

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.207 OF 2021

Gulab S/o Natthuji Patankar,
Age 68 years,
Occupation - Retired,
R/o 17, Bandhu Soni Layout,
Parsodi, Trimurti Nagar,
Ring Road, Nagpur.

...APPLICANT

Versus

State of Maharashtra,
through Police Station Officer,
Police Station MIDC, Hingna,
Nagpur.

...NON-APPLICANT

Mr. Rajnish Vyas, Advocate for Applicant.
Mr. N.S. Rao, Additional Public Prosecutor for
Non-Applicant/ State.

CORAM : ROHIT B. DEO, J.
DATE : 1st JULY, 2021

ORAL JUDGMENT :

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Admit. With consent of the learned counsel appearing for the parties, the application is finally heard.

3. On 2-7-2015, offence punishable under Sections 63(b) and 64 of the Copyright Act, 1957 (for short, "the Act") was registered with Police Station, Hingna, vide Crime 3215 of 2015 on the basis of the report lodged by Mr. Prakash Ingle.

4. The informant Mr. Prakash Ingle claims to be the Chief Executive Officer of Perfect Anti-Piracy Force, which organization is engaged by several software manufacturers and tasked with protection of the copyrights.

5. The gist of the report is that Mr. Atique @ Abdul Rashid Siddhique is exclusively responsible for installing unauthorized and/or pirated software at Miltech Industries Pvt. Ltd., M.I.D.C., Nagpur. The

report refers to Mr. Siddhique as the Tool Room Manager, Miltech Industries Pvt. Ltd. The applicant is not named in the report. However, it appears that during the course of the investigation, the Investigating Officer perceived that the accused Mr. Siddhique installed the unauthorized software, as directed by the applicant Mr. Gulab Patankar. The applicant Mr. Patankar was chargesheeted as accused 2.

6. Mr. Patankar preferred an application, purportedly seeking discharge on the premise that there is absolutely no material to warrant a trial and that even it is assumed that the Company has committed an offence, there is no material suggesting that Mr. Patankar was in charge of the affairs of the Company.

7. The learned Magistrate dismissed the discharge application vide order dated 19-9-2015. The learned Magistrate held that there is no provision

in summons cases for discharge and that since it was the responsibility of Mr. Patankar as the Director of the Company to supervise the functioning and, therefore, Mr. Patankar cannot disclaim knowledge of the piracy.

8. Mr. Patankar preferred Criminal Revision Application 309 of 2015, which is rejected by the learned Additional Sessions Judge-9, Nagpur. The Revisional Court held that the application for discharge was not maintainable, that it is undisputed that Mr. Patankar is the Director of the Company, and that the other issues would be a matter of evidence.

9. In my considered view, there is absolutely no reason to compel Mr. Patankar to face the trial. While both the Courts are correct in observing that the power of discharge is not available, Section 258 of the Code of Criminal Procedure (for short, "the Code") could have been invoked to terminate the proceedings.

10. Section 258 of the Code reads thus :

“258. Power to stop proceedings in certain cases.--In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

11. I have scrutinized the entire chargesheet with the assistance of Mr. Vyas, the learned counsel for the applicant- Mr. Patankar; and Mr. Rao, the learned Additional Public Prosecutor for the non-applicant/State, and having done so, I have not come across any material which would *prima facie* suggest that Mr. Patankar was the Director who was in

charge of the affairs of the Company.

12. Section 69 of the Act provides that where any offence under the Act has been committed by a Company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence.

13. It is not in dispute that Mr. Patankar is one of the Directors of the Company and Mr. Siddhique is an employee. The Company is not arraigned as an accused. The principle of vicarious liability, which is recognized in Section 69 of the Act, would come into play if the offence is committed by the Company. In the absence of the Company, it would not be possible to bring home the charge against Mr. Patankar with the aid of Section 69 of the Act.

14. Apart from the fact that the Company is not an accused, there is no material whatsoever suggesting that Mr. Patankar was in charge of the affairs of the Company and was responsible to the Company at the time of the commission of the alleged offence. I have not come across any statement or material, which, if translated into evidence, would so suggest. The gist of the case does refer to the role of Mr. Patankar surfacing in investigation, to the extent the gist of the case states that the co-accused Mr. Siddhique installed the alleged pirated software, as directed by Mr. Patankar. However, there is nothing in the chargesheet to *prima facie* substantiate what is said in the gist of the case.

15. I am satisfied that the learned Magistrate erred in not exercising the jurisdiction under Section 258 of the Code.

16. I am more than satisfied that the material in the chargesheet is not sufficient even to arouse a

strong suspicion. As already observed *supra*, the Company is not arraigned as an accused and Section 69 of the Act does not come into play. Assuming that Section 69 of the Act could have been invoked, there is no material to hold, even prima facie, that Mr. Patankar was in charge of the affairs of the Company.

17. The trial cannot be a ritualistic formality.

18. The orders impugned are quashed.

19. It is directed that the proceedings in Criminal Case 666 of 2012 shall stand terminated *qua* the applicant Mr. Patankar.

20. Since the prosecution evidence has not commenced, Mr. Patankar is entitled to release, which shall have the effect of discharge.

21. The application is allowed in the aforestated terms.

JUDGE.

Lanjewar