

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

**CRIMINAL APPLICATION NO. 258 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. 762 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 Payment of Wages Act, 1936 ('Act of 1936') 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. During the investigation, it was noticed that pay muster did not display the notice of date of payment. The pay muster also did not display the notice specifying the rate of wages payable to the

employees. Applicant No.2 – Nandkumar Muley, General Manager was present during the investigation. He failed to produce the register of advances in form IV. Thus, it is violation of Section 13-A of the Act of 1936 and Rules 8 and 20 of the Maharashtra Payment of Wages Rules, 1963 ('the Rules'). Such contravention is punishable under Section 20 of the Act. The complainant, therefore, filed the complaint against the Director and General Manager (Applicant Nos. 1 and 2 respectively) of the establishment. The learned Magistrate was pleased to issue the process.

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. Unlike Section 22-C of the Minimum Wages Act, 1948, there is no such provision in the Act of 1936. In short, the Act does not provide for vicarious liability of the person in-charge and responsible to the day-to-day business of the company. Admittedly, 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. The company is an employer. Section 13-A of the Act of 1936 speaks of maintenance of registers and record. It is the responsibility of every employer to maintain such registers and record giving such particulars of persons employed by him.

4. There are no averments in the complaint to suggest that the applicants herein were responsible for maintenance of such registers and records. When under Section 13-A of the Act of 1936 the primary responsibility is that of the employer i.e. the company herein, and it has not been made an accused in the case, the order of issuance of process against the applicants herein is unsustainable in law.

5. 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. )

SSD