IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4193 OF 2019

Mr. Ramchandra Kaundinya Vinnakota
Director of M/s. Syngenta India Limited,
having his office at Amar paradigam, S.NO
110/11/3, Baner Road, Pune 411 045. ... **APPLICANT**

V/s.

The State of Maharashtra,
through Mr. P.P. Vibhandik
Inspector of Legal Metrology,
Pachora Division, Dist. Jalgaon. ... **RESPONDENT**

.....
Mr. K.H. Parekh h/f. A.N. Ayachit, Advocate for the Applicant
Mr. V. M. Jaware, APP for the Respondent-State
.....

CORAM : Y.G. KHOBRAGADE, J.
RESERVED ON : 09.10.2024
PRONOUNCED ON : 18.10.2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally.

2. Having regard to the rival submissions canvassed on behalf of both the sides, I have gone through the record.

3. By the present application under Section 482 of Code of Criminal Procedure, 1973, the Applicant is seeking quashment of the Criminal Complaint

bearing SCC No. 25 of 2019 pending on the file of the learned Judicial Magistrate First Class, Pachora, Dist. Jalgaon. The present Applicant is the original Accused in Criminal Complaint bearing SCC No. 25 of 2019 instituted by the Respondent/Complainant - Inspector Legal Metrology Department.

4. It is not in dispute that the present Applicant is one of the Directors of M/s Syngenta India Limited. Mr. P. P. Vibhandik, Inspector Legal Metrology Department is appointed under Section 13 of the Legal Metrology Act, 2009. He made a surprise visit to M/s. Paras Krishi Kendra at Pachora on 9th July, 2018. During course of inspection of said establishment he found packages of brand "Gramoxone" kept for sale by the retailer, which have been manufactured by the Industrial establishment M/s. Syngenta India Limited and the manufacturer has not maintained the height of numeral in the declaration as required, which violates the provisions of Legal Metrology Act, 2009 and the same is an offence u/s 18 of the Legal Metrology Act, 2009 read with Rule 7(2). Therefore, the Inspector Legal Metrology Department instituted a complaint before the Judicial Magistrate F.C, Pachora. Accordingly, on 8th July, 2019, the learned Magistrate has issued the summons against the present Applicant/ original Accused.

5. Mr. Parekh, the learned counsel appearing for the Applicant canvassed that M/s Syngenta India Limited is a registered Company under the

provisions of the Indian Companies Act, 1956. The Applicant/Accused is one of the Directors of the said company. Though there are other Directors but they are not impleaded as accused. The Company manufactures commodities, which has been seized by the complaint, however, the Company, who is juristic person is not impleaded as party accused. Therefore, the complaint is not maintainable against the present Applicant alone for the offence committed by the Company. Therefore, the complaint lodged by the Respondent is not maintainable, hence, it needs to be quashed.

6. The learned counsel for the Applicant further canvassed that Section 49 of the Legal Metrology Act, 2009 provides for offences by the Companies and power of Court to publish the name, place of business etc., for conviction of the Company, but the Company is not impleaded as an Accused. Further, in complaint no averment has been made as to how the present Applicant is responsible for business, production of the Company as well as packaging of it's product/commodities. The Complainant has also not made any averment regarding the specific role played by the Applicant while packaging the commodities. Therefore, the sole Applicant as a Director of the Company is not liable for prosecution for the offence committed by the Company, hence, prayed for quashing and setting aside the complaint.

7. To buttress these submissions, the learned counsel for the Applicant placed reliance on the following judicial pronouncements which are as under:

a. Judgment dated 07.11.2017 passed in Cri. Appln. 2899 of 2017 in case of Mr. Rohit Gothi Vs. State.

b. 2018 ALL M. R. Cri. 465 (SC) Managing Director, M/s Castrol India Ltd., Vs. State of Karnataka,

c. Judgment dated 03-10-2022 delivered in Cri. Appln. No. 829 of 2015 in case of Dr. Vijaypat Singhania and others Vs. State,

d. 2018 (1) FAC 401; Rajeev Tandan & others Vs. State

e. 2018 (1) FAC 1; Yum Restaurant India Pvt. Ltd. & Ors.Vs. State of Maharashtra.

f. 2007 ALL M.R. Cri. 3050; Shantanu Sinha Vs. State.

8. Per contra, Mr. V. M. Jaware the learned APP canvassed in vehemence that, on 9th July, 2018, Mr. P. P. Vibhandik, the Inspector Legal Metrology Department had visited the premises of M/s. Paras Krishi Kendra situated at Pachora and during the course of inspection at the said establishment, he noticed packages of brand “Gramoxone” kept for sale manufactured by M/s. Syngenta India Limited, an Industrial establishment of which the present Applicant is a Director. The Complainant found that the Accused has not maintained the height of numeral in the declaration as required, which is an offence under Section 18 of the Legal Metrology Act, 2009 read with Rule 7 (2). Since, the complainant complied with all the

necessary requirements and drawn panchanama in presence of the witness. Therefore, a complaint has been lodged against the Applicant/Accused because the Applicant is a Director of said Industrial Establishment and manufactured the commodities. Therefore, the accused is *prima facie* guilty for the offence punishable under Section 18 read with Rule 7(2) of the Legal Metrology Act, 2009. Accordingly, on 8th July, 2019, the learned Magistrate passed an order and issued the summons against the present Applicant. Therefore, the Application under Section 482 of the Code of Criminal Procedure, 1973 is not maintainable as it is an interlocutory order, hence, prayed for dismissal of the Application.

9. In support of these submissions, the learned APP relied on the case of **Om Kr. Dhankar Vs. State of Haryana & Anr.; 2012 AIR SCW 1821,** wherein the Hon'ble Supreme Court of India has held that an order directing the issuance of process is purely an interlocutory order and therefore, the bar under Sub-Section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and therefore, the revisional jurisdiction under Section 397 would be exercised against the same.

10. The learned APP further relied on the case of **Amar Nath and others Vs. State of Haryana and Ors.; AIR 1977 SC 2185,** wherein it is held that where a revision to the High Court against the order of the Subordinate Judge

is expressly barred under Sub-Section (2) of Section 397 of the Code, 1973, the inherent powers contained in Section 482 would not be available to defeat the bar contained in Sub-Section 2 of Section 397. Section 482 of the Code, 1973 contains the inherent powers of the Court and does not confer any new powers, but preserves the powers High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397 (2) and cannot be the subject of revision by the High Court, then in such cases the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provisions on the subject matter but when there is an express provision, barring a particular remedy, the Court cannot resort to exercise the inherent powers.

11. Coming to the instant case, the Applicant has approached this Court under Section 482 of Code of Criminal Procedure, 1973 seeking quashing of Criminal Complaint SCC No. 25 of 2019 pending on the file of Judicial Magistrate First Class, Pachora, Dist. Jalgaon. Therefore, the Applicant has no other remedy other than Section 482 of the Code of 1973. The Applicant has not challenged the order of issuance of summons passed below Exh.1 on 08.07.2019 in SCC No. 25 of 2019, therefore, though the said order can be revisioned but the remedy under Section 482 of Code of 1973 is not a bar to

approach this Court. Therefore, the submissions canvassed on behalf of the learned APP is not acceptable to my judicial conscious.

12. It is not in dispute that the Applicant is one of the Directors of M/s. Syngenta India Limited, registered under the provisions of the Indian Companies Act. Therefore, the Company is the legal person. It is a matter of record that the Complainant- Mr. P .P. Vibhandik, the Inspector Legal Metrology Department visited the premises of M/s. Paras Krishi Kendra at Pachora on 9th July, 2018, and during the course of inspection of the said establishment he noticed the packaged brand of "Gramoxone" kept for sale. Said commodities are manufactured by M/s. Syngenta India Limited. The Complainant found that the manufacturer has not maintained the height of numeral in the declaration as required, which constitutes an offence under Section 18 of the Legal Metrology Act, 2009 read with Rule 7 (2), hence, he has instituted a complaint before the Judicial Magistrate F.C, Pachora. Accordingly, on 8th July, 2019, the learned Magistrate issued the summons against the Applicant/Accused.

13. Section 49 of the Legal Metrology Act, 2009 deals with the offences by companies and power of Court to publish name, place of business, etc., for companies convicted. Sub-Section 1 (a) and (b) of Section 49 reads as under:

"(1) Where an offence under this Act has been committed by a company,—
(a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as a person responsible); or
(ii) where no person has been nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and

(b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence."

14. Rule 18 of Legal Metrology (packaged Commodities) Rules, 2011 reads as under:

"18. Provisions relating to wholesale dealer and retail dealers.- (1) No wholesale dealer or retail dealer or importer shall sell, distribute, deliver, display or store for sale any commodity in the packaged form unless the package complies with in all respects, the provisions of the Act and these rules.

(2) No retail dealer or other person including manufacturer, packer, importer and wholesale dealer shall make any sale of any commodity in packed form at a price exceeding the retail sale price thereof.

(3) Where, after any commodity has been pre-packed for sale, any tax payable in relation to such commodity is revised, the retail dealer or any other person shall not make any retail sale of such commodity at a price exceeding the revised retail sale price, communicated to him by the manufacturer, or where the manufacturer is not the packer, the packer, and it shall be, the duty of the manufacturer or packer as the case may be, to indicate by not less than two advertisements in one or more newspapers and also by circulation of notices to the dealers and to the Director in the Central Government and Controllers of Legal Metrology in the States and Union Territories, the revised prices of such packages but the difference

between the price marked on the package and the revised price shall not, in any case, be higher than the extent of increase in the tax or in the case of imposition of fresh tax higher than the fresh tax so imposed:

Provided that publication in any newspaper, of such revised price shall not be necessary where such revision is due to any increase in, or imposition or, any tax payable under any law made by the State Legislation:

Provided further that the retail dealer or other person, shall not charge such revised prices in relation to any packages except those packages which bear marking indicating that they were pre-packed in the month in which such tax has been revised or fresh tax has been imposed or in the month immediately following the month aforesaid;

Provided also that where the revised prices are lower than the price marked on the package, the retail dealer or other person shall not charge any price in excess of the revised price, irrespective of the month in which the commodity was pre-packed.

(4) Nothing in sub-rule (3) shall apply to a package which is not required,under these rules to indicate the month and the year in which it was pre-packed.

(5) No wholesale dealer or retail dealer or other person shall obliterate, smudge or alter the retail sale price, indicated by the manufacturer or the packer or the importer, as the case may be, on the package or on the label affixed thereto.

(6) The manufacturer or packer or the importer shall not alter the price on the wrapper once printed and used for packing.

(7) All retailers who are covered under the Value Added Tax VAT or Turn Over Tax (TOT) and dealing in packaged commodities whose net content declaration is by weight or volume or a combination thereof shall maintain a electronic weighing machine of at least accuracy class III, with smallest division of at least 1 g, with facility to issue a printed receipt indicating among other things, the gross quantity, price and the like at a prominent place in their retail premises, free of cost, for the benefit of consumers and the consumers may check the weight of their packaged commodities purchased from the shop on such machine."

15. In the case of **Managing Director, M/s Castrol India Ltd.,** *(supra)*, the Hon'ble Supreme Court of India has held that to determine vicarious liability of Officer of Company, clear and categorical statement that he was Incharge of the conduct of business of company in respect of which an offence is alleged to have been committed, is required to be made. If no such statement or averment is made in the complaint that the M.D. was responsible for conduct of business of the company or for commission of any act on the basis of which an offence is alleged to have been committed, the proceeding against the M.D. of Company is liable to be quashed.

16. In case of **Mr. Rohit Gothi Vs. State (Cri. Appln. 2899 of 2017)**, the Co-ordinate Bench of this Court by Judgment dated 07.11.2017 has held that combine reading of Clauses-A and B of Section 49 of the Act, it is very clear that when the offence is committed by the Company, then the nominated person and the Company both are liable to be prosecuted. The vicarious liability of a nominated person would arise only when the Company is also made an accused. The nominated Director is impleaded as an accused in the event Company commits offence, he being Incharge and responsible to the Company for the conduct of the business of the Company.

17. In the case of **Dr. Vijaypat Singhania and others Vs. State (Cri. Appln. No. 829 of 2015)**, the Co-ordinate Bench of this Court by it's Judgment

dated 03.10.2022 has considered the cases of *Yum Restaurants (India Pvt. V/s. The State of Maharashtra; 2018 (1) FAC91, Rajiv Kashinarayan Tandon & Ors. V/s. The State of Maharashtra; 2018 (1) FAC 401, TVS Motors Company and Ors. V/s. The State of Maharashtra; 2015 (1) FAC 432, Managing Director of M/s Castrol India Ltd.; 2018 ALL M. R. Cri. 465 (SC) and case of Sunil Bharti Mittal V/s. Central Bureau of Investigation; (2015) 4 SCC 609* and held that in absence of averment in respect of role and responsibility of the Directors, in such cases the prosecution against the Directors is not warranted.

18. Similarly, in the case in hand, it *prima facie* appears that the Respondent/Complainant neither impleaded the Company who manufactured the commodities nor impleaded all the Directors of the Company as an accused. Nonetheless, there is no averment as to how the present Applicant is responsible for the business and production of the Company as well as packaging of it's product/commodities. No any specific role is attributed to the present Applicant while packaging the commodities, which is subject matter of the complaint. Therefore, the sole Applicant as a Director of the Company is not liable for the prosecution for offence committed by the Company and no prosecution as against the present Applicant can be continued. Therefore, the Criminal Complaint bearing SCC No. 25 of 2019 pending on the file of Judicial Magistrate First Class, Pachora Dist. Jalgaon is required to be set aside. In view of above discussion, I proceed to pass the following order:

: ORDER :

I. Criminal Application No. 4193 of 2019 is allowed.

II. Criminal Complaint bearing SCC No. 25 of 2019 pending on the file of Judicial Magistrate First Class, Pachora Dist. Jalgaon is hereby quashed and set aside in its entirety. Consequently, the order dated 08.07.2019 passed by the learned Judicial Magistrate First Class, Pachora Dist. Jalgaon is also quashed and set aside.

III. Accordingly, Rule is made absolute in the above terms.

[Y.G. KHOBRAGADE, J.]

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