



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.223 OF 2023

Mr. Gautam Hari Singhania,
S/o Vijaypat Singhania,
Aged about 57 years
Chairman and Managing Director,
Raymond Limited,
Having its registered office
at Plot No.156, H. No.2, Village Zadgaon
Ratnagiri, Maharashtra-415612

... APPLICANT

// VERSUS //

State of Maharashtra,
Through Shri S.M. Saraf,
Inspector of Legal Metrology,
Nagpur-4 Division,
Plot No.19, Bhange Sadan,
Gazetted Officers Colony,
Civil Lines, Central Museum
Road, Nagpur-440001

... NON APPLICANT

Shri H.V. Thakur, Advocate for the applicant.
Shri Amit Chutke, APP for the non-applicant/State.

CORAM : G. A. SANAP, J.
DATED:- 08/06/2023

ORAL JUDGMENT

1. Heard.
2. **ADMIT.** Taken up for final disposal forthwith by the consent of learned Advocates for the parties.
3. In this application, the applicant has questioned correctness of the order dated 19.05.2014 passed by the learned Judicial Magistrate, First Class, Court No.4, Nagpur, whereby the learned Magistrate was pleased to issue process for the offences under Sections 18(1), 49 and 36 (1) of the Legal Metrology Act, 2009 (hereinafter referred to as “the Act of 2009” for short) read with Rule 18(1) and 24 of Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter referred to as “the Rules of 2011” for short).
4. Shri S.N. Saraf, Inspector of Legal Metrology, Nagpur – 4 Division, Nagpur filed a complaint against the company by name Raymond Limited and the applicant, being Managing Director of the said company. The

remaining directors were also made accused. It is stated in the complaint that the Inspector of the Legal Metrology during his visit to the establishment of Reliance Trends Ltd., at Nagpur, noticed one cardboard package of fabric of the company Raymond Limited. The said package did not contain a declaration about the name of the commodity, name and particulars of manufacturer, packer, number of pieces etc. The Inspector drew the panchanama and seized the said package. The Inspector, Legal Metrology issued a compounding notice to the company, which was duly replied on 07.01.2014, disputing the charges. The Inspector, Legal Metrology Department filed the complaint before the Judicial Magistrate, First Class, Nagpur against the present applicant and other directors of the company alleging that the above violations constitute an offence under the Act of 2009. The learned Judicial Magistrate, First Class, Nagpur took cognizance and issued process against the applicant and other directors.

5. It is the case of the applicant that the remaining Directors of the company, against whom process was issued by the learned Magistrate, had approached this Court against the order passed by the learned Judicial Magistrate, First Class, Nagpur. The Co-ordinate Bench of this Court on 03.10.2022 allowed the criminal application i.e. APL No.829 of 2015 filed by eight directors of the company and quashed and set aside the order of issuance of process against them.

6. Learned Advocate for the applicant submitted that the learned Magistrate mechanically passed the order of issuance of process. Learned Advocate submitted that in view of the facts stated in the complaint, the learned Magistrate ought to have taken into consideration the provisions of Section 49 of the Act of 2009. Learned Advocate submitted that in view of the provisions of Section 49 of the Act of

2009, the order of issuance of process on the basis of the averments made in the complaint cannot be sustained. Learned Advocate submitted that in order to fasten the vicarious liability on the applicant being Managing Director, there must be specific averments in the complaint attributing specific role to the applicant. Learned Advocate submitted that no person was nominated by the company in terms of sub-section 2 of Section 49 of Act of 2009 to exercise the powers on behalf of the Company. Learned Advocate submitted that there is no averment in the complaint that the applicant was in-charge of and was responsible to the company for the conduct of the business of the company. Learned Advocate submitted that in absence of such averment in the complaint, the Magistrate should not have issued process against the applicant and other Directors. Learned Advocate submitted that the co-ordinate bench of this Court has quashed and set aside the order of issuance of process against the remaining Directors and, therefore, the

same view is required to be taken in the case of the applicant. Learned Advocate, in order to substantiate his submission, has relied upon the decision in the case of *Managing Director, Castrol India Limited Vs. State of Karnataka and another* reported in *(2018) 17 SCC 275*. In this case, Hon'ble Apex Court has held that in order to make Managing Director/Director vicariously liable for the acts of the company, there must be clear and categorical statement in the complaint, specifying the role played by the Director/Managing Director. It is held that until and unless such averment is made, the vicarious liability cannot be fastened. It is further held that in absence of specific allegation in the complaint attributing role to the Director or Managing Director in the commission of offence, the criminal proceedings cannot continue.

7. Learned APP for the State submitted that only difference between the case of the applicant and the

remaining directors was that by his designation the applicant, would be required to face the prosecution.

8. In order to appreciate the rival submissions, I have perused the record and proceedings. Sub-section (1) of Section 49, which is relevant for the purpose of this application, 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 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.”

9. In this case, it is contended by of the applicant that no person was nominated to exercise the powers as required under sub-section (2) of Section 49 of the Act of 2009. No statement has been made in the reply filed by the prosecution to counter the statement. 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 accused 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, the learned Magistrate should not have taken cognizance against the applicant and other Directors. It is true that the company is arrayed as accused. It is alleged that the offence was committed by the company. As far as the company is concerned, no application has been made for quashing the order of issuance of process. In the facts and circumstances, the vicarious liability of the Managing Director/Director would arise by deeming fiction and, therefore, the necessary averments are required to be made in the complaint to fasten the vicarious liability on the Directors. Perusal of the complaint and particularly para No.7 thereof, would show that the averments are as vague as the vagueness could be. The relevant statement has been made in the para No.7 of the complaint. It is extracted below:-

*“The Accused is the Owner/Partner/Director/Manager of the shop/stall/Factory etc. situated at :
1) Gautam Hari Singhania-Managing director and all other director 2) Raymond Limited, building no.A1 B1, Saidhara complex, Mumbai Nasik Highway, village Kukse, Borivali, Bhiwandi Dist.*

Thane- 421302.”

10. Perusal of the above averments would show that besides stating the name of the company, it has been pleaded in generalized form that the accused is either owner or partner or director of the company. It is seen that no specific averments have been made to attribute any role in any capacity to the applicant and as such, fasten the liability for prosecution on the accused. In my view, learned Magistrate has not considered this fact.

11. It is further seen that considering the scheme of the Act, particularly the provisions of Section 49 of the Act of 2009, learned Magistrate, before issuing process, was required to apply his mind to the provisions of law and the facts. Learned Magistrate was required to record his *prima-facie* satisfaction about the role of the applicant before issuing process against him. Learned Magistrate, as can be seen from the order, has mechanically issued the process.

12. It is, therefore, apparent that on both counts, the order passed by the learned Magistrate cannot be sustained. The continuation of prosecution against the applicant in the above facts and circumstances would be an abuse of process of law.

13. Accordingly, the application is allowed.

The order dated 19/05/2014 passed by the learned Judicial Magistrate, First Class, Nagpur issuing process is quashed and set aside to the extent of applicant – Shri Gautam Hari Singhania s/o Vijaypat Singhania.

14. The criminal application stands disposed of accordingly.

JUDGE

manisha