

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

CRIMINAL APPLICATION (APL) 786 OF 2019

1. M/s. Dhanuka Agritech Ltd.
A company registered under
the Companies Act, 1956,
having registered office at 82,
Avinash Mansion, Joshi road,
Karol Bagh, New Delhi 110005,
through its Senior Manager
Mr. Ashish Thakur, aged 41 yrs,
Occ. Service,
R/o. C/o. Dhanuka Agritech Ltd,
at 14th Floor, Building No. 5A,
Cyber City, DLF Phase III,
Gurgaon 122002, Haryana.
2. Mr. Balwinder Singh Kalsi,
Director, Dhanuka Agritech Ltd.,
R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001
3. Ms. Priya Brat,
Director, Dhanuka Agritech Ltd
R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001
4. Mr. Rahul Dhanuka
Director, R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001
5. Mr. Mridul Dhanuka
Director R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001
6. Mrs. Asha Mundra

Director, R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001

7. Mr. Ram Gopal Agrawal,
Director, R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001
8. Mr. Mahendra Kumar Dhanuka
Managing Director,
R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001
9. Mr. Vinod Kumar Jain
Director, R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001
10. Mr. Sachin Kumar
Director, R/o.C/o. Dhanuka Agritech,
G-Daulatabad Road,
Gurgaon 122001

..... **APPLICANTS**

...VERSUS...

The Inspector,
Legal Metrology Division 2
Akola, Sudhir Colony, Akola
Dist. Akola

... **RESPONDENT**

Mr. Prafulla S. Khubalkar, counsel for applicants.
Mr. S.S. Doifode, AGP for respondent.

CORAM: ROHIT B. DEO, J.
DATE : 15.01.2021

ORAL JUDGMENT:

Heard Mr. Prafulla S. Khubalkar, the learned counsel

for the applicants and Mr. S.S. Doifode, the learned APP for the non-applicant. With consent, the application is finally heard at the admission stage.

2. Applicant 1 - M/s. Dhanuka Agritech Ltd is a company incorporated under the Companies Act.

3. Applicants 2 to 10 are the Directors of the company.

4. The applicants are arraigned as accused in Summary Criminal Case 112/2017, instituted by Mr. Raju Pawar, Inspector, Legal Metrology, Division 2, Akola, alleging contravention of section 18(1) of the Legal Metrology Act, 2009 ("Act" for short) and rules 7,8,9 of the Legal Metrology (Packaged Commodities) Rules, 2011 ("Rules" for short).

5. The learned Magistrate took cognizance of the complaint and summoned the applicants vide order dated 4.3.2017.

6. The applicants contend that the order of issuance of summons is jurisdictionally vitiated, and the proceedings

constitute an abuse of process of law.

7. Mr. Prafulla S. Khubalkar, the learned counsel has twin submission to canvas.

8. The first submission is that since Mr. Mridul Dhanuka, the applicant 5 herein was duly nominated under section 49(2) of the Act, the implication of the Directors of the company is contrary to the statutory provisions and to that extent the learned Magistrate was not clothed with the jurisdiction to summon any Director other than nominated person. The other submission is that the products manufactured and marketed by the applicant 1-company are regulated by the Insecticides Act, 1968, which is a special enactment *vis a vis* the Legal Metrology Act. The extension of the submission is that since Legal Metrology Act is a general enactment, and the Insecticides Act, 1968 is a special enactment *qua* insecticides, the provisions of the special enactment shall override the general law.

9. The submission of Mr. Prafulla Khubalkar that the order of cognizance is jurisdictionally vitiated *qua* the Directors other than the person nominated, is well merited.

10. 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.

liable for the offence committed by the company, if there is a nomination under section 49(2) of the Act. The statutory scheme reveals, that even if there is a nomination under section 49(2) of the Act, the Directors can indeed be held liable for the offence committed by the company. However, before the directors other than the nominated person can be held liable, the complainant shall have to make out a case that the offence is committed with the consent or connivance of, or is attributable to the neglect on the part of, the director. There is not even a whisper in the complaint that the offence is committed by the company with the consent or connivance of, or is attributable to the neglect on the part of any director. Sub-section (4) of section 49 of the Act, therefore, does not come into play.

12. It is irrefutable that the applicant 5 – Mr. Mridul Dhanuka is nominated under section 49(2) of the Act. The certificate issued by the Deputy Controller, Legal Metrology dated 12.2.2013 certifies the nomination of Mr. Mridul Dhanuka. The State is not disputing the certificate issued by Deputy Controller, Legal Metrology. In my considered view, in summoning the Directors other than the nominated person – applicant 5 herein, the learned Magistrate committed a jurisdictional error. In any

event, the proceedings qua the Directors other than the nominated person shall have to be quashed since said Directors cannot be compelled to face a prosecution as an empty ritualistic formality.

13. In so far as the submission predicated on the Insecticides Act prevailing over the provisions of the Legal Metrology Act, Mr. Prafulla Khubalkar, the learned counsel states that the said submission is not pressed at this stage, and may be left open for the applicant 1 – company and applicant 5 – Mr. Mridul Dhanuka nominated person to raise before the learned Magistrate.

14. Summary Criminal Case 112/2017 is quashed qua the applicants 2 to 4 and 6 to 10.

15. It is clarified that the complaint shall proceed against applicant 1 – company and applicant 5 – Mridul Dhanuka, nominated person subject to the liberty granted to raise ground of the Insecticides Act overriding the Provisions of Legal Metrology Act, before the trial Court.

Judge