

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.2888 OF 2018
M/S. BALLARPUR INDUSTRIES LTD., BALLARPUR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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Advocate for Applicants : Mr. Surender Kumar Gupta & Adv. Pratibha K.
Choudhari

APP for Respondents/State : Mr. S.R. Yadav-Lonikar

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CORAM : KISHORE C. SANT, J.

DATE : 27th MARCH 2023.

ORDER :

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

2. The applicants who are shown to be directors/employees of applicant no.1/Company have approached this Court challenging an order dated 10.02.2015 passed by the learned Judicial Magistrate First Class, Aurangabad issuing process for the offences punishable under Section 18(1) and 36(1) of the Legal Metrology Act, 2009. All the applicants are shown to be accused in the said complaint lodged by the

Inspector of Legal Metrology Division-II, Aurangabad.

3. In short the complaint by the respondent is that in an inspection dated 08.08.2014, two packages of paper product from the Best Price Modern Wholesale, Wallmart India Pvt. Ltd. having their unit at Plot No.1, Gut No.86, Itakheda, Aurangabad. It was found that the MRP though was printed word 'Rs.' was not mentioned on the packages and on that, complaint was lodged. It is alleged that by thus there is violation of Section 18(1) of the Legal Metrology Act read with rule 2N of the Legal Metrology (Packaged Commodities) Rules, 2011 [hereinafter referred as 'said Rules']. It is further alleged that the applicants are guilty of Section 36(1) of the said Act. The complaint was lodged on 02.02.2015. The learned Magistrate passed the impugned order on the same complaint. Following are the submission of the learned Advocate for the applicants:

- (i) The order does not show application of mind.
- (ii) There is no specific averment as regards role of the applicants before this Court in the complaint.
- (iii) That all the applicants are residents of the place beyond territorial

jurisdiction of the Court at Aurangabad and therefore inquiry under Section 202 of the Code was necessary.

4. The learned APP however submits that the complaint was lodged only after satisfaction of the complainant. He points that in fact there is compliance even by sending notice, as required under Rule 23 of the said Rules and the opportunity was given.

5. During the course of argument, learned Advocate for the applicants relied upon the judgment in the case of **Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors.**, reported in 1998 5 SCC 749. He points out the paragraph no. 28 of the said judgment, which read as below:

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.

. Another judgment he relied upon is in the case of **Mehmood UI Rehman Vs. Khazir Mohammad Tunda & Ors.**, reported in 2015 12 SCC 420. Wherein the Hon'ble Apex Court by considering the judgment in the case of Pepsi Foods Ltd. (supra), has held that there has to be an application of mind by the Magistrate, while issuing process to an accused and allowed the appeals filed in the Hon'ble Apex Court.

6. He further relied upon judgment in the case of **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Ors.**, reported in (2005) 8 SCC 89. On the point of Section 141 of the N.I. Act, it is held that the vicarious liability cannot be fasten upon the Director or any person unless there is specific averment in the complaint that the said person is

responsible for day to day activities of the Company. He also further relied upon the judgment is in the case of **K.K. Ahuja Vs. V.K. Vora and Ors.**, reported in (2009) 10 SCC 48 and in the case of **National Small Industries Corp. Ltd. Vs. Harpreet Singh Paintal**, reported in (2010) 3 SCC 330.

7. The learned Advocate further relied upon the case reported in the case of **Lalankumar Singh and Others Vs State of Maharashtra** reported in **2022 LiveLaw (SC) 833**, wherein the Hon'ble Apex Court has held that the Magistrate is required to apply his mind as to whether sufficient ground for proceeding with the complaint exists in the case or not. The formation of such an opinion is required to be stated in the order itself. It was a case under the Drugs & Cosmetics Act, 1940. The learned Advocate submits that in this case looking at the order as it is, it does not show any application of mind. There was no material produced before the Magistrate as appears from the record except the complaint and still the process has been issued.

8. On considering the judgments and the submissions, this Court finds that no much discussion is necessary once this Court has come to

a conclusion that from the impugned order no application of mind is reflected. Secondly on the count that in the entire complaint, there is no averment to show as to what is the role of each of the directors/employees of the Company and whether they are responsible for day-to-day activities of the Company. On the third count, it is seen that the learned Magistrate has directly issued process without holding an inquiry under section 202 of the Cr.P.C. By now it is well settled that such inquiry is mandatory when accused persons are residing beyond territorial jurisdiction of the Court.

9. The learned APP though initially has raised an objection about the maintainability of this application, it is now well settled in view of the case of **Dhariwal Tobacco Products Ltd.& Others. Vs State Of Maharashtra & Anr.**, that the alternative remedy is not an absolute bar to entertain the application under Section 482 of the Cr.P.C. and in this view this Court holds that this application can very well be entertained. In view of the above discussion, this Court finds that a case is made out to allow the application. Thus, the application is allowed in terms of prayer clause 'B' and 'C'.

10. With this, the Writ Petition stands disposed off.

[KISHORE C. SANT, J.]

Najeeb.