

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.439 OF 2019

RENUKA RAMNATH

... PETITIONER.

VERSUS

THE STATE OF MAHARASHTRA & ANR.... RESPONDENTS.

Mr.Shyam Marwadi, Advocate a/w Mr.Mayur Bhojwani & Mr.Hassan F. i/b Manilal Kher Ambalal & Company for the petitioner.

Mr.Kunal Waghmare, Advocate for Respondent No.2(M.C.G.M.)

Mr.A.R.Kapadnis, Additional Public Prosecutor for the State.

CORAM : A. M. BADAR, J.

DATE : 6TH MARCH 2020.

P.C.:

1. By this petition, the petitioner/one of the accused in criminal case no.4106171/SS/2016 filed by the respondent No.2/Municipal Corporation is praying for quashing the

summoning order dated 27.6.2016 passed by the learned trial Magistrate.

2. Heard the learned counsel for the petitioner/original accused. He argued that the complaint is vague. The petitioner/original accused is a nominated Director of Moage Media Private Limited and as such she was not responsible for day to day affairs of the company. My attention is drawn to Form DIR-12 issued by the Registrar of the Company to buttress the contention that, the petitioner is only a nominated Director. It is further urged that the learned single Judge of this Court in the matter of **Criminal Writ Petition no.518 of 2012 in the case of Dipak Brijmohan Gupta Vs. State of Maharashtra, 2013(3) LJSOFT 70** was pleased to hold that, in local establishment like branches of the bank or any other local establishment, the person who is having control over the establishment shall be liable for contravention of any of the provisions of the Act or Rules

made thereunder. With this, it is urged that the Joint Director or the Managing Director were held in that matter, not responsible, for commission of offence if the Manager is available whose duty is to comply with the provisions of the Maharashtra Shops and Establishments Act, 1948 (hereinafter to be referred to as the 'Shops and Establishments Act' for the sake of brevity) as well as the Rules framed thereunder. Reliance is also placed on the Judgment of this Court in **Criminal Writ Petition No.1773 of 2009, in the matter of M/s Tops Security Limited and Another Vs. S.P. Aspingekar decided on 3rd May 2010, 2010(3) CLR 646**, for pointing out that in order to make accused liable for the offence, offence committed by the agency, it is to be shown that the said offence is committed by the proprietor or in connivance with the proprietor. It is to be shown that the neglect can be attributed to the proprietor of the agency.

3. As against this, the learned counsel appearing for the complainant/Municipal Corporation drew my attention to

Section 58 of the Shops and Establishments Act and argued that the petition deserves to be dismissed in view of the provisions of this Section.

4. I have considered the submissions so advanced and also perused the material placed before me including the complaint as well as Form DIR-12.

5. In the complaint filed by the Municipal Corporation it is alleged that Sandip Goyal, Tanya Goyal and Renuka Ramnath-the petitioner herein of Mogae Media Private Limited have committed contravention of Rule 20-A, 20(1), 20(4) of the Rules framed under the Shops and Establishments Act. It is alleged that the accused persons have not disclosed the name of their establishment in Marathi/Devnagri script. It is further alleged that they have not maintained the Employment Register in Form 'J' prescribed for establishment in respect of Sangita, Kartik, Preeti and other 11 employees.

It is further alleged that the accused persons have not maintained the Register of leave in Form 'M' in respect of Sangita, Kartik, Preeti and other 11 employees and by contravention of these Rules, they have committed an offence punishable u/s 52 – 56 of the Shops and Establishments Act.

6. In the matter of **Dipak Brijmohan Gupta (supra)**, the learned single Judge of this Court has considered the definition of the term 'Employer' as well as 'Establishment' and held that when a Manager of the Bank is available, it is not proper to prosecute the Director, Managing Director or Joint Director of the said Bank. It is held that the Manager can be a person owning or having ultimate control over the affairs of branch of the Bank where the offence allegedly took place. In the matter of **M/s Tops Security Limited & Another (supra)** this court was considering the provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 2002 as well as provisions

of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act 1981.

7. How constructive liability for offences punishable under the Shops & Establishments Act can be imposed in case the offender is a Company, can be found in provisions of Section 58 of the said Act. It reads thus;

58. Determination of employer for the purpose of this Act

(1) Where the owner of an establishment is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Act for any offence for which an employer in an establishment is punishable.

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in the (State) to be the employer for the purpose of this Act and such individual shall so long as he is so resident be deemed to be employer for

the purposes of this Act, until further notice cancelling the nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the owner of an establishment is a company, any one of the directors thereof, or in the case of a private company, any one of the share holders thereof, may be prosecuted and punished under this Act for any offence for which the employer in the establishment is punishable.

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a shareholder who is resident in the (State) to be the employer in the establishment for the purposes of this Act, and such director or shareholder shall so long as he is so resident be deemed to be the employer in the establishment for the purposes of this Act, until further notice cancelling his

nomination is received by the Inspector or until he ceases to be a director or shareholder.

8. It is thus clear that, when the owner of an establishment is a Company, any one of the Director thereof and when the owner is a private Company, any one of its shareholder, can be prosecuted for the offences punishable under the Shops and Establishments Act. Proviso clause of this Section makes provisions for nominating a Director of a private company or shareholder as employer in the establishment for the purpose of this Act. In case of such nomination such nominated person is held to be responsible as employer in the establishment.

9. Nothing is pointed out by the petitioner to show that there is such nomination of any other Director or shareholder for making him responsible in terms of proviso of Section 58 of the Shops & Establishments Act in order to

evade liability of the prosecution of the petitioner for commission of offence provided for in the Shops and Establishments Act. Form DIR-12 placed on record shows that the petitioner is a Director of Mogae Media Private Limited.

10. In this view of the matter, she is certainly responsible for commission of offence as alleged in the complaint in view of constructive liability imposed on the Director as per provisions of Section 58 of the Shops and Establishments Act.

11. In the light of these findings, the observations of this Court, in the matter of **Dipak Brijmohan Gupta (supra)** and **M/s Tops Security Limited & Another (supra)** shall not be applicable to the case in hand.

12. Petition, as such is devoid of merits, and

accordingly, it is dismissed.

13. At the request of the learned counsel for the petitioner stay which is reportedly in operation from 30th January 2019 is extended for a period of 4 weeks from today.

(A. M. BADAR, J.)