

Ghuge

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

CRIMINAL APPLICATION NO.55 OF 2020

Bata India Limited ... Applicant

V/s.

State of Maharashtra and Anr ... Respondents

Mr. Shyam Dewani with Mr. Chirag Chanani i/b
Dewani and Associates for the applicant.

Mr. Arfan Sait, APP for the State.

Ms. Madhuri More advocate for Respondent/MCGM.

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2023

P.C.:

1. The challenge in this application is the order dated 17th June 2017 issuing summons to the accused and the order dated 25th November 2019 rejecting the petitioner's application under Section 256/258 of the Code of Criminal Procedure, 1973 for stoppage of prosecution against the remaining accused.

2. Respondent No.2 filed a complaint under Sections 52 and 56 of the Bombay Shops and Establishment Act, 1948, for contravention of Rule 20(4) and 20(5) of Bombay Shops and Establishment Rules. The ground for initiating prosecution is a violation of Rule 20(4) for non-maintenance register of leave in Form 'M' in respect of employees and Rule 20(5), which requires the employer to maintain the leave book in Form 'N'.

3. By order dated 17th June 2017, the Magistrate issued a

summons. Petitioner pleaded guilty to the plea before Magistrate. The Magistrate convicted and sentenced the petitioner by directing them to pay a fine. By the impugned order dated 25th November 2019, the application filed Petitioner under Section 256/258 of the Code of Criminal Procedure, 1973 has been rejected.

4. The order dated 3rd November 2018 at Exhibit-E indicates that on 3rd November 2018, accused No.2, i.e. present petitioner, pleaded guilty to the offence. The Metropolitan Magistrate, therefore, convicted the petitioner for an offence punishable under Sections 52 and 56 for contravening the provisions of Rule 20(4) and 20(5) of Bombay Shops and Establishment Act, 1948 and sentenced the petitioner to pay a fine of Rs.5,000/- each. In default, the petitioner was directed to undergo imprisonment for 20 days. This order, dated 3rd November 2018, is not the subject matter of the present petition. The Company/Accused No.2 is not questioning the validity of the conviction and sentence imposed on 3rd November 2018.

5. Petitioner has filed an application dated 4th February 2018 after an order of conviction and sentence dated 3rd November 2018. Petitioner was already convicted and sentenced by the Magistrate after they pleaded guilty. Petitioner (Company), after its conviction in the same complaint, prayed to stop prosecution against the remaining accused and sought discharge of the remaining accused as the Company has paid the maximum fine.

6. On perusal of the impugned order, the following factual scenario emerges.

(i) On the date of filing of the application dated 4th February 2019 under Section 256 of the Code of Criminal Procedure, 1973, the petitioner was not accused.

(ii) Accused No.2, being a legal entity, can sue or sued in its own name. The other accused did not apply stoppage of prosecution.

7. The learned Trial Court rejected the application on the ground that the petitioner, having been convicted and sentenced, the application at his instance is not maintainable.

8. In my opinion, the reasoning adopted by the Magistrate while rejecting the application under Section 256/258 of the Code of Criminal Procedure, 1973, at the instance of the petitioner, cannot be termed as perverse.

9. The learned advocate for the petitioner relied on the unreported judgment of this Court in the case of **Shri. Deepak Brijmohan Gupta Vs. State of Maharashtra** in Criminal Writ Petition No.518 of 2012 and **Mr Om Prakash Bhatt Vs. State of Maharashtra and Anr** in Criminal Writ Petition No.4069 of 2016. The proposition of law in both cases was different from the one involved in the present application. The question involved in the present petition is whether, once Company has been convicted and sentenced, it can file an application for stoppage of prosecution of other accused. Therefore, both judgments are of no help to the petitioner.

10. On the date of filing such an application, the petitioner was no longer accused. Therefore, the petitioner could not have filed

such an application, and Magistrate could not have entertained such an application. Therefore, no interference in the impugned order is called for.

11. Therefore, the Criminal application stands dismissed. No costs.

(AMIT BORKAR, J.)

Note :- This order is modified as per order dated 5th April, 2023 and the corrections in appearance is shown in italicize.