

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5501 OF 2004**

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| 1. | Shri Bharat Puri of Mumbai |] |
| | Indian Inhabitant, the age 43 |] |
| | 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 P. 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.	]	
	Branch-Shivshakti Compound,	]	
	Anjur Road, Rehenal Village,	]	
	Bhivandi, Tal. Bhivandi, Dist.	]	
	Thane.	]	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

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Ms. Kirti Parekh i/b Prem Ranga, for the Applicants.

Ms. P.P. Shinde, A.P.P, for the Respondent-State.

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CORAM : REVATI MOHITE DERE, J.

DATE : 6TH NOVEMBER, 2019.

JUDGMENT :

By this application preferred under section 482 of the Code of Criminal Procedure, 1973, the applicants seek quashing and setting aside of the order of issue of process dated 17th December, 2003 passed by the learned Chief Metropolitan Magistrate, Khed in R.C.C No.131 of 2003.

2. 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 the 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 the 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 manufacturing/ distribution/ storage of the product i.e Cadbury Chocolate.

3. 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.

4. Perused the papers. On 16th October, 2003, the Food Inspector-A.N. Ransubhe visited the godown of one M/s. Asiatic General Stores at Dak Bunglow Road, Khed, Tal. Khed, Dist. Ratnagiri. 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 17th 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), Thane. After obtaining consent, prosecution was lodged as against the applicants and several others. Thereafter, the Food Inspector filed a complaint as against the applicants and others in the Court of the Learned Judicial Magistrate, 1st Class at Khed, pursuant to which, the learned Magistrate vide order dated 17th December, 2003 issued process as against the applicants in the said case. The case was numbered as R.C.C No.131 of 2003. Being aggrieved by the said order issuing process, the applicants approached this Court under section 482 of the Cr. P.C for quashing and setting aside the said order issuing process. The aforesaid application along with other applications was admitted by this Court and the proceeding before the trial Court was stayed i. e. R.C.C No.131 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 No.5503 and 5505 of 2004 were listed separately and as such were heard finally. By judgment and order dated 3rd August, 2017, this Court (Coram: A.K. Menon, J.) allowed Criminal Application Nos.5503 of 2004 and 5505 of 2004 also preferred by the Applicants herein and accordingly the orders issuing process as against the applicants therein, were quashed and set aside. The very same applicants in the said applications are the applicants in the present

application. The observations made by this Court vide judgment and order dated 3rd August, 2017 in particular in 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.

5. A perusal of the complaint in R.C.C. No.131 of 2003 reveals that there are no allegations made in the said complaint that the present applicants were concerned with the said activities on regular basis. A mere bald statement that the persons are Directors of the Company is not sufficient to make them liable unless there are specific allegations regarding their role in the management of the Company. Admittedly, the Company and its nominee (original accused No. 2 and 8 in R.C.C No.131 of 2003) are facing prosecution.

6. In view of the aforesaid discussion, the application is allowed and the impugned order issuing process dated 17th December, 2003 in R.C.C. No.131 of 2003 pending on the file of the Learned Judicial Magistrate, 1st Class, Khed and consequently the proceeding/complaint is quashed and set aside as against the applicants.

7. Rule is made absolute in the aforesaid terms and the application is disposed of.

[REVATI MOHITE DERE, J.]