

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.891 OF 2021

Mylan Laboratories Limited
H-12, H-13, M.I.D.C. Waluj, Aurangabad
through its Occupier
Rakesh B, S/o Trilokinath Bamzai,
Age : 55 years, Occu: Business
R/o Mylan Laboratories Limited
H-12, H-13, M.I.D.C. Waluj, Aurangabad
Tq. & Dist. Aurangabad.

... APPLICANT
(Orig. Accused)

VERSUS

The State of Maharashtra,
For Deputy Director, Industrial Safety & Health,
Aurangabad, Tq. & Dist. Aurangabad.

... RESPONDENT
(Resp. No.1 is Orig. Complainant)

...
Advocate for Applicant : Mr. P.V. Mandlik, Senior advocate i/b.
Mr. Punit S. Mehta
APP for Respondent/State: Mrs. G.L. Deshpande
...

CORAM : MANGESH S. PATIL, J.
Reserved on : 20.07.2021
Pronounced on : 27.07.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. By invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, the applicant which is a factory and its occupier is seeking quashment of a complaint filed by the respondent being S.C.C.

No.9417/2020 for the offences punishable under Section 92 read with Section 7-A (2)(c) of the Factories Act, 1948 (hereinafter the Act) and Section 92 of the Act read with Rule 4 (2) of the Maharashtra Factories Rules, 1963 (hereinafter the Rules).

3. The facts leading to the filing of the present proceeding are to the effect that the applicant is a Factory engaged in manufacturing process wherein medicines are manufactured. A construction of a staircase for a building adjoining the main gate of the premises was going on and was undertaken by one M/s. Real Constro Projects Private Limited (hereinafter the Construction Company). One Sachin Karbhari Kedare was an employee of that Construction Company. On 05.09.2020 at about 5:30 p.m. Sachin started driving a TATA Pick-up vehicle and had gone for fetching cement bags. He parked the vehicle on a slope, alighted from the driver's seat and started proceeding on feet. Having seen that the vehicle was moving along the slope he tried to halt it physically but unfortunately was crushed between the vehicle and a wall and succumbed to the injury on the same day. The respondent who is a Deputy Director of Industrial Safety and Health, Aurangabad visited the premises, held an inquiry and having concluded that the aforementioned offences were committed filed the complaint. Learned Magistrate directed the process to be issued. Hence this Application.

4. The learned Senior advocate Mr. Mandlik would submit that even accepting the allegations in the complaint at their face value, no

offence can be made out. Though the applicant is a Factory within the meaning of Section 2(m) of the Act and though it is engaged in manufacturing process within the meaning of Section 2(k), the deceased was not a worker within the meaning of Section 2(l) of the Act. The work that was being undertaken by the Construction Company had nothing to do with the manufacturing process. The deceased Sachin was an employee of that Construction Company and therefore the applicant was not responsible for the accident and cannot be fastened with a criminal liability.

5. The learned Senior advocate would further point out that the complaint is absolutely silent as to what was the alleged violation of the approved plan. So that it can be said to have committed an offence punishable under Section 92 read with Rule 4 of the Rules. He would further submit that essentially the applicant is engaged in manufacturing drugs. Admittedly the accident had occurred in respect of an employee engaged by the Construction Company which was carrying out construction of a staircase and all these are not part of the manufacturing process of the drugs. The learned Senior advocate, therefore would place reliance on the decision of Supreme Court in the case of **State of Kerala Vs. V.M. Patel; MANU/SC/0367/1960** and on the decision of this Court in **Richard Rushton Vs. State of Maharashtra; 2016 DGLS (Bom.) 1825** and three decisions of the Karnataka High Court.

6. The learned APP would strongly opposes the submissions of the learned Senior advocate for the applicant. She would submit that the

present inquiry is restricted in ascertaining if all the necessary ingredients for constituting the offences can be made out from the complaint. Quashing of a complaint is an exceptional circumstance and in the normal course the complaints cannot be quashed. The power of quashing is to be exercised sparingly and with utmost caution. She would place reliance on the decision of the Supreme Court in the case of **S.M. Datta Vs. State of Gujarat and Anr. ; (2001) 7 SCC 659** and the decision in the case of **Skoda Auto Volkswagen India Private Limited V/s. The State of Uttar Pradesh and Ors.; AIR 2021 SC 931.**

7. The learned APP would further submit that accepting the allegations at their face value, one can easily infer that the deceased was engaged by the Construction Company which in turn was carrying out construction activity of the staircase of the premises being used by the applicant factory and should be regarded as the part of the manufacturing process, at least an activity which is incidental to it. She would therefore submit that the applicant is not being implicated without substance. The prosecution may not be scuttled at the threshold. An opportunity be extended to the respondent to substantiate his allegations.

8. I have carefully considered the rival submissions and the decisions cited at the bar and also examined the papers. As can be appreciated there is not much of a dispute that the applicant is an occupier of a factory wherein drugs are being manufactured. There is no dispute about the fact that the deceased was not directly in the employment of the

applicant. It is also admitted that it was the Construction Company which was engaged by the applicant and was carrying out the construction of the staircase and the deceased was its employee. Factually, even there is no dispute about the manner in which the accident had occurred. The deceased was driving a vehicle and was to fetch cement bags. He had parked the vehicle along the slope and had alighted from the driver's seat. It is thereafter that when it started moving along the slope that he tried to stop it physically and was crushed between the vehicle and a wall. Bearing in mind such undisputed facts let us now turn to the core issues.

9. Since the applicant is being implicated for commission of offences under Section 7-A (2) (c) of the Act and Rule 4(2) of the Rules the provisions need to be looked into and read thus:

Section 7-A of General duties of the occupier :-

(1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include—

(a).....

(b).....

(c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

Rule 4 (2) : Use of premises as a factory – No occupier shall use any premises as a factory unless -

(1).....

(2) The factory building, extensions, processes, and machinery layout are in conformity with the approved plans;

10. So far as Section 7(A) is concerned, as the wording suggests it

lays down the general duty of the occupier *inter alia* of ensuring safety of the workers working in the factory. It, therefore, becomes imperative to bear in mind the definition of worker as defined under Section 2(l) which reads as under:

Section 2(l) “worker” means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer; whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union]”

As can be understood a worker means a person employed either directly or through an agency in any manufacturing process or something connected with the manufacturing process. Obviously, the emphasis being on the ‘manufacturing process’ one also needs to refer to the definition of the manufacturing process provided in Section 2(k) of the Act which reads thus:

Section 2(k) “manufacturing process” means any process for—

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,
- (ii) [(ii) pumping oil, water, sewage or any other substance; or]
- (iii) generating, transforming or transmitting power; or
- [(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;] [or]
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- [(vi) preserving or storing any article in cold storage;]

A manufacturing process is defined *inter alia* to me making,

altering, packing or demolishing a substance.

11. If one bears in mind all these definitions and the scheme of the Act it is apparent that the whole emphasis has been to look after the welfare and safety of the 'workers' engaged in a 'factory' where a 'manufacturing process' is undertaken.

12. In the matter in hand, the applicant undertakes manufacturing of medicines. The construction of a staircase for a building near the main gate was undertaken by the applicant but by engaging the Construction Company. The deceased was an employee of that Construction Company and was not directly engaged by the applicant in any activity much less touching the manufacturing process. So, even if the definition of worker is borne in mind, the deceased was not employed either directly or through any agency for utilizing his services in manufacturing process of the drugs, which is a *sine qua non* for him to be a worker under that definition. This is what has been precisely held in the cases of **State of Kerala Vs. VM. Patel** and **Richard Rushton** (supra). Even the Single Judges of the Karnataka High Court have taken similar view in the case of **D. Kumarswamy and Ors. Vs. State of Karnataka; MANU/KA/3011/2013**, **Aristides Protonotarios and Ors. Vs. State of Karnataka; MANU/KA/6589/2019** and **Shailendra K. Jain and Ors. Vs. State of Karnataka; MANU/KA/0626/2020**. In view of such state of affairs, even if the allegations in complaint are accepted at its face value, it cannot be said that the applicant was having any duty towards the deceased as is contemplated under Section 7-A of the Act so that a punishment under

Section 92 can be meted out.

13. So far as the alleged violation of Rule 4(2) of the Rules, as can be seen it touches the use of the premises as a factory strictly in accordance with the plans approved by the Deputy Inspector of the Factories. The complaint is absolutely silent and does not disclose exactly as to in what respect there has been a violation of the approved plan. The paragraph No.8 of the complaint only vaguely alleges that on the inspection being carried out by the respondent, after the occurrence of the accident, he found that the building layout the factory was not in conformity with the approved plan and is violative of Rule 4 of the Rules. One cannot make out as to what has been objected to by the respondent and it also does not disclose as to how merely on taking a round in the premises he could form such an opinion. Therefore it is quite apparent that the allegations regarding the construction of the premises being in violation of some approved plan are as vague as it could be.

14. True it is, as has been emphatically laid down in the case of **S.M. Datta** (supra) and followed in the case of **Skoda Auto Volkswagen India Pvt. Ltd.** (supra) even if the principles laid down in the case of **State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335**, are to be followed, it is only in the exceptional cases that this Court is expected to step in and quash a proceeding under Section 482 of the Code of Criminal Procedure. The Court has to be cautious and only if it results in abuse of the process of law that the complaint should be quashed. Cautioning ourselves with these

riders put by the Supreme Court in the case of **Bhajan Lal, S.M. Datta** and **Skoda Auto** (supra) the peculiar facts and circumstances of the matter in hand clearly demonstrates that so far as Section 7-A (2) of the Act is concerned, the deceased was not a worker within the meaning of Section 2(l) of the Act and consequently there would be no liability of the applicant towards him. So far as alleged violation of Rule 4 (2) of the Rules is concerned, the complaint is vague even in respect of the allegations and the documents annexed to the complaint also do not substantiate the allegations muchless *prima facie*, rather there is not a single document annexed to the complaint to *prima facie* subscribe to its genuineness in respect of the alleged violation of the approved plan. In my considered view, therefore, the present case constitutes one such exception carved out by the Supreme Court where this Court should invoke the powers under Section 482 of the Code of Criminal Procedure in quashing the complaint.

15. The Application is allowed. The complaint SCC No.9417/2020 filed in the Court of the Judicial Magistrate First Class, Aurangabad for the offences punishable under Section 92 read with Section 7-A (2)(c) of the Factories Act, 1948 and Section 92 read with Rule 4 (2) of the Maharashtra Factories Rules, 1963 is quashed and set aside. The Rule is made absolute.

(MANGESH S. PATIL, J.)