



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 263 OF 2008

Tilaknagar Industries Ltd.
Tilaknagar,
(through Shri. M. Raman Kutty Nair,
Manager, Age 57 years,
Legal and Admn. Tilaknagar
Industries, Shrirampur,
Dist. Ahmednagar .. Petitioner

Versus

The State of Maharashtra
Through Shrirampur Police Station,
District Ahmednagar .. Respondent

Mr. N. S. Choudhary, Advocate for the Petitioner;
Ms. M. N. Ghanekar, A.P.P. for Respondent

CORAM : S. G. MEHARE, J.

DATE : 14-08-2024

PER COURT :-

1. Heard the learned counsel for the petitioner and the learned A.P.P. for the respondent.

2. The petitioner has impugned the judgment and order of the learned District Judge-1 & ASJ, Shrirampur, passed in Criminal Revision No.38 of 2004, dated 05.01.2008, confirming the order of the learned Judicial Magistrate First Class, Shrirampur, passed below Exhibit-16 in S.T.C.No.51 of 2001, dated 21.07.2004, refusing for recalling of issuance of process against the petitioner under Section 23 of the Petroleum Act, 1934.

3. It is an interesting case wherein the charge sheet was filed against the petitioner along with the co-accused on the basis of the raid laid by the police machinery in the factory which was previously owned by the petitioner. The Investigating Officer had recorded the statement of the Manager, who categorically stated that the factory was under the control and management of Umesh G. Mehata, a resident of Mumbai. He categorically stated to the police that the factory was leased to Umesh G. Mehta, in 2000. The copy of the lease deed executed between the petitioner who was running the factory under the name and title "Tilaknagar Industries Ltd., Tilaknagar" and one "M/s. Ramnath Glass Containers Pvt. Ltd." was on also record. The incident happened on 04.01.2001. The lease was for ten years from 04.04.1992 till 03.04.2002.

4. After submitting a report under Section 173 of the Code of Criminal Procedure ("Cr.P.C.", for short), the petitioner approached the learned Magistrate, and filed an application to recall the order of issuance of process.

5. In the body of application Exhibit-16, it has been mentioned that the Glass Bottle Manufacturing Factory situated at Tilaknagar, Taluka Shrirampur, was originally owned by accused No.1 i.e. Tilaknagar Industries Ltd. The Plant was managed/operated by Tilakanagar Industries Ltd. till March 1992. The Glass Bottle Plant

was then leased to Ramnath Glass Container Private Ltd., in March 1992 for ten years, and since then, it has been under their management. Apart from that, the grounds of the requirement of license-based on quantity to be stored or stocked in pursuance of the Petroleum Act, 1934 were also raised.

6. The learned Magistrate discussed relevant provisions of the Act and held that the stock was exceeding the limit as provided under Section 7 (ii) of the Petroleum Act, 1934 and Rules 2002. Since the stock exceeded the limit, the license was essential. The accused did not possess a licence on the date of the registration of the offence against them for storage of petroleum class 'C' exceeding 45,000 liters, and accordingly, he rejected application Exhibit-16 by his order dated 21.07.2004.

7. The learned Sessions Judge recorded the findings that the learned Magistrate has no inherent jurisdiction to recall process or summons. It is not necessary for him to consider the other aspects of the case, whether there was sufficient material to issue the process or summons, but it is suffice to say that the Magistrate has no power to recall the process or summons.

8. The learned counsel for the petitioner submits that the statement of the Factory Manager and the lease deed of the factory to M/s. Ramnath Glass Containers Pvt. Ltd. was available before the Court. However, the trial Court issued the process by a

stamped order and issued a summons to the petitioner. Though, he pleaded that, at the relevant time, the factory was not under his control and management, it was not considered. He further argued that the learned Sessions Court did not consider that the material available with the investigation Officer, though those were brought to the notice of the Sessions Court with a view to apprise him of the legality of the order of issuing process. However, the learned Sessions Court, without considering the facts pleaded in the application, dismissed the petition only on the ground of maintainability. He submits that the nomenclature does not decide the fate of the proceeding. The entire contents of the application should be considered. Though, there was a legal impediment to the jurisdiction of the Magistrate from recalling the order, the factual aspect ought to have been considered by the learned Sessions Court, and the matter could have been decided under revisional jurisdiction.

9. To bolster his arguments, he relied on the following cases;

- i) *M/s. Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others, reported in (1998) 5 SCC 749;***
- ii) *Sunil Bharti Mittal vs. Central Bureau of Investigation, (2015) 4 SCC 609.***
- iii) *Lalankumar Singh and others vs. State of Maharashtra, 2022 LiveLaw (SC) 833;***

10. He, referring to the ratio in **Lalankumar** (supra) vehemently argued that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a *prima facie* case against the accused. No doubt the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court, in the case of **Sunil Bharti Mittal** (supra).

11. In sum and substance, he submits that the learned Session Court had ignored the pleading in the application before the learned Magistrate that the factory was not under his control at the relevant time and only dealt with the provisions of the Petroleum Act. The sessions Court could consider the application as a whole. Hence, the petition deserves to be allowed.

12. Per contra, the learned A.P.P. has strongly argued that in view of the ratio in Mathew's case, the Criminal Court has no power to recall the order of issuance of process. However, the learned Magistrate, in fact, exceeded its jurisdiction in recording findings on facts. There were major technical glitches in the order of the learned Magistrate. Hence, the learned Sessions Court has

corrected it and rightly dismissed the petition. Since there were no findings about the issuance of the process, the learned Sessions Judge could not remit the case. She submits that the only option for the petitioner was to approach the Court for discharge on the grounds raised in the application.

13. The impugned order of the learned Judicial Magistrate is silent about the fact of having no control of the petitioner over the factory on the date of registration of the offence. A copy of the lease and the statement of the Manager were available with the Magistrate, but it seems that, the learned Magistrate, since the matter was filed by the State, has mechanically passed the order of issuing process. The Court impressed the stamp on the record, filled the blank spaces and issued the summons to the petitioner. It was the only order, the learned Magistrate passed the order issuing the process. The learned Magistrate was passing the serious orders of issuing process without application of mind. It could be safely said that he did not examine the papers available with the case and mechanically signed below the stamp. The order of issue process, as observed by the Hon'ble Supreme Court in ***Lalankumar*** (supra) is not a mechanical process. The order must reflect an application of mind by the learned Magistrate and consideration of the material produced in the charge sheet. Detailed reasons are not required in the order, but at least there should be some reasons mentioned in the application that *prima*

facie evidence is available against the petitioner to issue process.

14. Admittedly, the nomenclature of Exhibit-16 was 'for recall of process' only. On reading the application, there was material before both Courts to examine the facts, as such who was in management and control of the factory on the date of the incident. The record includes the statement of the witness/Manager of Ramnath Glass Containers Ltd and the copy of the lease deed between Ramnath Glass Container Private Limited and Tilaknagar Industries Ltd. Both courts ought to have gone through this material. Though the order of the learned Magistrate was discussing the legal provisions, it was possible for the Revisional Court to go into the facts and material placed before the Court, and instead of considering the nomenclature of the application, it ought to have considered the legality and validity of the order issuing process. The learned Sessions Judge could have done this for the reason that the pleadings in the application were two fold; *firstly*, on the facts, *and secondly*, on the legal issue.

15. The Hon'ble Supreme Court in the case of ***M/s. Pepsi Food Ltd.*** (supra), in paragraph No.26 observed thus;

"26. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory.

If in a case like the present one the Court find that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. it may not however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts.”

16. In paragraph No.28, It has been observed thus;

“28. Summoning 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 scrutinize 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.”

17. In paragraph No.29, It has been observed thus;

“29. The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. The preliminary evidence on which the 1st respondent relied in issuing summon to the accused/appellant also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955.”

18. In ***M/s. Pepsi Food Ltd.*** (supra), the Hon’ble Supreme Court laid down the law that the powers of judicial interference under Article 227 of the Constitution may extend to quashing an

impugned order on the ground of an error apparent on the face of the record. The power of interference is limited to seeing that the tribunal functions within the limits of its authority. Thus, we have to examine the power of the High Court under Articles 226 and 227 of the Constitution and Section 482 of the Code of Criminal Procedure.

19. As discussed above, the application was specific that on the day of the incident, the factory was not under the control of the petitioner. It was leased to M/s. Ramnath Glass Containers Pvt. Ltd. for ten years. Apart from that, the statement of the Manager of M/s. Ramnath Glass Containers Pvt. Ltd. Was also available before the Court. However, it seems that the learned Magistrate did not go through the papers submitted with the charge sheet.

20. In view of the law laid down by the Hon'ble Supreme Court in **Lalankumar** (supra), such an order is no order in the eye of law. It seems that due to the non-application of the mind of the Magistrate, the petitioner was unnecessarily invited to face the trial, which is not a matter of course.

21. Considering the facts of the case on record, the Court is of the view that it is a fit case to exercise powers under Articles 226 and 227 of the Constitution and Section 482 of the Cr.P.C. *Prima facie*, it is seen that on the day of the incident the factory was not under the control and management of the petitioner. His

contention was supported by the lease deed that was included in the case. As observed above, the impugned order of issuance of process/summons was mechanically passed, and it does not reflect the application of mind, the criminal writ petition deserves to be allowed. Hence, the order:-

ORDER

- i) The Criminal Writ Petition is allowed.
- ii) The impugned the judgment and order of the learned District Judge-1 & ASJ, Shrirampur, passed in Criminal Revision No.38 of 2004, dated 05.01.2008, confirming the order of the learned Judicial Magistrate First Class, Shrirampur, passed below application Exhibit-16 in S.T.C.No.51 of 2001, dated 21.07.2004, refusing for recalling issuance of process against the petitioner under Section 23 of the Petroleum Act, 1934, is quashed and set aside.
- iii) The petitioner stands discharged from the trial.
- iv) Rule made absolute in above terms.

**(S. G. MEHARE)
JUDGE**