

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.3927 OF 2018**

Mr. K. Chandran	}	
Aged 60 Years,	}	
Board of Director,	}	
M/s Wanbury Ltd.	}	
Having his official address at	}	
A-15, M.I.D.C. Industrial Area,	}	
Patalganga, District Thane Raigad	}	 Petitioner.
	}	

Vs.

1. The State of Maharashtra	}	
	}	
2. Mr. D.G. Madgude	}	
Inspector Under Maharashtra Mathadi	}	
Hamal & Other Manual Workers	}	
(Regulation Of Employment & Welfare)	}	
Act, 1969, At the Instance of Grocery	}	
Markets & Shops Board,	}	
Having its Office at 515,	}	
Central Facility Bldg., 6 th Floor,	}	
Fruit Market, Turbhe, Navi Mumbai – 400703	}	 Respondents.

Mr. Subodh Desai a/w Mr. Karan Dogra and Ms. Toshika Katore i/b. M/s. Rignaya and Associates LLP for the Petitioner.

Smt. Rutuja Ambekar, APP for the Respondent No.1-State.

Mr. B.S. Mahamulkar a/w Mr. Rahul D. Oak for the Respondent No.2.

CORAM : A. S. GADKARI, J.

RESERVED ON : 1st APRIL, 2021.

PRONOUNCED ON : 7th APRIL, 2021.

JUDGMENT :-

1. The Petitioner/Original Accused No.2 has impugned Judgment and Order dated 23rd November 2017, passed in Revision Application

(MHWA) No.02 of 2015, by the learned Member of Industrial Court, Thane, dismissing the said Revision with costs and confirming the Order dated 19th July 2014 issuing process against the Petitioner and original Accused No.1 for contravention of Clause No.14 punishable under Clause No.44 of the Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme 1970 (for short, "*the Scheme*").

2. Heard Mr. Desai, learned counsel for the Petitioner, Smt. Ambekar, learned A.P.P. for the Respondent No.1-State and Mr. Mahamulkar, learned counsel for the Respondent No.2. Perused record.

3. The record reveals that, the Respondent No.2 is an Inspector appointed by the Grocery Markets and Shops Board under Section 15 of Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (for short, "*the Mathadi Act*"). As provided under Section 4(1) of the said Act, the Government of Maharashtra has framed a Scheme, namely, Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970. That, as provided under Section 6(1) of the said Act, the State Government has constituted a board known as Grocery Markets and Shops Board (for short, "*the said Board*") for Greater Mumbai, Thane and Raigad District.

4. The Accused No.1, namely, M/s. Wanbury Limited is carrying on business of manufacturing and sale of bulk drugs and activities of

loading, unloading, shifting, stacking, etc. of raw material in the form of chemicals and finished goods are being carried out in the establishment of Accused No.1, situated at Industrial Area, Patalganga, District Raigad. The Petitioner (original Accused No.2) is the Director of Accused No.1 and is having ultimate control over the affairs of business of Accused No.1. The accused are therefore, 'Employer' within the meaning of Section 2(3) of the said Act. As provided under Clause No.14 of the said Scheme, every employer to whom said Scheme applies, shall apply for registration with the said Board on commencement of its business in a prescribed form appended to the said Scheme.

5. That, the Respondent No.2 visited establishment of Accused No.1 on 24th February 2014, in the morning, where one Mr.Vitthal Pawar, representative of the Accused No.1 was present. At that relevant time of inspection, the Respondent No.2 found that, four unregistered workers were engaged by the accused for the work of loading of Matformin Powder in a container. On inquiry with the said workers, they stated that they are doing the said work of loading, unloading, shifting, stacking etc. of the accused and they are being paid on monthly rate basis. The representative of accused, namely, Mr. Vitthal Pawar, who was accompanying Respondent No.2 confirmed the said information given by the workers. It was revealed that, the Accused No.1 was not registered with the Board as required under Clause No.14 of the said Scheme. The representative of Accused No.1

accepted the said Inspection Report and acknowledged receipt of the same on the duplicate copy. The accused were directed to apply for registration within 7 days from the date of receipt of inspection remarks, however the accused did not do so and hence the Respondent No.2 issued Show Cause Notice dated 5th March 2014 and called upon the accused to explain as to why penal action should not be taken against them for breach of Clause No.14 of the said Scheme. It was also revealed that, the Application for exemption filed by the Accused No.1 under Section 5 (also under Section 22) of the said Act was already rejected by the State Government. The accused were thus under statutory obligation to apply for registration with the Board, but they intentionally failed, and neglected to apply for it and therefore continued to contravene the provisions of Clause No.14 of the said Scheme. It is the specific case of the Respondent No.2 that, the Accused No.2 is responsible for the contravention of Clause No.14 of the said Scheme by Accused No.1, as he is having ultimate control over the affairs of business of Accused No.1.

In the aforestated premise, narrated in paragraph nos.3 to 5, the Respondent No.2 filed Complaint (MHWA) No.02 of 2014 in the Labour Court at Mahad on 4th April 2014 for contravention of Clause No.14, punishable under Clause No.44 of the said Scheme.

6. The record further reveals that, the verification statement of Respondent No.2 was recorded by the Trial Court on 19th July 2014. The

Trial Court thereafter passed Order below Exh.U-1 on 19th July 2014 and issued process against the accused for the offence punishable under Clause No.14 read with Clause No.44 of the said Scheme. Feeling aggrieved by the issuance of the process by the Trial Court, the accused preferred Revision Application (MHWA) No.2 of 2015 in the Industrial Court of Maharashtra at Thane. As noted earlier, the Revisional Court by its impugned Judgment and Order dated 23rd November 2017, was pleased to dismiss the said complaint with costs.

7. Mr. Desai, the learned counsel for the Petitioner submitted that, the Petitioner has been unnecessarily impleaded in the present Complaint by the Respondent No.2. He submitted that, the provisions of Mathadi Act are not applicable to the Accused No.1 establishment and therefore inter alia the said Scheme is also not applicable to it. He submitted that, the name of the Petitioner has been wrongly entered into the form of Visit Remarks dated 24th February 2014. That, there is no specific averment made in the Complaint with regard to the role assigned to the Petitioner and the offence committed by him. He submitted that, the Trial Court has not taken into consideration these aspects while passing impugned Order dated 19th July 2014 issuing process against the Petitioner. He therefore prayed that, the impugned Order may be set aside by allowing the present Petition.

8. Per contra, Mr. Mahamulkar, learned counsel for the Respondent No.2 vehemently opposed the Petition and submitted that, a

strong *prima facie* case against the Petitioner/original Accused No.2 has been made out. He submitted that, despite granting sufficient opportunity to the Petitioner, he clearly failed to comply with the necessary legal requirements as contemplated under the Scheme and therefore the Respondent No.2 has filed the aforestated Complaint. He submitted that, there are no merits in the contentions raised by the learned counsel for the Petitioner and therefore the present Petition may be dismissed.

9. At the outset, it is to be noted here that, the representation made by Accused No.1 Company, as contemplated under Section 5 of the Mathadi Act, for exemption from application of the said Act and the Scheme formulated therein has been rejected by the Competent Authority of the Government established under the said Act. Therefore the provisions of Mathadi Act and the provisions of Scheme formulated thereunder are applicable to the establishment of Accused No.1 Company.

10. In this background, it is to be noted here that, on the date of visit of the Respondent No.2, i.e. on 24th February 2014, to the establishment of Accused No.1 Company, he found that, four unregistered workers were engaged by the accused for the work of loading of Matformin Powder in a container. Upon inquiry with the said workers they told Respondent No.2 that, they are doing the work of loading, unloading, shifting, stacking, etc. of the accused and they are being paid on monthly rate basis. It was revealed that, the Accused No.1 Company was not

registered with the Board as required under Clause No.14 of the Scheme. The Respondent No.2 therefore directed accused to apply for registration within 7 days from the date of receipt of Inspection Remarks, however the accused did not apply for registration. A Show Cause Notice dated 5th March 2014 was therefore issued to the accused calling upon them to explain as to why penal action should not be taken against them for the breach Clause No.14 of the said Scheme. Despite receipt of said notice, the accused neither replied it nor applied for registration with the Board and continued to contravene the provisions of the said Scheme. The Visit Remarks dated 24th February 2014 mentions the name of Petitioner as a Director as declared under the provisions of S & E Act/Factory Act.

Section 2(3) of the Mathadi Act defines “employer”. The said definition reads as under :-

"2(3). "employer", in relation to any unprotected workers engaged by or through contractor, means the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment, and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or is called by any other name prevailing in the scheduled employment;"

Specific averments in para Nos.3 and 11 of the Complaint have been made by the Respondent No.1 that, the Petitioner (Accused No.2) is the Director of Accused No.1, who is having ultimate control over the

affairs of business of Accused No.1. That, the accused are therefore “Employer” within the meaning of Section 2(3) of the said Act. That, the Petitioner (Accused No.2) is responsible for the contravention of Clause No.14 of the said Scheme by the Accused No.1 as he is having ultimate control over the affairs of business of Accused No.1. The Respondent No.2 in his verification statement dated 19th July 2014 has made categorical allegations against the Petitioner and Accused No.1 for contravention of Clause No.14 punishable under Clause No.44 of the said Scheme. Thus, a strong prima facie case has been made out against the Petitioner by the Respondent No.2.

11. The Trial Court therefore has rightly issued process against the accused in the matter. The Revisional Court after taking into consideration all the necessary and relevant aspects of the matter has dismissed it with costs. The Trial Court and Revisional Court have not committed any error either in law or on facts while passing impugned Orders.

12. It is to be noted here that, on 30th March 2021, during the course of arguments, Mr. Desai, learned counsel for the Petitioner profusely pleaded that, the Petitioner being Director of the Accused No.1 Company may be discharged from the case. This Court, therefore made a query with the learned counsel that, whether the Petitioner/accused can be substituted in the Complaint for the offence alleged against him and if the answer is ‘yes’, then to give name of some other person who has ultimate control over

the affairs of the establishment of Accused No.1 Company. Today, Mr. Desai on instructions from Shri Ravikant Alhat, Senior Executive, Legal, of Accused No.1 Company suggested name of Shri Sanjay Ramchandra Telange, DGM, HR, IM & Admin of Accused No.1 Company to be substituted for the Petitioner/accused. Upon a query put by this Court that, as to when the said Mr. Sanjay Telange would be retiring from the services of Accused No.1 Company, it was on instructions answered that, he would be retiring in within 2-3 years from today. The core question, whether such a substitution of an accused is permitted, was not responded.

It thus appears to this Court that, the Petitioner to save himself from the clutches of law is trying to put forth somebody else as a scapegoat with a view to avoid legitimate prosecution initiated by the Respondent No.2. It further appears to this Court that, if the information given by the Accused No.1 Company on 24th February 2014 which is entered into the Visit Remarks Form is presumed to be correct, then the stand taken and defence adopted by the Petitioner is sham, spurious, moonshine and not bonafide. It prima facie appears that, the Petitioner is changing stance as per his convenience only to defeat the bonafide prosecution against him.

13. In view of the above, this Court finds no merits in the Petition and it is accordingly dismissed.

(A.S. GADKARI, J.)