

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

CRI. APPLN. (APL) NO. 516 OF 2016

APPLICANTS :-

1. The President, Vidarbha Hindi Sahitya Sammelan, Zhansi Rani Chowk, Sitabuldi, Nagpur.
2. The General Secretary/Trustee, Vidarbha Hindi Sahitya Sammelan Zhansi Rani Chowk, Sitabuldi, Nagpur.

...VERSUS...

NON-APPLICANT:

1. The Inspector, Shops and Establishments Office of the Additional Commissioner of Labour, Administrative Building, 4th Floor, Civil Lines, Nagpur. .

NON-APPLICANT NO.2: The State of Maharashtra, through Commissioner of Labour, Civil Lines, Nagpur.

Mr. S.S.Ghate, counsel for the applicants.
Mr.S. Ashirgade, APP for the non-applicants.

CORAM : MANISH PITALE, J.

DATE : 05.07.2021.

ORAL JUDGMENT

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

2. Heard the learned counsel for the rival parties.

3. This is an application filed under section 482 of the Code of Criminal Procedure for quashing and setting aside complaint/prosecution sought to be initiated by an Inspector under the provisions of the Maharashtra Shops and Establishments Act, 1948, against the applicants.

4. The applicants are the office bearers of Vidarbha Hindi Sahitya Sammelan, which was a registered Trust under the erstwhile legislation of the State of Madhya Pradesh. This Trust was established at Nagpur, the then capital of Central Provinces and Berar State, for promoting cultural activities. In this regard, there were premises allotted to the Trust by the State Government, since 1956.

5. The material on record shows that on 04/11/2015, a person claiming to be president of Nagpur Gumasta Mandal sent a complaint to the concerned Authority under the provisions of the Minimum Wages Act, 1948, against the applicants. It was claimed that proper wages were not being paid to employees of the applicants and attendance registers were not being maintained and further that some of the employees had been forcibly removed from the employment. According to the applicants, in the year 2016 an inspection was carried out by an Inspector under the provisions of the Minimum Wages Act, 1948. The Inspector granted time of seven days to the applicants to make good alleged shortcomings. Thereafter, the applicants sought time and submitted a reply to the Inspector under the provisions of the Minimum Wages Act, 1948 as also the Maharashtra Shops and Establishments Act, 1948. In this reply dated 24/02/2016, the applicants stated the scope of their activities, asserting that the Trust could not be classified as an establishment under the provisions of the aforesaid legislation, particularly when employees were being paid only honorarium.

6. Thereafter, the Inspector under the provisions of the Maharashtra Shops and Establishments Act, 1948, initiated proceedings before the Court of Judicial Magistrate First Class, (JMFC) Nagpur, bearing Criminal Complaint No.6428 of 2016.

7. In this complaint/launching of prosecution, the Inspector claimed that the applicants had violated various provisions of the Maharashtra Shops and Establishments Act, 1948. A perusal of the said complaint shows that the Inspector has proceeded on the basis that the provisions of the Maharashtra Shops and Establishments Act, 1948, would apply. It is at this stage that the applicants immediately filed writ petition before this Court. On 18/10/2016, the principal contention raised on behalf of the applicants was recorded and while issuing notice, this Court granted interim stay to further proceedings in the said Criminal Complaint No.6428 of 2016 pending before the JMFC, Nagpur.

8. Thereafter, on 30/06/2017, this Court granted Rule and the interim stay order was continued.

9. Mr. Ghate, learned counsel for the applicants,

submitted that in the present case, the aforesaid criminal complaint lodged by the respondents deserved to be quashed at the outset, for the reason that there is no ascertainment of the fact as to whether the provisions of the Maharashtra Shops and Establishments Act, 1948, would apply to the applicants-Trust at all. It is submitted that the applicants had filed a detailed reply before the concerned Inspector and without any determination of the applicability of the provisions of the Maharashtra Shops and Establishments Act, 1948, the said criminal complaint stood registered against the applicants. It was submitted that the very initiation of proceedings under the provisions of the Maharashtra Shops and Establishments Act, 1948, was stillborn because there was no determination as to whether under the provisions of the said Act, the Trust was covered under the definitions of “Establishment” or “Commercial Establishment” or any other such expression. On this basis, it was submitted that the present application deserved to be allowed.

10. Mr. Ashirgade, learned APP for the respondents submitted that the definition of commercial establishment under section 2(4) of the Maharashtra Shops and Establishment Act,

1948, clearly covered the applicant-Trust. This was because the applicants were earning handsome profit from their activities by renting out the property. It was further submitted that the question as to whether the applicant-Trust was covered under the provisions of the Maharashtra Shops and Establishments Act, 1948 or not could be agitated in the pending proceedings before the Magistrate and that therefore, the present writ petition deserved to be dismissed.

11. Heard the learned counsel for the parties and perused the material on record. This Court has perused the provisions of the Maharashtra Shops and Establishments Act, 1948. It is clear from sections 1, 2 (particularly definitions of “Commercial Establishment” and “Establishment”) as also, section 5 onwards of the said Act that there is a procedure contemplated for determining and ensuring applicability of the said Act to a particular establishment. There can be no doubt about the fact that a prosecution under the provisions of the Maharashtra Shops and Establishments Act, 1948, can be launched against an entity only when the provisions of the said Act can be said to be applicable to such an entity. A perusal of the complaint lodged by

the respondent No.1-Inspector under the provisions of the Maharashtra Shops and Establishments Act, 1948, before the Magistrate, show that it has proceeded on the basis that the provisions of the said Act apply in full force upon the applicants. There is admittedly no determination of the said question regarding applicability of the provisions of the Maharashtra Shops and Establishments Act, 1948, to the applicant-Trust. This exercise is necessarily required to be anterior in point of time to filing of such a complaint or launching of such a prosecution.

12. In this context, when section 60 of the Maharashtra Shops and Establishments Act, 1948, is perused, it becomes clear that a safeguard has been provided. The said provision reads as follows:

“60. Cognizance of Offences

- (1) No prosecution under this Act or the rules or orders made thereunder shall be instituted except by an Inspector and except with the previous sanction of the (District Magistrate)(Additional District Magistrate, Sub-Divisional Magistrate, Commissioner of Labour, Additional Commissioner of Labour or Deputy Commissioner of Labour) or the local authority as the case may be [or, without any such sanction, by an aggrieved person, or by a representative of the registered union of which the aggrieved person, is a member]:

Provided that any local authority may direct that the powers conferred on it by this sub-section shall, in such circumstances and subject to such condition, if any, as may be specified in the direction, be exercised by its standing committee or by any committee appointed by it in this behalf or, if such local authority is a municipal corporation, by its Municipal Commissioner, Deputy Municipal Commissioner or Assistant Municipal Commissioner.

13. A bare perusal of the above quoted provision shows that no prosecution under the Maharashtra Shops and Establishments Act, 1948, can be instituted, except by an Inspector and further only with previous sanction of specific Authorities stated in the above quoted provision. Therefore, it is clear that unless there is sanction order from one of the said Authorities, which include Commissioner of Labour, Additional Commissioner of Labour and Deputy Commissioner of Labour or the Local Authority, no prosecution can be instituted by an Inspector. The safeguard so provided is obviously, *inter alia*, to ensure that prosecution is instituted only against establishments that are covered under the provisions of the Maharashtra Shops and Establishments Act, 1948. It appears that under the scheme of the said Act, proper previous sanction is necessary so as to ensure that

prosecution is not instituted in a frivolous manner.

14. In the present case, the respondents have failed to show any document or order showing previous sanction granted to the respondent No.1-Inspector to institute the said criminal complaint against the applicants under the provisions of the Maharashtra Shops and Establishments Act, 1948. The reply filed on behalf of the respondents is completely silent on this aspect of the matter and the learned APP has fairly conceded that there is no previous sanction order in the present case.

15. In this backdrop, it becomes clear that the said criminal complaint launched against the petitioners is stillborn and prohibited under the above quoted section 60 of the Maharashtra Shops and Establishments Act, 1948. Therefore, there is no substance in the contention raised on behalf of the respondents that the applicants could demonstrate before the Magistrate regarding inapplicability of the provisions of the Maharashtra Shops and Establishments Act, 1948. The prosecution or the complaint has been lodged against the applicants on the basis that the provisions of the Maharashtra

Shops and Establishments Act, 1948, apply. Therefore, the said contention cannot be accepted.

16. In view of the above, this Court is of the opinion that the present application deserves to be allowed, so as to ensure that a complaint not maintainable in view of section 60 of the Maharashtra Shops and Establishments Act, 1948, against the applicants is quashed at this stage itself.

17. Hence, the application is allowed in terms of prayer clause (ii), which reads as follows:

“(ii) To quash and set aside the Criminal Complaint No.6428 of 2016 (Annexure I) pending in the court of the Judicial Magistrate First Class, Nagpur (Court No.1) holding that same is untenable at law.”

18. Rule is made absolute in the aforesaid terms.

JUDGE