

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.46 OF 2020

1 M/s. Hiralal & Company
Swatantra Path, P.O. Box
No.8, Thakker House,
Vasco da Gama,
Goa-403802.
Represented by its Partner
of M/s. Hiralal & Company
Shri Dhirendra Thakker,
Swatantra Path, Thakker
house, Vasco-da-Gama, Goa.

2 Shri Dhirendra Thakker,
Partner of M/s. Hiralal &
Company,
Swatantra Path, Goa,
Represented by its
Authoritsed Representative

.... Petitioners

Versus

1 Shri A.K. Das
Ast. Director (Safety),
Inspecortae Dock Safety,
Civil Maintenance Officer
Bldg., Mormugao Port
Trust, Headland, Sada,
Goa-403802

2 Capt. Arnel T. Caermare,
Master of M.V. AgiaEirini,
M/s. Epagris Navigation S.A
(Address f the said
company)
Name of the Vessel : A.V.
Agia Eirini
Flat/Port of Registry :
Marshall Islands/Majuro
IMO No./Official No. :
9237101/5075

.... Respondents

Mr. G.K. Sardessai, Advocate for the Petitioners.
Mr. Mahesh Amonkar, Advocate for the Respondents.

Coram:- SMT. M.S. JAWALKAR, J.

Reserved on :- 3rd AUGUST 2021

Pronounced on :7th AUGUST 2021

JUDGMENT :

Heard Mr. G.K. Sardessai, learned Counsel for the petitioners and Mr. Mahesh Amonkar, learned Counsel for the respondents.

2. Rule. Rule made returnable forthwith. Learned Counsel for the respondent waives service. By consent and at the request of the learned Counsel appearing for the parties, petition is disposed of at the admission stage.

3. The petitioner prays for quashing of the order of process dated 28.03.2019 in proceeding no.2651/AOA/DWA/2018 dated 20.10.2018, on the file of the learned Judicial Magistrate First Class, Vasco Goa.

4. Brief facts of the case are as under :

The petitioner no.1 is a partnership firm registered under Partnership Act and petitioner no.2 is a partner of petitioner no.1. Respondent no.1 is notified as an Inspector of

Dock Safety for the Port of Mormugao under the Dock Workers (Safety, Health and Welfare) Act, 1986 (hereinafter referred to as "Dock Workers Act"), who has filed the complaint which is the subject matter of the present petition. Respondent no.2 (accused no.1) is the Master of vessel M.V. AGIA EIRINI, which was berthed at the berth no.5A in the vicinity of Mormugao Port for the purpose of loading of steel coils.

5. Respondent no.1 filed complaint dated 20.10.2018 before the JMFC, Vasco - Goa, on the basis of an accident alleged to have occurred on 26.10.2017 at 12.45 hrs. while placing the Fork Lift Truck (hereinafter referred to as "FLT") No.GA-06-E-1853 with the help of ship's crane no.2 for the purpose of handling steel coils in hatch no.3 of the said vessel. The said FLT attached to the ship's crane no.2 had fallen down from a height into the hatch no.3 due to failure of the brake of ship's crane no.2 thereby causing damage to the FLT. The said crane was operated by Mr. Suhas Mapsekar, who is an employee/dock worker of M/s. Om Freight Forwarders Pvt. Ltd.

6. The petitioner submitted that respondent no.1 vide letter dated 25.09.2018 requested the petitioners to furnish details of the master of the vessel. Accordingly, on 28.09.2018,

the petitioners replied to the same stating that they were appointed by the Time Charterers of the Vessel M/s. Star Ship Freight Pvt. Ltd., who had taken the vessel of respondent no.2 on one time charter trip from Mormugao Port to Marghera, Italy. It is further made clear that their role was only to assist in completing the port formalities from arrival of the vessel till its sailing and their role as an appointed agent was terminated once the vessel departed from the load port and they are no longer in touch with the vessel or the master. He also provided the details sought by the respondent no.1. It is also made clear that their role as a vessel agent is limited only to the paper work, port formalities and port payments and they were not directly involved in the loading/unloading or the stevedore operations. Thereafter, complaint came to be filed by the respondent no.1 before the JMFC, Vasco, which issued order of process against the petitioners.

7. It is submitted by the learned Counsel for the petitioners that the order impugned is issued mechanically without application of mind. It is the contention of the applicant that they are not required to be registered under the Dock Workers Act nor they are covered under the Dock Workers (Safety, Health and Welfare) Regulations, 1990

(hereinafter referred to as the "Regulations of 1990"). The reference of agent of ship in the Regulations of 1990 is not the agent like the petitioners whose role is limited only to the paper work, the port formalities and port payments and, as such, no liability under the Act can be fastened on the petitioners. Mere nomenclature as an agent, *per se*, does not cast on the petitioners the right and obligation under the Act. In the absence of any averment in the complaint as to in what manner the petitioners can be made liable for an accident no process could be issued against the petitioners and thereby fastening criminal liability on them. Learned JMFC without considering the documents and only on the basis of mere averments issued process against the petitioners and hence the order is liable to be quashed and set aside.

8. Learned Counsel Shri Sardesai drew my attention to Section 200 of Cr.P.C., which is in respect of complaint by public servant in the discharge of his official duties. He placed reliance on ***Pepsi Foods Ltd. & Anr. V/s. Special Judicial Magistrate & Ors., 1998 (5) CC 749***, wherein Hon'ble Apex Court held as under :

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses

to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

9. He further pointed out from the documents annexed with the complaint explaining how the sections are applicable in the present case. Respondent no.1 clearly observed that :

"The complainant states that M/s. Hiralal & Company, is involved in the work of as charterers appointed agent was only to assist in completing the port formalities from arrival till sailing and after sailing. Thus, accused no.3 was as such a person responsible for dock work carried out by the victim at Port of Mormugao as defined under Section 15 of the said Act."

10. It is further contended that learned JMFC ought to have applied his mind to this clear cut admission on the part of the complainant that accused no.2 was appointed as an agent only to assist in completing the port formalities from arrival till

sailing and after sailing, and held accused no.3 responsible person for dock work carried out by the victim at the port of Mormugao.

11. Learned Counsel for the petitioners relied on the case of ***Punjab National Bank & Ors. V/s. Surendra Prasad Sinha, 1993 Supp (1) SCC 499***, in support of his contention that judicial process should not be an instrument of operation or needless harassment. It is responsibility and duty on the Magistrate to find whether the concerned accused should be legally responsible for the offence charged for.

12. It is further contended that there is no show cause notice issued before filing criminal complaint as provided under Regulations 3(a)(vii) & (viii) of Regulations of 1990. As provided under Regulations 3(a)(vii) and (viii), there has to be an inquiry into the cause of any accident or dangerous occurrence and show cause notice is required to be issued before initiating any action. It is also pointed out that 'agent' is not defined under the Act nor in the regulation. Thus, there is no material on record to issue summons in the present matter.

13. As against this, Mr. M. Amonkar, learned Counsel for the respondents submitted that it is admitted position that petitioner is the agent of respondent no.2 (accused no.1), that is the master of the vessel M.V. AGIA EIRINI. For the sake of convenience, definition of 'dock work' and 'dock worker' are reproduced here under:

*Section 2(d) - “**dock work**” means any work in or within the vicinity of any port in connection with, or required for, or incidental to, the loading, unloading, movement or storage of cargoes into or from ship or other vessel, port, dock, storage place or landing place, and includes-*

(i) work in connection with the preparation of ships or other vessels for receipt or discharge or cargoes or leaving port; and

(ii) chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area in board the ship or in the docks;

*(e) “**dock worker**” means a person employed or to be employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, on dock work.”*

14. It is submitted that in view of these definitions, even a agency on dock work is to be fallen within the definition of dock worker and dock work includes any work in order within the vicinity of any port in connection with or required for, or **incidental to** loading, unloading, movement or storage of cargo.

15. It is further pointed out that the accused no.3 was responsible for the day today business of accused no.2 and was looking after the dock work on behalf of the accused no.2. Accused no.3 was, as such, a person responsible for dock work carried out by accused no.2 at port of Mormugao as defined under Section 15 of the said Act. It is further pointed out that in view of regulation 7(3)(b), it shall be the duty of the master or Chief Officer of such ship and agent of such ship to comply with the regulation 40 in case of lifting appliance, loose gear or any other equipment used in the dock work on shore or on board if the ship is not registered in India. It is the duty cast by regulation 40(b) that all lifting appliance including all parts and working gears thereof to be maintained in good repair and working order. Thus, the petitioner herein is well within the definition of dock worker being agent and also performing dock work as defined under the Act as well as the regulations. In view thereof, he cannot shirk his responsibility as an agent to M.V. AGIA EIRINI, which is not registered in India. It is their duty to comply with the regulations 17(4), 27, 40 to 49, 51, 52 (1 to 4), 54, 57(1 to 4, 6 & 7), 59 (1 to 3), 60, 62, 63, 64, 84(1), 85(5), 87 and 88.

16. Thus, accused no.1 and 2 & 3, being the masters and agents of the said vessel respectively are liable for the breach of regulations.

17. I have perused the record and gone through the impugned order. Admittedly, the applicant is working for masters of the vessel M.V. AGIA EIRINI, which was registered in Marshall Islands/Majuro and the said ship was at berth no.5A where the accident occurred. The petitioner herein is the shipping agent for the said vessel and it is his contention that his role was limited to assist in completing the port formalities from arriving till sailing and after sailing. However, accused no.3 was *prima facie* looking after the dock work on behalf of the accused no.2 and was responsible for day today business of accused no.2, that is the petitioner no.1, herein. As such, accused no.2 is also *prima facie* performing the dock work.

18. Though learned Counsel for the petitioners pointed out portion of the paragraph 1 at page 43 of the petition, which reads that; *"Thus, Accused No.3 was as such a person responsible for dock work carried out by the victim at Port of Mormugao as defined under Section 15 of the said Act."* conveniently not read further sub-para wherein it is

categorically mentioned that; *“During the relevant time, the Accused No.3 was responsible for day to day business of Accused No.2 and was looking after the dock work on behalf of the Accused No.2. Accused No.3 was as such a person responsible for dock work carried out by Accused No.2 at Port of Mormugao as defined under Section 15 of the said Act.”* Moreover, how one can raise this ground specifically as both accused no.2 & 3 jointly filed this petition.

19. So far as contention of petitioners that notice is required to be issued under Regulation 3(a)(vii) & (viii) of Regulations of 1990, these are the powers of Inspector and he may exercise it under the said provision. Therefore, it is not mandatory as such nor petitioners can claim as of right any notice under this provision.

20. As such, the satisfaction for issuance of summons cannot be said to be without any application of mind or without any substance.

21. Even in the present matter, the petitioner has not placed on record what is his scope of agency and what is the extent of control, he is having over other dock work. On the

contrary, it is admitted position that he was appointed by accused no.1 - Company to complete the formalities of loading and unloading.

22. As such, considering the facts and circumstances of the case, I do not see any reason to interfere in the order dated 28.03.2019, issuing process passed by the learned JMFC, Vasco.

23. Hence, I proceed to pass the following order :

O R D E R

(i) Criminal Writ Petition is dismissed with no order as to costs.

SMT. M.S. JAWALKAR, J.

NH

NITI K

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