'M.M.C. Act' for the sake of brevity) is not maintainable because the same is not disclosing any offence under the said provision of law. The learned Senior Counsel further argued that even inspection pleaded in the complaint allegedly took place at Gala No.1, Ramesh Bhuvan, first floor, Balashet Madhurkar Marg, Mumbai-400 013. However, the Inspection Report shows that the License Inspector had conducted inspection at 'C' Wing, 108, Trade World, Kamala Mill Compound, S.B.Road, Worli, Mumbai-400013. With this, the learned Senior Counsel argued that the proceedings needs to be quashed, as no offence is made out and there can not be any ground to proceed against accused persons. Reliance is placed on the Judgment of this Court in the matter of ***Silver Land Developers Private Limited Vs. State of Maharashtra***¹.

5. Learned counsel appearing for Respondent/M.M.C.

¹ 2013 (3)AIR Bom R 478

opposed the applications by contending that the Inspection Report as well as offence sheet shows that the applicants have committed an offence of keeping tailoring shop without license from the M.M.C. and the said offence is punishable under clause (e) of the Sub-section 1 of the Section 394. He further argued that in the application for registration, names of applicants were disclosed as the Directors of accused No.1 Walspun India Private Limited. With this the learned counsel for respondent/M.M.C. prayed for dismissal of applications.

6. I have considered the submissions so advanced and also perused the material placed on record.

7. The complaint for the offence punishable under Section 394 (1)(a)(ii) of the Mumbai Municipal Corporation Act is filed by the Assistant Law Officer on behalf of the M.M.C. It is, thus, clear that the complaint is filed by the legally trained Law Officer of the M.M.C. Same seems to be filed

on 20.04.2018. Paragraph 4 of the said complaint needs to be reproduced and it reads thus;

4. That on 23.01.2018 License Inspector named Smt.M.J.Rawool working at G/Suogth ward who was duly empowered with the powers given by Deputy Municipal Commissioner dated 12.02.2016, carried out inspection/observed of the place named M/s Walspun India Limited Gala No.1 and Ramesh Bhuvan, first floor Balashet Madhurkar Marg, Mumbai-4000 013.

Where in one Mr.Suryakant Kamtekar (person incharge) was present. On enquiry with him he told that above mentioned premises is belong to the Ms. Walspun Indian Limited and Accused no.2 to 9 are the owners of the company and they are responsible persons for the trade activity running there without license from the M.C.G.M. Further it is submitted that they were dealing with the trade of or carried on or suffering to be carried the trade of or any process of operation connected with the trade of Activity of Tailoring Shop without license from Municipal Commissioner of Greater Mumbai and thereby committed offence us 394(1)(a)(ii) of M.M.C.Act (i.e. carbon copy of the said Inspection Report is part and parcel of the complaint.)

8. The averments made in paragraph 4 of the complaint as such makes it clear that the License Inspector had inspected the premises located at Ramesh Bhuvan, first floor, Balashet

Madhurkar Marg, Mumbai-400013 and found that the trade activity was being run at that premises without obtaining license from the M.M.C. It is averred that trade activity of tailoring shop was being conducted at the premises. The offence alleged in the complaint is stated to be punishable under Section 394 (1)(a)(ii) of the MMC Act.

9. Section 394 (1)(a)(ii) of the MMC Act reads thus;

“394.(1)(a)(ii) Certain articles (or animals) not to be kept and certain trades, processes and operations not to be carried on without a license; and things liable to be seized, destroyed, etc., to prevent danger or nuisance.

(1) Except under and in accordance with the terms and conditions of the license granted by the Commissioner, no person shall-

(a) keep, or suffer or allow to be kept, in or upon any premises,

(i).....

(ii) *any article specified in Part II of Schedule M, in excess of the quantity therein specified as the maximum quantity (or where such article is kept alongwith any other article or articles specified in that Schedule, such other maximum quantity as may be notified by the*

Commissioner) of such article which may at any one time be kept in or upon the same premises without a license.”

10. It is thus, clear that no person can keep articles specified in Part II of Schedule M, in excess of the quantity therein specified as the maximum quantity of such article in the premises without license from the Corporation. This penal provision is invoked in the complaint against the applicants.

11. It hardly needs to mention that the pleadings are of vital importance in criminal complaint cases. The object of the pleadings is to enable the accused persons to know exactly what is the case against them in order to prepare themselves for defending such case. The term “complaint” is defined by Section 2(d) of Criminal Procedure Code. It means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code,

that some person whether known or unknown, has committed an offence, but does not include a police report. Undoubtedly, pleadings made in the criminal complaint can be amended by making proper application before concerned court, but, in the case in hand, it is not in dispute that no application for amendment was ever made by the complainant to correct the offence alleged in the complaint at any point of time till date despite pendency of these applications for about six months. It is seen that the complaint is pending for a period of more than one year. However, in the said complaint also it is not reported that any efforts to amend the pleadings are made upto now.

12. Keeping articles specified in Part II of Schedule 'M' in excess of the quantity therein specified as the maximum quantity of such article in the premises without license from the Corporation is an offence. The said provision is invoked against the applicants. Perusal of Part II of the Schedule 'M'

of the MMC Act show that it deals with combustible liquids of various types. Activity of running of a tailoring shop is not in Part II Schedule 'M' as envisaged by Section 394(1)(a) (ii) of the M.M.C. Act.

13. Similarly premises which are stated to be inspected by the License Officer as stated in the complaint, were located at Ramesh Bhuvan, first floor, Balashet Madhurkar Marg, Mumbai-400013. However, the Inspection Report submitted by the License officer shows that inspection was conducted at 'C' Wing, 108, Trade World, Kamala Mill Compound, S.B.Road, Worli, Mumbai. Thus, there is no material on record to show that the premises at Ramesh Bhuvan, first floor, Balashet Madhurkar Marg, Mumbai-400013 were inspected and it was found that applicant/accused were conducting any trade activity at that place.

14. It is thus, clear that though the allegations in the complaint are in respect of the offence under Section 394(1)

(a)(ii) of the MMC Act, the complaint read as a whole alongwith annexures thereto does not reflect any offence stated in the provisions of law. It is not the case of the complainant that combustible liquids were stored in excess of the quantity therein specified as the maximum quantity by the applicant/accused and that too at the premises stated in the complaint. Learned Senior counsel appearing for the applicants, has rightly placed reliance on M/s *Silver Land Developers Private Limited Vs. State of Maharashtra* where in somewhat similar case it was held that the complaint does not disclose commission of any offence punishable under Section 475-A of the M.M.C. Act and proceedings were quashed.

15. In the result, I proceed to pass following order.

ORDER

1. Both the applications are allowed by making the Rule absolute in terms of prayer clause (b), (c) and (d).

(A. M. BADAR, J.)