

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.8 OF 2019.

Jogindernath Mehra
major of age, Indian National
R/o 201, Hare Krishna,
Presidency Society,
North South Road No.8,
Ville Parle(West), Mumbai,
Maharashtra – 400049

.... Petitioner.

Vs
Union of India,
Ministry of Corporate Affairs,
O/o Registrar of Companies (Goa)
Corporate Bhavan, EDC Complex,
Patto, Panaji-Goa 403 001.

.... Respondent.

Shri Shivan Desai, Advocate for the petitioner.

Shri M. Amonkar, Addition Public Prosecutor for the respondent.

Coram:- M. S. JAWALKAR, J.

Reserved on:- 1st March 2021.

Pronounced on:-2nd March, 2021.

JUDGMENT

Heard Shri Shivan Desai, learned counsel for the petitioner and
Shri Mahesh Amonkar, learned Additional Public Prosecutor for
Respondent.

2. Rule. Rule is made returnable forthwith at the request and with the
consent of the learned counsel for the parties.

3. By this petition, the petitioner has invoked extra ordinary
jurisdiction of this Court under Section 482 of Cr.P.C., challenging the
order passed by the Chief Judicial Magistrate, Panaji dated 3.10.2012 in
Labour Case No. 26 of 2009.

4. It is the case of the petitioner that the respondent initiated criminal proceedings against him under Section 220(3) of the Companies Act, 1956 on account of failure to file three copies of balance sheet and profit and loss account alongwith relevant annexures thereto, by Enercon India Ltd, in which the petitioner was directed. It is alleged in the complaint that the petitioner is the officer of the said company who has knowingly and willfully authorized the default on behalf of company. It is further case of the petitioner that he is not the managing director of the said company and he has been erroneously and malafidedly made a party by the respondent. It is further case of the petitioner that said Enercon (India) Ltd is a joint venture of German Company and the Indian Company and he was the promoter of the said Indian Company. The said venture was set up in 1993 and later on the dispute arose between the said Indian promoters and the German Promoters. It is further case of the petitioner that in the year 2007, litigations were initiated by the German Promoters under Section 397 read with 398 of the Act and the said dispute was before the Company's Law Board due to which there were impediments in the regular functioning of the company for the purpose of holding Board Meetings and/or the General Meetings. It is further case of the petitioner that due to the dispute between the two promoters, German Promoters suddenly stopped the access to the accounting records maintained on SAP platform to the Indian Partners in the year 2007, hence the account could not be finalised. It is further the case of the petitioner that there were two

interim orders passed by CLB wherein it directed the company not to hold any AGM even for the adoption of the accounts for the year 2006-07 and a second interim order was passed directing the petitioner not to convene any board meeting without the leave of CLB due to which circular resolution could not be proposed. It is further case of the petitioner that on account of two interim orders passed the petitioner could not furnish three copies each of the said documents as it was beyond the control of the petitioner as he were bound to comply with the orders of CLB.

5. It is further case of the petitioner that the complaint does not contain any material allegations against him and the summons issued to him by the learned Chief Judicial Magistrate is without any application of mind and contrary to the law applicable.

6. The learned counsel for the petitioner relied on the judgment of this Court in case of ***Shri Varun Kudchadkar Vs Shri Vishwas Gopinath Naik and anr. in criminal case no. 254 of 2019 dated 16.2.2021.***

7. Shri M. Amonkar, the learned Addl. Public Prosecutor for the respondent submitted that there is no infirmity in the order of issuance of process as it is a technical offence. The said criminal complaint is filed for violation of provision 220(3) of the Companies Act 2013. The accused failed and neglected to file with the complainant herein the balance sheet and profit and loss account. The said period of default is from 31.10.2010

till date. The learned APP therefore submitted that there is no substance in petition and it needs to be rejected.

8. The question here is whether the impugned order passed on 3.10.2012 by which the process came to be issued against the accused is legal and as per provisions of law. The impugned order reads as under:-

(before Dvijple Patkar JMFC Panaji)

3.10.12 Called out today.

Issue notice to complainant s/s to accused no.1 and 2.

matter adj. For appearance on 19.11.12

sd/-

JMFC

9. By various judgments standard requirement by the Magistrate while taking cognizance in the matter are laid down. Magistrate while taking cognizance has to satisfy himself as to the existence satisfactory ground to proceed with the complaint. At this stage, the consideration should not be whether there is sufficient ground for conviction. The Magistrate is also not require to give elaborate reasons but the order should reflect independent application of mind by the magistrate to the material placed before him. This Court relying on **Rajendra Rajoriya**(supra), quash the order of issuance of process and restored the matter to the Court of JMFC. The Hon'ble Apex Court in **Rajendra Rajoriya**(supra).

10. From the impugned order passed by the learned JMFC, it is very much clear that he has issued notice to the complainant and at the same time issued summons to the accused nos. 1 and 2. It appears that said order is passed very casually and without there being any application of

mind. There is no satisfaction recorded for issuance of summons to the accused. The learned JMFC ought to have appreciated that summons to an accused in criminal matter have a serious consequences detrimental to the liberty and reputation of the person to whom such summons are issued.

11. In my considered opinion, the learned JMFC before issuing process has nowhere recorded her satisfaction for such issuance of process. Applying the principles laid down by the Hon'ble Apex Court in ***Rajendra Rajoriya***(supra), the impugned order dated 3.10.2012 is liable to be set aside and accordingly is hereby set aside. The matter require to be restored to the Court of JMFC, Panaji for fresh consideration based on the complaint and the material produced on record.

12. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

M. S. JAWALKAR, J.

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VIKAS NAIK

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