

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

CRIMINAL APPLICATION (APL) NO. 829 OF 2015

1. Dr. Vijaypat Singhania, A/a 77 years,
Occ – Director of M/s Raymond Limited,
having office at M/s Raymond Limited,
Mahindra Tower, B-Wing, Pandurang
Budhkar Marg, Worli, Mumbai – 400018
2. Mr. Iswar Das Agarwal, A/a 74 years,
Occ – Director of M/s Raymond Limited,
having office at M/s Raymond Limited,
Mahindra Tower, B-Wing, Pandurang
Budhkar Marg, Worli, Mumbai – 400018
3. Mr. Nabankur Gupta, A/a 67 years, Occ
– Director of M/s Raymond Limited,
having office at M/s Raymond Limited,
Mahindra Tower, B-Wing, Pandurang
Budhkar Marg, Worli, Mumbai – 400018
4. Mr. Pradeep Kumar Guha, A/a 63 years,
Occ. Director of M/s Raymond Limited,
having office at M/s Raymond Limited,
Mahindra Tower, B-Wing, Pandurang
Budhkar Marg, Worli, Mumbai – 400018
5. Mr. Boman R. Irani, A/a 46 years, Occ –
Director of M/s Raymond Limited,
having office at M/s Raymond Limited,
Mahindra Tower, B-Wing, Pandurang
Budhkar Marg, Worli, Mumbai – 400018
6. Mr. Hariharan Sunder, A/a 56 years,
Occ. Director of M/s Raymond Limited,
having office at M/s Raymond Limited,

Mahindra Tower, B-Wing, Pandurang
Budhkar Marg, Worli, Mumbai – 400018

7. Mr. Pradeep Kumar Bhandari, A/a 58 years, Occ – Director of M/s Raymond Limited, having office at M/s Raymond Limited, Mahindra Tower, B-Wing, Pandurang Budhkar Marg, Worli, Mumbai – 400018
8. Mr. Shailesh V. Haribkhati, A/a 59 years, Occ. - Director of M/s Raymond Limited, having office at M/s Raymond Limited, Mahindra Tower, B-Wing, Pandurang Budhkar Marg, Worli, Mumbai – 400018

... APPLICANTS

VERSUS

The State of Maharashtra, through
Mr. S.M. Saraf, Inspector of Legal
Metrology, Plot No. 19, Bhange
Sadan, Gazetted Officer's Colony,
Civil Lines, Central Museum Road,
Nagpur – 4 Division, Distt. Nagpur –
440 001

... NON-APPLICANT

Shri K.H. Parekh, Advocate for the applicants.
Shri H.D. Dubey, A.P.P. for non-applicant/State.

CORAM : **VINAY JOSHI, J.**
DATED. : **03.10.2022.**

ORAL JUDGMENT :

By consent of both the learned Counsel appearing for the parties, the matter is taken up for final hearing.

2. This is an application under Section 482 of the Code of Criminal Procedure raising a challenge to the order of issuance of process dated 19.05.2014 in Summary Criminal Case No.12099 of 2014 pending on the file of Judicial Magistrate First Class Nagpur. It is the prosecution case that the Inspector of Legal Metrology Division Nagpur appointed under Section 14 of the Legal Metrology Act, 2009 (for short hereinafter referred to as 'the Act') has conducted a raid on the retail shop and found certain discrepancies. It is alleged that there was no proper declaration made on certain prepackaged commodities amounting to commission of offence in terms of Sections 18(1), 49, 36 of the Act read with Rule 18(1), 24 of the Legal Metrology (packaged Commodities) Rule 2011.

3. In pursuance of the complaint, the Magistrate took cognizance and issued process against the applicants, who are Directors of the Company as well as against the Company. Though the process was issued against all the Directors, however, the complaint nowhere discloses names of other Directors. The challenge is this petition is

specifically to the issuance of process against Directors and not against the Company. Paragraph 7 of the complaint only discloses the name of the Managing Director of the Company. Learned Counsel appearing for the applicant made a brief submission that the applicants being Directors, *ipso facto*, would not be held responsible for the acts of the Company in absence of specific pleadings and averments. In this regard, he took me through the provisions of Section 49 of the Act, which reads as below : -

“Section 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”

4. The section provides a complete mechanism for fixing the liability for the offences committed by the Company. Section 49(1)(a) (i) of the Act, relates to fixing responsibility on a person, if specifically nominated by the Company. Herein no specific nomination is made by the Company within the meaning of Section 49(1)(a)(i) of the Act,

therefore, the case falls under Section 49(1)(a)(ii) of the Act. It specifies that, every person who at the time of the offence was in-charged of, and was responsible to the Company for the conduct of the business of the Company, is liable. The challenge is solely on the ground that in absence of specifying the role of the Directors, the prosecution is not tenable against them. As regards to the violation of Rules is concerned, the same has not been argued or challenged in this application. Therefore, the scope of challenge is revolving around the requirement under Section 49 of the Act only.

5. According to the applicants, in order to fasten vicarious liability on the Managing Director or Directors, there must be specific averment demonstrating the role of the applicants, in absence, prosecution is not tenable. In support of said contention, reliance is placed on the decision of this Court in case of ***Yum Restaurants (India) Pvt & ors. vs. The State of Maharashtra 2018(1) FAC Vol 91***, wherein this Court has observed that, in absence of any averments as to the manner in which the accused – Directors were responsible for the affairs of the Company, a general statement that the accused were Directors is not sufficient and the averments in that regard are necessary and in absence thereof, the proceedings against them cannot

go on. On the same line, reliance is placed on the decision of this Court in case of *Rajiv Kashinarayan Tandon and ors. vs. The State of Maharashtra and ors. 2018 (1) FAC 401* and in *TVS Motor Company Limited and ors vs. The State of Maharashtra 2015 (1) FAC 432*.

Besides that applicants relied on the decision of the Supreme Court in case of *Managing Director M/s Castrol India Limited vs. State of Karnataka and anr. 2017 (2) FAC 562* which pertaining to the Weights and Measures Act 1976, which has been replaced by the Legal Metrology Act. In similar circumstances, the Supreme Court has observed that in case of offences committed by the Company, there must be avernments or statements that the Managing Director of a Company was responsible or in-charged of the conduct of the business of the Company of which the offence is alleged to have been committed.

6. We may make useful reference of the decision of the Supreme Court in case of *Sunil Bharti Mittal Vs. Central Bureau of Investigation (2015) 4 SCC 609* of which relevant observations made in paragraph 42 to 44 are reproduced herein below :

“42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an

offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. *Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporation such a provision.*

44. *When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect.....”*

7. Thus, there is long line decisions which speaks about the requirement of specific averments about the role and responsibility of the Directors to hold them liable for the act of the company. In that regard the entire complaint is perused, which is very short running in to 9 paragraphs only. Particularly, paragraphs 6 and 7 are relevant for our purpose as the rest is of technical nature. Paragraph 6 specifies the nature of offence for which the prosecution has been launched. Paragraph 7 is the only relevant from the view point of controversy and therefore, it is reproduced as below ;

“7. *The Accused is the Owner/Partner/Director/ Manager of*

the shop/ stall/ Factory etc. situated at : 1) Gautam Hari Singhania – Managing director and all other director 2) Raymond Limited, building no.A1 B1, Saidhara complex, Mumbai Nasik Highway, village Kukse, Borivali, Bhiwandi Dist. Thane – 421302.”

8. It reveals that besides mentioning the name of the Company in generalized form, it has been pleaded that the accused is either an owner or partner or a Director of the Company. Absolutely, there are no specification about the role and responsibility of the applicants regarding alleged offence. In absence of essential ingredients, the prosecution cannot be continued in view of above referred decisions. Neither the role of the Managing Director or any of the Director has been specified in complaint. Pertinent to note that, even the name of Directors have not been stated in the complaint.

9. In view of that, the application is allowed. The impugned order dated 19.05.2014 passed by the Judicial Magistrate First Class, Nagpur is hereby quashed and set aside as regards to applicants only. The application stands disposed of in above terms. No order as to costs.

(VINAY JOSHI, J.)