

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3225 OF 2009

Jamshyd N. Godrej and Ors.
M/s. Godrej & Boyce Mfg. Co,
Ltd. Having its Registered
Office at Pirojshanagar,
Vikhroli, Mumbai-400079

... Petitioners

Vs

1 The State of Maharashtra

2 Mr. U.J.Sarmalkar, Licence
Inspector, "N" Ward/Mr.
S.K.Bergal, Licence Inspector,
(N), Ward

3 Mr. B.T.Gawali, Senior
Licence Inspector "N" Ward

4 Mr. S.M.Tinaikar, Assistant
Supdt. Of Licence (Eastern Sub)
Nos.2,3 and 4 are officers of
Municipal Corp. of Greater Mumbai
having its office at Jawahar Road,
Ghatkopar East, Mumbai 400 007.

5 Mumbai Municipal Corporation
having its office at
Mahapalika Marg, Mumbai 400001

... Respondents

WITH
WRIT PETITION NO.1935 OF 2009
WITH
WRIT PETITION NO.3385 OF 2010

1. M/s. Godrej & Boyce Mfg. Co. Ltd.
having its registered office at
Pirojsha Nagar, Vikhroli
Mumbai 400079

2. Mr. Jamshyd N. Godrej

3. Mr. Adi B. Godrej

4. Mr. Kavas N. Petigara

5. Mr. Nadir B. Godrej

6. Mr. Vijay M. Crishna

7. Mr. Behram A. Hathikhanvala

8. Mr. Fali P. Sarkari

9. Mr. Phiroze D. Lam

10. Mr. Kyamas A. Palia

11. Mr. Pradip P. Shah

12. Ms. Anita Ramchandran

Nos. 2 to 12 being Directors of
Petitioner No.1 company abovenamed **...Petitioners**

V/s.

1. State of Maharashtra
2. P.B.Vichare, Licence Department
“N” Ward, having his office at
Jawahar Road, Ghatkopar (East)
Mumbai- 400 077
3. Mumbai Municipal Corporation
having its Main Office at
Mahapalika Marg, Mumbai 400001 ...Respondents

...

Mr. T.D.Deshmukh for the Petitioners in all petitions.

Mr. A.R. Patil , APP for the Respondent-State in all matters.

Mr. Kunal Waghmare for Respondent (MCGM) in all petitions.

CORAM : SANDEEP K. SHINDE J.

Monday, 29th November, 2021.

ORAL JUDGMENT:

1. These petitions, seek to quash eight complaints, filed by the Mumbai Municipal Corporation- Respondent no.5, against the petitioners, for alleged violation of the provisions, of Section 394(1)(b) and/or

394(1)(e)(i) read with Section 471 of the Mumbai Municipal Corporation Act, 1888 ('MMC Act' for short) and since the issue raised therein, being common, all the petitions are taken up for disposal by common judgment.

2. Petitioners' are challenging the maintainability of the complaints and the orders "*Issue Process*" against them under Section 394 read with 471 of the MMC Act.

Back-ground facts are as under:

3. Petitioners are Directors/Vice-President of M/s. Godrej & Boyce Manufacturing Company Limited ('Company' for short). The Company has establishments/factory at Vikhroli and at other places. The company manufactures steel furniture and variety of consumer goods. Respondent No.5, being, local authority, inspected the establishments and the factory premises of the company, in the year 2009. Inspector of the Corporation, found certain articles were kept on the

premises of the Company without licence, for sale and also found certain processes or operations were being carried out in the premises of the Company, without licence. Therefore, the petitioners were prosecuted for violation of the provisions of the MMC Act.

4. Mr. Deshmukh, the learned counsel for the petitioners, drew my attention to the inspection reports, qua establishment of the Company. He submitted, that since the alleged violations, i.e, keeping of the articles and carrying on processes and operations without licence, were relating to the establishment of the Company and when Company is offender, vicarious liability of the directors cannot be imputed automatically in absence of statutory provisions to that effect. Furthermore, Mr. Deshmukh submitted, complaints do not disclose anything to indicate complicity of the petitioners in violating the provisions of M.M.C. Act. Therefore, it was urged that the complaints against the petitioners were not maintainable

and as such, the learned Magistrate erred in issuing the process against them.

5. In so far as the case no.4100072/SS/09, which is the subject matter of the Writ Petition No.1935 of 2009 is concerned, Mr. Deshmukh submitted that the company and the directors of the Company have been prosecuted for keeping wooden articles, i.e., “wooden furniture”, on the ground-floor area of the company premises without licence, which according to the complainant, is an offence under Section 394(1)(b) read with 471 of the MMC Act. Mr. Deshmukh has taken me through the provisions of Section 394(1)(b) and the articles specified in Part III of Schedule ‘M’. According to Mr. Deshmukh, Part III of Schedule ‘M’, does not include “wooden furniture” and, therefore, the complaint on the face of it was not maintainable for the alleged violation of the provisions of Section 294(1)(b) of the MMC Act.

6. On the aforesaid two grounds, petitioners are seeking to quash the complaints and the process issued against the company and its directors.

7. The learned counsel appearing for the Corporation would justify the prosecution.

8. In seven complaints, Corporation has prosecuted, only Directors/Vice-President of the Company, leaving aside the Company, for keeping certain articles upon the premises of the company for sale and for carrying on trade, process or operations on the company premises without licence. Since company is an 'independent entity' of its own, prosecution should have been launched against the company and not against the Chairman and Managing Director or Vice-President. The learned counsel for the Corporation could not point anything to show complicity of the petitioners in these cases. Hence, on this ground alone, these seven

complaints must fail.

9. In so far as the case no.4100072/SS/09 is concerned, prosecution has been launched against the company and the directors for keeping the “wooden furniture” on the premises of the company. According to the Corporation, accused have violated provisions of Section 394(1)(b) of the MMC Act. Section 394(1)(b) reads as under;

“394. (1) Except under and in accordance with the terms and conditions

of the licence granted by the Commissioner, no person shall, (a) keep, or suffer or allow to be kept, in or upon any premises,—

(i) any article specified in Part I of Schedule M ; or,

(ii) any article specified in Part II of Schedule M, in excess of the quantity therein specified as the maximum quantity (or where such article is kept alongwith any other article or articles specified in that Schedule, such other maximum quantity as may be notified by the Commissioner) of such article which may at any one time be kept in or upon the same premises without a licence ;

(b) keep, or suffer or allow to be kept, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule M ;” (emphasized)

Clause (b) refers to part III of the Schedule 'M'. I have perused Part III of the Schedule 'M'. Part I of Schedule 'M' refers to "Explosives"; Part II refers to "combustible liquids" and Part III enlist the articles in Group 1 and Group 2; but does not include the "wooden furniture". For that reason, there was no violation of Section 394(1)(b) of the MMC Act, by the Company of Directors. Thus, this complaint, also must fail.

10. In consideration of the facts of the case and for the reasons stated, Complaints no. 4204734 /SS/ 2009, 4204735 /SS/ 2009, 4204736 /SS/ 2009, 4204737/SS/ 2009, 4204738 /SS/ 2009, 4204886 /SS/ 2009 and 4100072 /SS/ 2009 pending before the learned Metropolitan Magistrate 42nd Court at Shindewadi, Dadar, Mumbai and the orders 'Issue Process' therein are quashed and set aside.

11. Rule is made absolute in aforesaid terms.

12. Petitions are disposed of.

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SAWANT

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(SANDEEP K. SHINDE, J.)