

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3139 OF 2022

Ajay Avinash Nadkarni

...Petitioner

V/s.

The State of Maharashtra & Anr.

...Respondents

Mr. Kushal Mar with Mr. Royden Fernandes and Mr. Abhijeet Badar i/by Khaitan & Company for the petitioner.

Ms. G.P. Mulekar APP for the State.

Mr. M.S. Topekar with Ms. Pavitra Manesh, for respondent no.2.

CORAM : AMIT BORKAR, J.

DATE : OCTOBER 4, 2022

P.C.:

1. By this petition under Article 227 of the Constitution of India, the petitioner is challenging order of issuance of process dated 29th November 2021 passed by the learned Magistrate at Nashik.

2. By the impugned order, the learned Magistrate issued process for violation of clause 30 and 26(8) of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Scheme, 2002 ("the Scheme", for short). Clause 26 of the said Scheme reads as under :-

***"Clause 26 – Obligations of employer agencies.- (1)
Every employer agency shall accept the allegations of the Scheme***

(2) to (7) ***

(8) Every employer agency shall comply with the provisions of the Minimum Wages Act, 1948 (XI of 1948); the Payment of Wages Act, 1936, (IV of 1936), the Payment of Gratuity Act, 1972, (XXXIX of 1972); the Employee's Provident Fund, Miscellaneous Provisions Act, 1952, (XIX of 1952); and the Contract Labour (Regulation and Abolition) Act 1970, (XXXVII of 1970); or any other Act as may be applicable to them, for the time being”

3. On careful reading of clause 26 of the Scheme, it is clear that the said clause is applicable to employing agency and not to the principal employer. The averments in the complaint are to the effect that the petitioner is a director of the principal employer, therefore, clause 26 of the Scheme is not attracted. Said Scheme prescribes penalty for contravention of the provisions of clauses 13, 24(7), 25, 26, 27 and 28. The penalty prescribed in clause 42 of the Scheme does not include breach of clause 30. Therefore, the learned Magistrate could not have issued process against the petitioner as on *prima facie* reading of the complaint and the Act, no offense has been made out under the provisions of the said Scheme.

4. The learned Magistrate was, therefore, not justified in issuing process against the petitioner. I, therefore, pass the following order.

5. Rule is made absolute in terms of prayer clause (a); Criminal Complaint S.C.C. No.13660 of 2021 pending before the learned Magistrate, Nashik is dismissed accordingly.

6. The criminal writ petition stands disposed of accordingly. No costs.