

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.55 OF 2021

Nathan Chowgule

... PETITIONER

Versus

State of Goa, Labour Enforcement
Officer (Central)

... RESPONDENT

Mr. Shivan Desai, Advocate *with Mr Varun Bhandankar
and Ms. Maria Carmel Cota Viegas, Advocates for the
petitioner.*

Mr Somnath B. Karpe, Additional Public Prosecutor
for Respondent.

CORAM:
DATED :

PRAKASH D. NAIK, J
2nd NOVEMBER 2023

P.C.

1. The limited question which is urged in this petition is that the impugned order dated 27.12.2019 was passed by the learned Judicial Magistrate First Class without assigning any reasons which reflects non-application of mind and hence the said order may be set aside.

2. The respondent filed a complaint before the Court of learned JMFC at Vasco under Section 25 Q of the Industrial Disputes Act, 1947 against the petitioner and it was prayed that cognisance of the offence may be taken and accused be

summoned under Section 25-M or Section 25-N read with Section 25 Q of the Industrial Disputes Act. The learned Magistrate has issued the process with cryptic order which reads as under:-

“Issue summons to accused.”

3. Learned advocate Mr Desai appearing for the petitioner submitted that the impugned order reflects non-application of mind. The order does not provide the reason or the offence for which the process has been issued. While issuing the process, the Court is expected to apply its mind to the facts of the case where prima facie case is made out and case for issuance of process is made out. Reliance is placed on the decision of this Court in the case of ***M/s. Rhydburg Pharmaceuticals Ltd. & Ors. v/s. Union of India, Ministry of Health and Family Welfare, C/o. Drug Controller of Health Services*** dated 07.09.2021 in Criminal Writ Petition No.81 of 2020.

4. Learned advocate Mr Karpe appearing for the respondent submitted that there was specific averment against the accused in the complaint about the commission of offence. Elaborate reasons are not warranted at the stage of issuance of process. There is no infirmity in the impugned order.

5. Perusal of the impugned order issuing process indicate that the learned Magistrate has passed one line order stating issue summons to accused. The offence for which the process has been issued is also not reflected. This Court in the case of

M/s. Rhydburg Pharmaceuticals Ltd. & Ors. v/s. Union of India, Ministry of Health and Family Welfare wherein it is observed that, it is the duty of Magistrate to apply his mind to the material placed before it before passing order taking cognizance and issuing process.

6. In the case of ***Rajendra Rajoriya v/s. Jagat Narain Thapak & Another***¹ wherein it was observed that the Magistrate while taking cognizance has to satisfy himself about the satisfactory grounds to proceed with the complaint and at such stage, the consideration should not be whether there is sufficient ground for conviction. It may not be out of context to state that at the stage of taking cognizance the Magistrate need not elaborate reasons but the order should reflect independent application of mind to the material placed before it.

7. The complaint was filed under Section 25 Q of the Industrial Disputes Act, 1947 alleging illegal retrenchment of workmen. As per the said provision any employer who contravenes provisions of Section 25-M or Section 25-N of Industrial Disputes Act shall be punishable with imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both. Applying the aforesaid principles to the factual matrix of the present case, it is seen that the impugned order issuing process reflects non-application of mind and requires to be set aside. The matter can be remanded back to the trial Court for fresh consideration.

¹ (2018) 17 SCC 234

ORDER

- (I) The impugned order dated 27.12.2019 passed by learned Judicial Magistrate First Class at Vasco-da-Gama is set aside.
- (II) The learned Magistrate shall apply its mind to the facts of the complaint and proceed with the complaint in accordance with law.
- (III) It is clarified that this Court has not adjudicated on the merits of the complaint.
- (IV) The petition stands disposed of.

(PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO

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