

TAUSEEF
LAIQUEE
FAROOQUI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2422 OF 2018

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Maersk Line India Pvt. Ltd. ...Petitioner

V/s.

V. M. Shevade & Anr. ...Respondents

Mr. Pradeep Havnur with Ms. Prajakta jagtap for the petitioner.

Mr. M. S. Topkar for respondent no.1.

Ms.G. P. Mulekar, APP for respondent no.2/State.

CORAM: AMIT BORKAR, J.

DATE: OCTOBER 3, 2022

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging order of issuance of process dated 27th March 2012 passed by the learned 38th Additional Chief Metropolitan Magistrate, Ballard Pier, Mumbai.

2. The complaint is filed for offense under clause 42 of the Maharashtra Private Security Guard (Regulation of Employment & Welfare) Scheme (Amended), 2005 ("the Scheme" for short). The proceedings under the provisions of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 ("the Act" for short) have been instituted by the competent officer.

3. According to the complaint, accused no.1 is the principal

employer registered under the provisions of the Act and, therefore, under clause 25(2) of the Scheme which was obligatory on the registered principal employer to appoint guards who had been allotted to them by the Secretary in accordance with the provisions of the Scheme. According to the averments in the complaint, the accused permanently closed the establishment in the year 2011 and the same was shifted to the new address. According to the averments, by not engaging the services of the guards allotted by the Secretary, the petitioners have violated the provisions of the Act.

4. *Mr. Havnur, learned advocate for the petitioner, submitted that the premises where the new establishment is situate on the 12th floor and there is no requirement for appointment of guards as the Urmi Estate Towers Building has its own security agency viz. G4S Security Services registered with Private Security Agencies Regulation Act, 2005 and Rules notified by the Govt. of Maharashtra. He submitted that the registered establishment M/s. Maersk Line India Pvt. Ltd. which had engaged security guards from security guards board for their office at Empire Industrial Complex was not required by the new establishment viz. APM Terminals India Pvt. Ltd. at Urmi Estate Towers Building which has its own security service for the Urmi Estate Towers.*

5. Having considered the submissions made on behalf of the petitioner, same are in relation to the events which may have occurred either before or after filing of the complaint. The scope of this petition is to consider as to whether the ingredients of the complaint are sufficient to constitute offense as alleged against the

petitioner.

6. *Prima facie* reading of the complaint discloses essential ingredients of the offense under the provisions of the Act. It will be open to the petitioner to raise appropriate defense before the Magistrate.

7. It is made clear that whatever defense, which the petitioner has, can be pointed out to the Magistrate at an appropriate stage of the proceedings.

8. The petition is thus disposed of in above terms. No costs.

(AMIT BORKAR, J.)

(The order is modified as per order dated 18th October, 2022. The corrections in the 4th paragraph of the order are shown in italics).