IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1421 OF 2022

1. Parth Sajjan Jindal
Aged 32 years,
Having my office at JSW Paints
Private Limited
JSW Centre, Bandra Kurla Complex,
Mumbai-400 051

2. Sundaresan A.S.
Aged 57 years,
Having my office at JSW Paints
Private Limited
JSW Centre, Bandra Kurla Complex,
Mumbai-400 051

3. Anunay Kumar
Aged 76 years,
Having my office at JSW Paints
Private Limited
JSW Centre, Bandra Kurla Complex,
Mumbai-400 051 … Applicants.

Versus

1.State of Maharashtra

2. Municipal Corporation of Greater
Mumbai through
Mr Shankar B. Mahajan

Assistant Law Officer
Assistant Commissioner 'S' Ward,
Municipal Office Building, Mangatram,
Petrol Pump, L.B.S. Marg, Bhandup (W),
Mumbai-400078. … Respondents.

Mr Niranjan Mundargi a/w Mr Dnyaneshwar Jadhav and Mr Dhavan Shah i/b Legasis Partners for applicant.
Mr AA Palkar, APP for State-Respondent No.1.
Ms Madhuri More for respondent No.2-Municipal Corporation of Greater Mumbai.

Coram : R.N.Laddha, J.
Reserved on : 1 September 2023
Pronounced on : 25 September 2023

Judgment :

Heard Mr Niranjan Mundargi, the learned Counsel appearing on behalf of the applicants; Mr AA Palkar, learned APP, appearing on behalf of respondent No.1/State; and Ms Madhuri More, the learned Counsel appearing on behalf of respondent No.2.

2. The challenge in this application is to the Criminal Case No.4106570/SS/2022 ('impugned complaint') filed by respondent No.2 against the applicants before the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai under sections 394(1)(e)(i) read with 471 of the

Mumbai Municipal Corporation Act, 1888 ('MMC Act') and the Order dated 20.10.2022 ('impugned order') passed by the learned Magistrate for issuance of a process.

3. It is the case of the prosecution that the applicants are directors of JSW Paints Private Limited ('the Company'). On or around 06.09.2022, a representative of respondent no.2 visited the Company's premises for inspection. During the inspection, in the presence of the store manager, Mr Vijay Yadav, the inspecting officer allegedly found 400 kilograms of paint and a colour mixing machine. Consequently, the inspecting officer issued an inspection report dated 06.09.2022 and called upon the applicants to produce valid licenses or documents for such activity. On failure to produce such documents, respondent no.2 filed the impugned complaint against the applicants.

4. Mr Mundargi, learned Counsel appearing on behalf of the applicants, submitted that the impugned complaint suffers from several flaws. Firstly, the complaint does not name the Company as an accused, despite respondent No.2 mentioning the Company's name indicating respondent No.2's awareness of the Company in question. Secondly, Mr Vijay Yadav, the store manager, present during the inspection, was not named

as an accused in the complaint. Thirdly, the complaint fails to establish the applicants' active role in the alleged offence. Fourthly, the inspection report does not mention the applicants' names or explain their involvement in the alleged offence, especially considering that the premises and trade activities in question belong to the Company. Lastly, there are no allegations in the complaint that demonstrate the active role of the applicants.

5. Mr Mundargi submitted that the MMC Act does not include any provision that makes directors vicariously liable for the alleged acts or omissions of the Company. The vicarious liability of directors and managing directors arises only if there is a stipulation to that effect in the statute. He also points out that the applicants were not at the subject premises during the inspection.

6. The learned Counsel complained that the Magistrate mechanically issued a process against the applicants. The summoning order does not disclose the penal provisions of the MMC Act or the process issued in light of section 204 of the Code of Criminal Procedure, 1973 ('CrPC'). The impugned order also did not disclose or indicate that the Magistrate was satisfied that the allegations in the complaint constituted an

offence.

7. Ms Madhuri More, learned Counsel for respondent No.2, submitted that one Vijay Yadav, stated to be the store manager, was present on the premises at the time of inspection. However, he failed to produce a trade/storage license as required under section 394 of the MMC Act. She submitted that such a license is mandatory for storage business activity. She further submitted that Vijay Yadav failed to show other valid documents regarding the authenticity of business activity and details about the owner; however, he did disclosed the name of the Company and its directors. Based on the information received from him, an inspection report was prepared and shown to him, on which his signature was obtained.

8. The rival contentions now fall for my determination.

9. It is not disputed that the Company allegedly involved in the manufacturing of paints has not been made an accused. It is also not disputed that the applicants' were not present during the inspection. It reveals from the record that Vijay Yadav, who was present at the premises during the inspection, informed that the applicants are directors of the Company.

10. The learned Counsel for respondent No.2/ MCGM has fairly admitted that there is no provision in the MMC Act that makes directors vicariously liable for the acts and omissions of the company. Apart from the complainant's bare averments that Vijay Yadav provided the name of the Company and its directors, there is no evidence to show that the Company was being operated with an active role of the applicants.

11. It is a settled position in law that an individual can be accused, along with the company, if there is sufficient evidence to prove their active role and criminal intent. The alleged criminal intent must have a direct nexus with the accused. The director's vicarious liability arises only if there is a provision in the statute that establishes such liability. The complainant must make necessary allegations to attract the provisions that constitute vicarious liability. All these aspects are highlighted in ***Shiv Kumar Jatia v. State (NCT of Delhi)***[1], and ***Maksud Saiyed v. State of Gujarat***[2].

12. In ***Sushil Sethi v. State of Arunachal Pradesh***[3], the Hon'ble Supreme Court held as follows:

> "*8.2. It is also required to be noted that the main allegations can be said to be against the*

1 2019 SCC OnLine SC 1090
2 (2008) 5 SCC 668
3 (2020) 3 SCC 240

> *company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692], it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.*"

13. If these observations of the Hon'ble Supreme Court are considered in the light of averments made in the impugned complaint, it becomes evident that the complaint does not

mention any allegations of vicarious liability against the applicants for storing paints and a colour mixing machine without obtaining license from respondent No.2/ MCGM. Similarly, the MMC Act does not provide for imposing vicarious liability on the directors of the company, specially when no active role has been assigned to the applicants.

14. Furthermore, the impugned order does not mention the specific penal provision of the MMC Act under which the process was issued. Additionally, the impugned order fails to state that the process was issued in accordance with section 204 of CrPC.

15. In ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.***[4], the Hon'ble Supreme Court held as follows:

> "*33. 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. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman [Mehmood Ul Rehman*

4 (2019) 16 SCC 610

v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , this Court held as under : (SCC p. 430, para 22)

> *"22. … The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal*

> *court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment"*
>
> *(emphasis supplied)*"

16. It is not stated in the complaint that the applicants are directors of the Company. The impugned order does not indicate that the learned Magistrate found the allegations in the complaint sufficient to issue summons for the offence under section 394(1)(e)(i) punishable under section 471 of the MMC Act. The summoning order does not specify the offence for which the *prima facie* case is made out for which the process is issued. These omissions suggest a lack of application of mind by the Magistrate. Furthermore, the contents of the complaint are conspicuously silent about the active role, if any, of the applicants.

17. Resultantly, the application succeeds and is allowed in terms of prayer clause (a). The application stands disposed of accordingly.

[R.N.Laddha, J.]