

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

CRIMINAL APPLICATION (APL) 355 OF 2017

Martin Kropp s/o. Mr.Rudolph Heinrich,
aged about 52 yrs,
Occ. Former Managing Director,
M/s. ADM Agro Industries India Pvt Ltd.
R/o. C-65, Third Floor, Anand Niketan,
New Delhi 110021

..... **APPLICANT**

...V E R S U S...

The State of Maharashtra through
Inspector of Legal Metrology Saoner Division
Saoner, Dist. Nagpur (Maharashtra)

... **RESPONDENT**

Mr. Vivek Awchat, counsel for applicant.
Mr. S.S. Doifode, AGP for non-applicant.

CORAM: ROHIT B. DEO, J.
DATE : 11.01.2021

ORAL JUDGMENT:

Heard Mr. Vivek Awchat, the learned counsel for the
applicant and Mr. S.S. Doifode, the learned APP for non-applicant/
State.

2. The petitioner is assailing the order dated 17.1.2015
rendered by the Judicial Magistrate First Class, Parshioni, in
Summary Criminal Case 137/2014, which reads thus:

“i) Perused the case and documents.

ii) Heard.

iii) The case is filed by the Government Officer alleging that the alleged persons have contravened the provisions of Legal Metrology Act. Prima facie it appears that offence punishable under section 18 of the said Act is made out. Hence, issue process against said accused on PF.”

3. The learned counsel for the petitioner Mr. Vivek Awchat invites my attention to section 49 of the Legal Metrology Act, 2009 (“Act” for short) in support of the submission that since Mr. Ashwin Patel was nominated by the Company under sub-section 2 of section 49, as the person authorized to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under the Act, the order of issuance of process against the petitioner and Managing Director is jurisdictionally infirm.

4. Section 49 of the Act reads thus:

49. Offences by companies and power of court to publish name, place of business, etc., for companies convicted. -1. *Where an offence under this Act has been committed by a company, -*

(a) (i). the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section

referred to as a person responsible); or

(ii). where no person has been nominated, 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; and b. the company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

2. Any company may, by order in writing, authorise any of its directors to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Director or the concerned Controller or any legal metrology officer authorised in this behalf by such Controller (hereinafter in this section referred to as the authorised officer) in such form and in such manner as may be prescribed, that it has nominated such director as the person responsible, along with the written consent of such director for being so nominated.

Explanation.-Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

3. The person nominated under sub-section (2) shall, until-

(i.) further notice cancelling such nomination is received from the company by the Director or the concerned Controller or the authorised officer; or

(ii) he ceases to be a director of the company; or

(iii.) he makes a request in writing to the Director or the concerned Controller or the legal metrology officer under intimation to the company, to cancel the nomination, which request shall be complied with by the Director or the concerned Controller or the legal metrology officer,

whichever is the earliest, continue to be the person responsible:

Provided that where such person ceases to be a director of the company, he shall intimate the fact of such cessation to the Director or the concerned Controller or the authorised officer:

Provided further that where such person makes a request under clause (iii) the Director or the concerned Controller or the authorised officer shall not cancel such nomination with effect from a date earlier than the date on which the request is made.

(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to the neglect on the part of, any director, manager, secretary or other officer, not being a person nominated under sub-section (2), such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where any company is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact

that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspaper or in such other manner as the court may direct.

(6) No publication under sub-section (5) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(7) The expenses of any publication under sub-section (5) shall be recoverable from the company as if it were a fine imposed by the court.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm but excludes nominated directors, honorary directors, Government nominated directors.

5. The petitioner invites my attention to the certificate issued by the Company Secretary dated 23.9.2011 and the certificate dated 23.11.2011 issued by the Deputy Controller, Legal Metrology certifying that Mr. Ashwin Patel's nomination is duly registered in that office.

6. Perusal of the affidavit in response would reveal that

there is no rebuttal to the submission that Mr. Ashwin Patel was duly nominated under sub-section 2 of section 49 of the Act, and therefore, the petitioner – Managing Director was not responsible for the alleged offence.

7. It is not as if a person, who is not nominated, cannot be prosecuted. Sub-section 4 of section 49 provides that if the offence under the Act is committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to the neglect on the part of, any director, manager, secretary or other officer, not being a person nominated under sub-section (2), such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. However, the averments in the complaint do not make out a case as would bring into play the provisions of sub-section 4 of section 49 of the Act.

8. All that is averred in the complaint is that the petitioner Mr. Martin Kropp is the Chairman / Managing Director of the company. Since it is not even an averment in the complaint that the offence is committed with the consent or connivance or is

attributable to the neglect on the part of the petitioner, it would be an abuse of the process of Court to permit the prosecution as against the petitioner to continue, since Mr. Ashwin Patel is duly nominated under section 49(2) of the Act.

9. The order dated 17.1.2015 in Summary Criminal Case 1321/2015 (*Old Summary Criminal Case 137/2014*) is quashed and Criminal Case 1321/2015 (*Old Summary Criminal Case 137/2014*) is dismissed as against the petitioner herein, Mr. Martin Kropp s/o. Mr. Rudolph Heinrich.

10. The complaint shall continue against the other accused.

11. The petition is allowed in the aforestated terms.

Judge