

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 256 OF 2019**

Vishwabandhu Gupta and Another

..APPLICANTS

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....  
Mr. Joydeep Chattarjee, Advocate h/f Mr. A.A. Yadkikar Advocate for  
applicants

Mr. G.L. Deshpande, A.P.P. for respondents

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**CORAM : R.G. AVACHAT, J.**

**DATED : 31<sup>st</sup> JANUARY, 2022**

**PER COURT :**

1. This is an application under Section 482 of Code of Criminal Procedure. The challenge herein is to the order of issuance of process in Summary Criminal Case No. 760 of 2016.

2. It is a case instituted otherwise than on police report. Respondent No.2 - Mr. S.P. Rajput, Government Labour Officer and Inspector under the Minimum Wages Act, 1948 ('Act of 1948') paid visit to the establishment of M/s Sapana Polyweave Pvt. Ltd., E-8, MIDC, Waluj, Aurangabad ('the Company') on 26<sup>th</sup> July, 2016 to find that muster role-cum-wages register of employees and bounded inspection book were not maintained. It is said to be violation of the provisions of Section 18(1) read with Rule 27(1) and

Section 18(3) read with Rule 28 of the Act of 1948 and the Maharashtra Minimum Wages Rules, 1963, and the said violation is punishable under Section 22-A of the Act of 1948. He, therefore, filed a complaint against the Director and General Manager (Applicant Nos. 1 and 2 respectively) of the establishment.

3. The order of issuance of process has mainly been assailed on the ground that M/s Sapana Polyweave Pvt. Ltd., a company registered under the Companies Act, 1956, has not been made a party to the said case. The complaint is also silent to state the applicants/accused to have been in-charge and responsible to the functioning of the establishment and thus vicariously liable.

4. Learned A.P.P. would, on the other hand, submit that Applicant No.2 was the General Manager of the said company. His designation itself indicates that he was in-charge of the business and day-to-day affairs of the establishment. Applicant No.1 was the Director and in his such capacity was liable to be prosecuted. Learned A.P.P., therefore, urged for dismissal of the application.

5. Considered the submissions advanced. Perused the averments in the complaint. Section 22-C of the Act of 1948 reads thus :-

*“22-C. Offences by companies – (1) If the person committing any offence under this Act is 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 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 or that he exercised all due diligence to prevent the commission of such offence.*

*(2) Notwithstanding anything contained in sub-section (1), 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 any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”*

6. In the case of ***Pepsi Foods Ltd. and Others Vs. Special Judicial Magistrate and Others, AIR 1998 SC 128*** it has been observed by the Hon’ble Apex Court :-

*“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law*

*set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*

7. In case of ***Dayle De’souza Vs. Government of India through Deputy Chief Labour Commissioner (C) and Others, AIR 2021 SC 5626*** the Hon’ble Apex Court has observed :-

*“16. The legal position has undergone further elucidation in a number of judgments. However, for the present decision, we would refer to the summarisation in National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and Another (2010) 3 SCC 330 to the following effect :*

*39. From the above discussion, the following principles emerge :*

*(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the Accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*

(ii) *Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*

(iii) *Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the Accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the Accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*

(iv) *Vicarious liability on the part of a person must be pleaded and proved and not inferred.*

(v) *If the Accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.*

(vi) *If the Accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.*

(vii) *The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”*

8. Furthermore, in paragraph no.22 of the Dayle De’souza (supra) it has been observed thus :-

“22. However, subsequent decisions of this Court have emphasised that the provision imposes vicarious liability by way of deeming fiction which presupposes and requires the commission of the offence by the company itself as it is a separate juristic entity. Therefore, unless the company as a principal Accused has committed the offence, the persons mentioned in Sub-section (1) would not be liable and cannot be prosecuted. Section 141(1) of the Negotiable Instruments Act, extends vicarious criminal liability to the officers of a company by deeming fiction, which arises only when the offence is committed by the company itself and not otherwise. Overruling *Sheoratan Agarwal and Anil Hada*, in *Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.* (2012) 5 SCC 661, a 3-judge bench of this Court expounding on the vicarious liability Under Section 141 of the Negotiable Instruments Act, has held :

51. We have already opined that the decision in *Sheoratan Agarwa* runs counter to the ratio laid down in *C.V. Parekh* which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in *Anil Hada* has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution Under Section 141 of the Act, arraigning of a company as an Accused is imperative. The other categories of offenders can only be brought in the drag-

*net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove.”*

9. Let us examine the averments in the complaint in the light of the aforesaid legal proposition. Admittedly, the company has not been made an accused. There are no averments in the complaint that Applicant No.1 – Director was in-charge and responsible to the day-to-day affairs of the company. Although Applicant No.2 in his capacity as General Manager may be said to have committed the breach as has been alleged in the complaint, the prosecution of him alone is not sustainable since his employer i.e. the company is not made an accused.

10. In view of above, the order of issuance of process under challenge herein needs to be set aside. Criminal application is, therefore, allowed in terms of prayer clause (B).

**( R.G. AVACHAT, J. )**