



(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.716 OF 2025

Mukesh s/o Hari Butani,
Aged about 60 Years,
R/o N-134, Panchsheel Park,
New Delhi – 110017.

..... APPLICANT

// VERSUS //

State of Maharashtra through
the Inspector, Legal Metrology,
Amravati Division No.3,
having Office at 2, Anand, State
Bank Colony, Near Dr. Borade's
Hospital, Central Jail Road,
Camp, Amravati – 444 602.

.....NON-APPLICANT

Mr. H. V. Thakur, Advocate along with Mr. Parth Ranade, Advocate
for applicant.

Mr. H. D. Dubey, APP for the non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 23.01.2026
PRONOUNCED ON : 03.02.2026

JUDGMENT :

1. Heard.

2. **Admit.**

3. Heard finally with the consent of the learned counsel for
the applicant and learned APP for the State.

4. The application filed under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 challenging the proceeding

Summary Criminal Case No.1129/2015 filed by the Inspector of Legal Metrology, pending before the 5th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Amravati, for quashing.

5. The criminal complaint is filed against the present applicant alleging that the complainant is the Inspector of Legal Metrology appointed under Section 14 of the Metrology Act, 2009 and empowered under Sections 13 and 14 of the said Act and also as per Section 190 of the Criminal Procedure Code, 1973 to prosecute the accused under Legal Metrology Act.

6. As per his allegation, during inspection visit to the premises of M/s Walmart India Private Ltd. and on inspection of the sealed packages of "Sensodyne Ultra-Sensitive (Specially Designed for people with sensitive teeth), Fresh Gel". It reveals that the manufacturer has not written name and address of manufacturer, commodity name, total number of the retail packages. These packages were kept for sale in premises with the suppliers tax invoice No.11587283 of M/s. Glaxo Smithkline Consumer Healthcare Limited, Building No. E-13, Shree Krishna Complex, Harihar Compound, Near Gajanan Petrol Pump, Bhiwandi, Thane. It is further alleged that accused is the supplier/dealer of M/s Glaxo Smithkline Consumer Healthcare Ltd. had committed a breach of Section 18(1) of the Legal Metrology Act, 2009 and Rules 24 of the Legal Metrology (Packaged Commodities) Rules, 2011 and is,

therefore, guilty of the offence punishable under Section 36(1) of Legal Metrology Act, 2009.

7. On receipt of the complaint, the learned Magistrate has taken cognizance and issued the process against the present applicant.

8. Being aggrieved and dissatisfied with the issuance of the process, present application is preferred by the applicant for quashing of the FIR on the ground that the learned Magistrate has not considered the allegations which do not *prima facie* disclose commission of any alleged offence by the accused. In fact, there are no specific allegations against the accused i.e. the present applicant to connect him with the alleged offence. Though, he is the Director of the said company M/s. Glaxo Smithkline Consumer Healthcare Limited, but there is no whisper in the complaint that he is responsible for the day-to-day activities of the said companies and responsible for the act committed by the company. In fact, the company was not being made an accused in the complaint and the allegations about the commission of the offence is made out against the company is not sustainable. For this ground itself, the order of issuance of the process deserves to be quashed and set aside.

9. Heard learned counsel Mr. Harish V. Thakur for the applicant, who reiterated the contentions and submitted that the complaint is silent in respect of the role of the present applicant.

(4)

There is no averment in the complaint that either the applicant is in-charge of the said company where the goods were manufactured. Even it is not the case of the complainant that the applicant is in-charge of the day-to-day affairs of the said M/s. Glaxo Smithkline Consumer Healthcare Limited. He further submitted that the complaint is nothing but an outcome of non-application of mind and the complainant himself is not shown as to whether the applicant is the Director, dealer of the said company or not.

10. Per contra, learned APP strongly opposed the said contention and submitted that being Director, the present applicant is responsible for the day-to-day activities of the said company and therefore, learned Magistrate has rightly considered this aspect and rightly issued the process against the present applicant.

11. In support of the contention, learned counsel for the applicant placed reliance on following judgments:-

(i) Sharad Kumar Sanghi Vs. Sangita Rane reported in **(2015) 12 SCC 781,**

(ii) Gautam Hari Singhania Vs. State of Maharashtra, through S. M. Saraf reported in **2023 SCC OnLine Bom. 1254,**

(iii) TVS Motor Company Limited vs. State of Maharashtra in Criminal Application (APL) No.437/2013 decided on 28.10.2014,

(iv) Mr. Rajiv Kashinarayan Tandon Vs. The State of Maharashtra in Criminal Application (APL) No.48/2018 and connected application, decided on 21.02.2028 and,

(v) Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd., and others Etc. in Criminal Appeal Nos.1047-1048/2021 decided on 27.09.2021.

12. In order to appreciate the submissions made by the learned counsel for the applicant, I have perused the record and proceedings. Sub-section (1) of Section 49, which is relevant for the purpose of this Section is extracted below:

"49. Offences by companies and power of Court to publish name, place of business, etc., for companies convicted.- (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 the punished accordingly:

Provided that nothing contained in this subsection 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."

13. Thus, in view of Section 49, no person was nominated to exercise the powers as required under sub-section (2) of Section

(6)

49 of the Act of 2009. No statement has been made by the complainant to counter the said contention. It is seen that Section 49 sub-section (1) provides complete mechanism for fixing the vicarious liability of the Managing Director/Directors in case of the offences committed by the company. Perusal of the complaint would show that no specific averments have been made in the complaint to fasten the vicarious liability on the applicant and other Directors. Similarly, no role at all has been attributed to the present applicant in the commission of crime. Until and unless a specific averment is made in the complaint that Managing Director or Director was in-charge of and was responsible to the company for the conduct of the business of the company or the Director is the in-charge of the company, the learned Magistrate should not have taken cognizance against the applicant and other Directors. Admittedly, the company is **not** arrayed as an accused. It is alleged that the offence was committed by the company. As far as the company is concerned, admittedly, the company is not made an accused.

Corrected as per
Court's order
Dated 13.02.2026

14. As per the allegations, there is violation of 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

(7)

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.

(8)

(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.

(8)(1) All the marketing companies, manufacturers, packers, importers or distributors of Liquefied Petroleum Gas cylinder shall maintain a check wiegher or non-atomatic weighing instrument, digital or analogue, of Accuracy class-III (Max. 50 Kg, e=10g) to check the weight of the Liquefied Petroleum Gas cylinder

(2) The marketing companies, manufacturers, packers, importers or distributors referred to in sub-rule (1), shall provide to the delivery man to measure or weigh the correct quantity of the liquefied Petroleum Gas cylinder."

15. Thus, as per the prosecution, the co-accused Bhushan Sureshrao Choudhary and Amar Sureshrao Bhidkar were the dealers of the said articles namely Sensodyne Ultra-Sensitive Fresh Gel and the present applicant is made an accused in his capacity as an

independent Director of Glaxo Smithkline Consumer Healthcare Limited. As far as the complaint is concerned, admittedly, it is completely silent in respect of the role of the present applicant. In view of Section 49 (1)(a)(ii) of the Act, all the applicants, who are Directors are responsible and they have joined as accused persons. It is to be noted here that the company is not joined as an accused in the present complaint. Section 49(1)(a)(ii) of the Act comes into picture only when the offences are committed by the company. Furthermore, the complaint is totally silent in respect of role of the present applicant. The law is well crystallized by the Hon'ble Apex Court as it could have been seen from the decision of the Hon'ble Apex Court in the case of **Pepsico India Holdings Private Limited .Vs. Food Inspector and another**; reported in **(2011) 1 SCC 176**, wherein it is held in para No.50 as under:

"50. As mentioned hereinbefore, the High Court erred in giving its own interpretation to the decision of this Court in S.M.S. Pharmaceuticals Ltd.'s case (supra), which was reiterated subsequently in several judgments, some of which have been indicated hereinabove, and relying instead on the decision of Rangachari's case (supra), the facts of which were entirely different from the facts of this case. It is now well established that in a complaint against a Company and its Directors, the Complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company."

16. In the case of **Sharad Kumar Sanghi Vs. Sangita Rane** (referred supra), wherein also it is held that though the allegations are against the Company, the company has not been made a party and, therefore, the allegations are restricted to the Managing Director. The allegations are vague and in fact, the same are principally levelled against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as an accused, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. 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.

17. In addition to the aforesaid observations, admittedly, the company itself is not made an accused. Further, the facts and circumstances on record shows that the Glaxo Smithkline Consumer Healthcare Limited in view of the order passed by the National Company Law Tribunal, Mumbai was merged and amalgamated with another company Hindustan Unilever Limited with effect from 01.04.2020. The present applicant is made an accused in his capacity as an independent Director of Glaxo Smithkline Consumer Healthcare Limited without specifying his role or without specifying how he is concerned with the day-to-day affairs of the said company.

18. Admittedly, the learned Magistrate has not recorded his satisfaction while issuing the summons or issuing the process against the present applicant. In order to issuing the summons learned Magistrate has to record his satisfaction about the *prima facie* as against the present applicant and the role played by him in the capacity of Director which is a *sine qua non* for initiating a criminal action against him. It is now well settled that summoning of an accused in criminal case is a serious matter. The Magistrate has to record satisfaction about prima facie case while summoning order. Where the Magistrate is exercising a jurisdiction on a complaint filed either under 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 himself the correct question i.e. as to whether the complainant petition, even if accepted at its face value and taken to be correct in its entirety, would lead to the conclusion that the applicant herein was personally liable for any offence. Vicarious liability of the Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. 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.

19. The Hon'ble Apex Court in the case of **Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749**, has observed in para 28, which reads as under:

"28. Summoning of 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. The Magistrate has to carefully scrutinise 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."

20. By applying all these principles laid down by the Hon'ble Apex Court, admittedly, in my view, the complaint cannot proceed further against the present applicant since there are no averments in the complaint that the applicant being in-charge of the company and liable for the day-to-day activities, and therefore, liable for prosecution in individual capacity. In the result, the entire

(13)

complaint is required to be quashed against the present applicant.

In view of that, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The Summary Criminal Case No.1129/2015 pending on the file of 5th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Amravati, is hereby quashed and set aside to the extent of the present applicant.

(iii) The order passed issuing the summons to the present applicant as well as the subsequent orders passed below Exhs.2 and 3 are also quashed and set aside.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)