

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 7 OF 2019.

Yogesh Jogindernath Mehra,
Son of 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.

.... Respondents.

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 22.7.2016 in
Labour case No. 37 of 2016.

4. It is the case of the petitioner that the respondent initiated criminal proceedings against him under Section 165(6) of the Companies Act, 1956 on the allegations that he is a director in 39 companies and thereby violated Section 165(1) of the said Act. The petitioner further states that out of 39 companies, five are limited Liability Partnership that are wrongly counted as Companies by the respondents. It is further case of the petitioner that he had resigned from 11 companies prior to coming into force of the Act and accordingly Form 32 was duly filed. It is further case of the petitioner that Vish Wind Infrastructure limited was converted into Limited Liability Partnership w.e.f. 9.7.2010. Accordingly Form 32 for 11 companies where petitioner has resigned and certificate of incorporation issued upon conversion of 1 company into LLP is produced on record. It is further case of the petitioner that after coming into force of said Act he resigned from three companies and filed Form DIR 12 in respect of two companies and could not file in respect of one company as the same was not taken on record. It is further case of the petitioner that he is the director of 19 companies. Therefore, he has not violated the provisions of Section 165(1) of the Act. It is further case of the petitioner that the fact pertaining to the resignation/cessation by him from Directorship of 14 companies has been suppressed by the complainant and the complaint filed is in abuse of process of law.

5. It is further case of the petitioner that 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 of sub section 1 of Section 165 of the Companies Act 2013. It was the case of the complaint before the learned JMFC that in violation of this Section 165(1) the petitioner herein would liable for penal liabilities as he is a director of companies over and above the prescribed limit. There was no response to the show cause notice by the petitioner. 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 22.7.2016 by which the process came to be issued against the petitioners is legal and as per provisions of law? The impugned order reads as under:-

*22/07/16 Case called out. Adv. For Representative
of Co Shri Shivpal Singh present.
Verification dispense.
Cognizance taken. Prima facie case made out against
accused. Issue s/o against accused. Matter adjourned for app.
23.09.16
at 10 am.
Sd/-
JMFC.*

9. By various judgments standard requirement by the Magistrate while taking cognizance in the matter. 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 Vs. Jagat Narian Thapak and anr**, (2018) 7 SCC 234 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) held at paragraph 17 as under:-

17. On a perusal of the order of the learned Magistrate taking cognizance, it is apparent that the learned Magistrate observes that the Sessions Court has already made out a prima facie case. Such finding would be difficult to sustain as the Revisional court only observed certain aspects in furtherance of remanding the matter. Such observations could not have been made by the Magistrate as he was expected to apply his independent mind while taking cognizance. In the case on hand, were cognize the limitation on the appellate forum to review subjective satisfaction of the Magistrate while taking cognizance, but such independent satisfaction unless reflected in the order would make it difficult to be sustained. There is no dispute that Justice should not only be done, but should manifestly and undoubtedly be seen to be done. It is wrought in our constitutional tradition that we imbibe both substantive fairness as well as procedural fairness under our criminal justice system, in the sense of according procedural fairness, in the making of decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention.

10. It appears from the reply filed before this Court by the learned Addl. Public Prosecutor that most of the contentions raised by the petitioner in relation to the resignation from different companies are accepted. Be that as it may be, the learned JMFC, was duty bound to apply her mind

independently and record her satisfaction to that effect and not to issue orders mechanically, atleast it should reflect from the order.

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 22.7.2016 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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VINITA VIKAS NAIK | Digitally signed by VINITA VIKAS NAIK
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