

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1074 OF 2018

P. Mahalingam ...Applicant

Versus

State of Maharashtra & Anr. ...Respondents

Mr.Rajeev Ravi for the Applicant.

Mrs.Veera Shinde, APP for Respondent No.1- State.

Mr.Kunal Wagmare for Respondent No.2-BMC.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 22 JANUARY 2019

P.C.:

1. In this Criminal Application, the order dated 16th April, 2016 passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai in Case No. 3906051/SS of 2016, issuing process against the applicant so also the order dated 20th January, 2018 passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai, rejecting the application filed by the applicant wherein he seeks permission to file application under section 59 of the Bombay Shops and Establishments Act, 1948 (hereinafter referred to as “the said Act”), are challenged.

2. The applicant was found running the business without renewing license by committing breach of section 7 (2-A) of the said Act.

3. The learned counsel for the applicant has submitted that the applicant is one of the directors of the company, who is running the business on the impugned license. He has further submitted that the order of issuance of process is illegal, as the applicant has shown his willing to pay a fine of Rs. 1,000/-, which is the maximum punishment under section 52 of the said Act. He has further submitted that as on today, the licence is renewed after payment of necessary fees for the same. He has further submitted that the applicant is a resident of Chennai and the company is having a local business at Andheri, Mumbai. Therefore, the applicant is not aware when the licence was expired and not renewed. Hence, the applicant has moved an application under section 59 of the said Act before the learned Magistrate praying that the Manager, who is employed by the applicant, is directly responsible for breach of section 7 (2-A) of the said Act, and he is to be substituted as an

accused and the applicant is to be exonerated. He has further submitted that if the said prayer is not accepted by the learned Magistrate despite of clear provisions under section 59 of the said Act, the learned Magistrate has committed error in rejecting the application.

4. While opposing the Application, the learned counsel for respondent No.2 has supported the order of issuance of process passed by the learned Magistrate.

5. Considered submissions. Perused impugned orders. In view of section 59 of the said Act and considering the facts of the case, the learned Magistrate should have been allowed the application filed under section 59 of the said Act by exonerating the applicant and substituting the Manager, and by accepting renewal charges. Secondly, the process itself is not as per law. The order of issuance of process dated 16th April, 2016 discloses that notice made returnable on 26th May, 2016, however, in the order, the process has issued against the applicant for contravention of section 7 (2-A) of the said Act. It is necessary for the learned Magistrate also to mention the penal section under which the accused is going to be

punished. Thus, section 7 (2-A) alongwith section 52 of the said Act should be mentioned in the order of issuance of process. Hence, the order dated 16th April, 2016 passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai is hereby quashed and set aside.

6. Criminal Application is allowed and accordingly disposed of.

(MRIDULA BHATKAR, J.)