

IN THE HIGH COURT OF BOMBAY AT GOA**Criminal Writ Petition No.187/2018****WITH****Criminal Misc. Application No.66/2021 (F.No.)****IN****Criminal Writ Petition No.187/2018****WITH****Criminal Writ Petition No.186/2018****WITH****Criminal Misc. Application No.155/2021 (F.No.)****IN****Criminal Writ Petition No.186/2018**

1. Mohan Tukaram Patil
major in age, Indian National,
resident of 22/3, Majare, Jatevadi,
Jatevadi, Gram mauje, Mahare,
Tehsil, Chandaga, D.-Kohlapur,
Maharashtra – 416552.

2. Sarika Machhindra Patil
major in age, Indian National,
resident of 518, Kachali,
Kusmbale, Alibaug,
Maharashtra-402108.

... Petitioners

Versus

Union of India, through
Ministry of Corporate Affairs,
Office of the Registrar of Companies,
(V.P. Katkar, RoC), Patto Plaza,
Panaji, Goa 403001.

... Respondent

Mr. S. Gaonkar, Advocate for the Petitioners.

Mr. M. Amonkar, Standing Counsel for the Respondent.

Coram:- M.S. SONAK, J.

Date:- 15th February 2021

P. C.:

Heard Mr. Gaonkar for the petitioners and Mr. Amonkar, learned Standing Counsel for the respondent in both these petitions.

2. In both these petitions, the petitioners seek quashing of the process issued to them in Labour Case No.22/2017 pending before the Chief Judicial Magistrate at Panaji (CJM).

3. In both these petitions the petitioners have taken out applications for amendment to add the following ground:

“It is submitted that the Complaint are liable to be quashed as the Respondent has not stated the role of the Petitioners in running the Company nor have they stated as to what role the Petitioners had in the active management and affairs of the Company. The duties and responsibilities of the Petitioners have not been mentioned anywhere. It is submitted that the petitioners were not in charge of the affairs of the Company and therefore no liability can be fastened upon them.”

4. Since, the ground which is sought to be added is in the nature of the legal submission, the amendment is allowed. Same is to be carried out forthwith.

5. Mr. Gaonkar, in support of both these petition has urged the

following two points:

a) that there are no averments in the complaint defining the role of the petitioners in the running of the company. The duties and responsibilities of the petitioners have not been stated in the complaint and based on such a complaint therefore, no process could have been issued. Reliance is placed on *G. N. Verma v. State of Jharkhand and another – (2014) 4 SCC 282* and *National Small Industries Corporation Limited v. Harmeet Singh Paintal and another – (2010) 3 SCC 330* in support of this contention;

(b) that the complaint against the petitioners was barred by limitation as provided under Section 468 of the Criminal Procedure Code (Cr.P.C.) since, the same is filed beyond the period of one year from the date of the commission of the alleged offence. In this regard reliance is placed on *State of Bihar v. Deokaran Nenshi and another – (1972) 2 SCC 890*.

6. Mr. Amonkar, the learned Standing Counsel has pointed out that the averments in the complaint are quite sufficient since, there is no dispute that the petitioners were at least the directors of the company which has failed to file the annual returns. He pointed out that even a show cause notice was issued which was not responded by the petitioners. He pointed out to the definition in Section 2(60) of the Companies Act and submitted that even a whole time director can

be regarded as an officer in default. He submitted that this is a case of continuing offence and the ruling in *Deokaran Nenshi (supra)* which concerned the provisions of the Mines Act is clearly inapplicable. He relied on *Anita Chadha v. The Registrar of Companies – 1998 (46) DRJ 506* to submit that the offences of the nature alleged in the present matter are continuous offences to which the provisions of Section 468 and 472, Cr.P.C. will not apply. He therefore submitted that these petitions may be dismissed.

7. The rival contentions now fall for my determination.

8. In these petitions, the petitioners do not dispute that they were the directors of the company in question. However, it is their case that such directorship was foisted upon them by deceit practice by one Mr. Girish More who was in fact the real managing director of the company. There are averments that the petitioners were kitchen helpers and sweepers and thereby not responsible for the conduct of the affairs of the company. The petitioners however admitted that they did sign certain documents which may have been misused to indicate that they are the directors of the company.

9. According to me, all these allegations of deceit or that the petitioners are only sweepers and kitchen helpers will have to be gone into at the stage of trial. Such matters, cannot be decided at this stage

itself where the petitioners seek quashing of the process based on a demurer.

10. Record however indicates that the petitioners were at least the directors of the company which has *prima facie* failed to file its returns within the prescribed period. The petitioners were served with a show cause notice which they did not bother to reply. Section 2(60) of the Companies Act defines “*officer who is in default*” for the purpose of any provisions of the Companies Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- whole-time director;
- key managerial personnel;
- where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- any person in accordance with whose advice, directions or

instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

- every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

11. Now if the complaint is perused, there are averments that accused nos.2 to 4, which includes the petitioners, were at all relevant time to which the complaint relates, the directors/officers of the said company and it is these accused who failed and neglected to file the annual return and balance sheet and relevant profit and loss account for the financial year ended 31.03.2015 within 60 days and 30 days after the said documents were so laid in the annual general meetings thereby violating Section 92 of the Companies Act. Whether these averments are correct or not will be established in the course of the trial. However, this is not a case where the complaint is bereft of any material averments particularly in the context of definition as in Section 2(60) of the Companies Act.

12. The ruling in *G. N. Verma (supra)* was delivered not in the context similar to which we are concerned with in the present matter. There, the issue was whether the accused was the deemed agent of the mines since, it was not even the case of the prosecution that G. N. Verma was appointed as an agent of the mines. It is in this context that averments in relation to the precise role and duties and responsibilities assigned to G. N. Verma were found to be relevant.

13. Similarly, in *National Small Industries Corporation Limited (supra)* in the context of the vicarious liability under the Negotiable Instruments Act, the Hon'ble Supreme Court held that it is not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. In that case also, the Hon'ble Apex Court was not considering the issue of offences under the Companies Act in the context to the definition of the officer in default to be found in Section 2(60) of the Companies Act.

14. Therefore, based on the amended ground there is no case made out to quash the process.

15. After having raised the issued of limitation, Mr. Gaonkar, now contends that he does not wish to press the issue of limitation before

this Court and liberty may be granted to raise such issue before the CJM, Panaji in the course of the prosecution. Since, the petitioners, do not wish to press the point of limitation at this stage, the same is not decided but liberty is granted to the petitioners to raise such point at the appropriate stage before the CJM, Panaji. However, it is made clear that all the issues arising in this matter will have to be decided together on their own merits and in accordance with law.

16. As a result both these petitions are required to be dismissed and the same are hereby dismissed.

17. Interim relief granted earlier to stand vacated.

18. The petitioners to appear before the CJM, Panaji on 15.03.2021 at 10.00 a.m. and file the authenticated copy of this Order.

19. Both the petitions are disposed of in the aforesaid terms without any order as to costs.

M. S. SONAK, J.