



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 115 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 116 OF 2018**

Devendra Darda,
Major in age,
Managing Director of
M/s Lokmat Media Pvt. Ltd.,
Having office at Lokmat Bhavan,
Jalna Road, Post Box No. 44,
Aurangabad, Maharashtra, 431003.

... Petitioner***Versus***

1. State of Goa
Represented through Public Prosecutor,
Panaji, Goa.

2. Labour Inspector,
Office of Labour and Employment,
Shram Shakti Bhavan,
Patto Plaza, Panaji, Goa.

...Respondents

Mr. Vishnuprasad A. Lawande with ***Mr. Parimal Redkar***,
Advocates for the Petitioner.

Mr. Gaurish Nagvenkar, Additional Public Prosecutor for
Respondents.

CORAM**: VALMIKI MENEZES, J.****DATED****: 4TH MARCH, 2025.**

JUDGMENT:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Counsel for the parties, the matter is finally heard and disposed of.
3. This common Judgment shall dispose of these Criminal Writ Petitions which challenge order dated 06.07.2017, of the Judicial Magistrate First Class, Panaji in Criminal Case No. LC 83/2016/B (in WPCR No. 115/2018) and Criminal Case No. 71/2016/B (in WPCR No. 116/2018). By the impugned order in both these petitions, the learned Magistrate has issued process/summons to the Petitioner on the complaint instituted by the Labour Commissioner alleging that the Petitioner has committed an offence under Section 17(a) of the Working Journalist and other Newspaper Employee (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Journalist Act and Rules) and under Rule 37(i), (ii), (iii) of the Journalist Rules framed thereunder.
4. The complaint before the Magistrate alleges that the complainant/Labour Inspector on 17.12.2015 had visited the establishment of M/s Lokmat Media Pvt. Ltd, a company

registered under the Companies Act, to carry out inspection of its records, had found that the Petitioner had violated the aforementioned provisions of the Journalist Act and Rules. The complaint further avers that the Petitioner is liable for the punishment for the commission of the aforesaid offences.

5. The impugned order of issuance of process against the Petitioner has been assailed on the following three grounds:

(a) That the offences alleged in the complaint carry a punishment of a fine of only Rs. 200/- (Rupees Two Hundred only) on the commission of the first offence and would be required to be filed within the limitation period of 6 months from date of offence came to the knowledge of the complainant in terms of sub Section (2), clause (a) of Section 468 Cr.P.C.; the complaint being expressly barred by limitation, the Magistrate had no jurisdiction to proceed with the complaint.

(b) That the offences have been alleged primarily against the employer, M/s Lokmat Media Private Limited, which is a body corporate/company defined under Subsection(B) of Section 18 of the Journalist Act and in terms of Subsection(1)(b) of Section 18 thereof, in the event, the complainant is desirous of fastening vicarious criminal liability for the offences on the

Director of the company, necessary statements stating the role of the Director in the affairs of the company ought to have been made in the complaint. The complaint being devoid of the necessary statements to attract vicarious liability under the Journalist Act, complaint has to be quashed as against the Petitioner; issuance of impugned order is consequently to be quashed.

(C) That the offence is based on the allegations made in the complaint, alleged to have been committed by the Director of the company, without impleading the company as an accused in the matter. The complaint was not maintainable against the Director of the company, foisting vicarious criminal liability on him, without the Company being impleaded as an Accused.

6. Mr. Gaurish Nagvenkar, Learned Additional Public Prosecutor has opposed to the said petitions and supported the impugned orders.

7. In addition to the three main grounds raised in the petition, it is also the case of the Petitioner that pursuant to the inspection carried out by the Labour Inspector on 17.12.2015, they were issued a notice of compliance containing three points raised in inspection note, which were duly replied to, by the

employer company in its communication dated 01.02.2016. The employer communicated complete compliance of maintenance of registers and muster roll as required by provisions of the Act and Rules. Despite full compliance with the provisions of the Act, and suppressing this fact, the Labour Inspector had proceeded to file the complaint dated 08.06.2016, about 4 months after having, received the communication of compliance. The Petitioner therefore, alleged that the filing of the complaint is with malafide intention only to harass the Petitioner.

8. Mr. Lawande, learned advocate appearing for the Petitioner, elaborates the aforementioned three submissions contending that when the complaint was expressly barred by limitation, the Magistrate lacked jurisdiction to issue process and the complaint ought to have been dismissed at the threshold. Instead, the learned Magistrate, without examining whether the complaint was filed within limitation and whether the complaint contained necessary statements alleging vicarious criminal liability by the Director of the Company(Petitioner), has proceeded to issue process.

9. He placed reliance upon *Sharad Kumar Singhi V/s Sangita Rane* reported in (2015) 12 Supreme Court Cases 781, wherein the Hon'ble Supreme Court has held that where

prosecution has lodged a private complaint against a body corporate, if it is necessary for the complainant to make specific averments therein as to the role played by each of the Directors of the company, against whom the offence is alleged. The judgement further holds that offence is alleged against the body corporate/company, the Company is primary accused and the specific allegations are required to be made against its officers/Directors of the body corporate as to whether they were responsible for a particular act on the part of the body corporate.

10. It was further submitted that, as in the present case, the only penalty contemplated by Section 17 or under Rule 37, was a fine of ₹200/- (Rupees Two Hundred only) and in terms of Section 468 of Cr.P.C., the limitation prescribed for filing of the complaint in such cases was 6 months from the date, the alleged offence came to the knowledge of the complainant. It is submitted that in the present case, the offence is within the knowledge of the complainant on the date of the inspection i.e. on 17.12.2015, while the complaint has been lodged/presented before the Magistrate 12.07.2016(in WPCR No. 115/2018) and on 21.06.2016 (in WPCR No.116/2018) and therefore, the complaints are expressly barred by limitation. The Magistrate therefore lacks the jurisdiction to issue process in both these cases.

11. From a plain reading of the complaint, it is clear that the necessary averments that were required to be made in the complaint, alleging the role played by the Petitioner, who was accused of the offence are totally missing. In other words, the complaint is devoid of statements of the allegations required to be stated in the complaint to maintain a case against the Accused, who are stated to be Directors of the company. It may be further noted that it is only the Director who is made Accused in the complaint without arraying the body corporate/company of which the Accused is alleged to be Director as an Accused. The law as laid down in ***Sharad Kumar Sanghi***(supra) would therefore, squarely apply to the facts of the present case. In ***Sharad Kumar Sanghi*** (supra), the Hon'ble Supreme Court has considered the effect of the absence of statements in the complaint, alleging the role of the Director of the body corporate. It has considered the maintainability of a complaint where the Company has not been impleaded as an Accused to the complaint. The Judgment has considered the vicarious criminal liability of a Director of a Company in relation to the provisions of the Negotiable Instruments Act. There it was held as under:

“ 9. The allegations which find place against the Managing Director in his personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the

vicarious liability. In Maksud Saiyed v. State of Gujarat, it has been held, thus: (SCC p. 674, para 13)

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. 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. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liability. 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."

11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, the Company has not been made a party and. therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. in the context of the Negotiable Instruments Act, 1881.

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the

criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly, we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.”

12. The ratio laid down in ***Sharad Kumar Sanghi*** (supra) applies in all force to the facts of the present case. There is no statement made in the complaint, alleging the role played by the Director of the company and how he was responsible for the acts of the Company. Further the Company has not been impleaded as an Accused. In the absence of such averments, which are mandatory and required to be made in the complaint, the order of issuance of the process is without jurisdiction.

13. Section 17(a) of the Act prescribes the punishment and fine to be imposed by the Magistrate of ₹200/- (Rupees Two Hundred only) on the commission of the 1st offence and ₹500/- (Rupees Five Hundred only) on subsequent commission.

Section 18 of the Journalist Act specifically bars a Court from taking cognizance of the offence under said Act where the complaint is filed beyond the period of six months from the offence alleged to have been committed. The offence having been alleged to have taken place on 17.12.2015, the complainant was *ex facie* barred by the provisions of Section 18 of the Journalist Act. Even otherwise the offence was barred by Section 468 of Cr.P.C, as conviction under Section 17 of the

Act attracts a fine of only ₹200/- or ₹500/-. The complaint would be barred by limitation under Section 468 Cr.P.C. and the learned Magistrate would have no jurisdiction to proceed with the case.

14. I am mindful of the position that the impugned orders being otherwise revisable, ought to have been challenged in a Criminal Revision Application before the Sessions Court. However, I find that this is a glaring enough case, where the Magistrate has proceeded totally without jurisdiction, to exercise supervisory powers vested in this Court under Article 227 of the Constitution of India to right the injustice caused to the Petitioner. Further, this Court, notwithstanding the fact that the Petitioner may have recourse to the remedy of revision, is vested with inherent powers under Sections 482 and 483 of the Cr.P.C. which may be exercised to secure the ends of justice. I am fortified in taking this view by a Judgment of the Supreme Court in *Dhariwal Tobacco Products Limited and ors V/s State of Maharashtra and anr.* reported in (2009) 2 *Supreme Court Cases* 370, where at para 6, 7 and 8 it is quoted as below:

“6. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur v. State of Punjab to Som Mittal v. Govt. of Karnataka has laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a

bar for entertaining an application under Section 482 of the Code. Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908, this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai.) Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Session is barred under Section 397(2) of the Code, the inherent power of the Court has been held to be available.

7. The power of the High Court can be exercised not only in terms of Section 482 of the Code but also in terms of Section 483 thereof. The said provision reads thus: "483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.— Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."

The inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of. (See Krishnan v. Krishnaveni.)

8. In fact in Adalat Prasad v. Rooplal Jindal to which reference has been made by the learned Single Judge of the Bombay High Court in V.K. Jain, this Court has clearly opined that when a process is issued, the provisions of Section 482 of the Code can be resorted to. It may be true, as has been noticed by the High Court that thereunder availability of appellate or revisional jurisdiction of the High Court did not fall for its consideration but in our considered opinion it is wholly preposterous to hold that Adalat Prasad so far as it related to invoking the inherent jurisdiction of the High Court is concerned, did not lay down good law. The High Court in saying so did not only read the said judgment

in its proper perspective: it misdirected itself in saying so as it did not pose unto itself a correct question.”

15. For the aforesaid reasons, the impugned orders cannot be sustained and have to be quashed and set aside. Accordingly, both impugned orders dated 06.07.2017 of the Magistrate of issuing process passed in Criminal Case No. LC 83/2016/B (in WPCR No. 115/2018) and Criminal Case No. 71/2016/B (in WPCR No. 116/2018) are quashed and set aside. Consequently, Writ Petitions are allowed.

16. Rule is made absolute in terms of prayer clause (a) of the petitions. No order as to costs.

VALMIKI MENEZES, J.