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**(2001) 11 BOM CK 0023**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 276 of 1995

Dom Fernandez

APPELLANT

Vs

V.M. Shevade and Another

RESPONDENT

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**Date of Decision :** 02-11-2001

**Acts Referred:**

Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 — Section 3(3), 39

**Citation :** (2002) 2 MhLj 281

**Hon'ble Judges :** D.G. Deshpande, J

**Bench :** Single Bench

**Advocate :** K.G. Menon, holding for J.L. Phaujar, for the Appellant; Pravin Singhal, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

D.G. Deshpande, J.—Heard learned counsel Mr. Menon for the petitioner and learned APP for the State/respondent No. 2.

2. Mr. Menon states that he has given an intimation of today's hearing to the office of the inspector Shevade as directed by this court yesterday. However, nobody is present for respondent No. 1.

3. The question involved in this case is, whether the petitioner who was original accused No. 3 can be said to be an employer within the meaning of the Maharashtra Private Security Guards (Regulation of Employment and welfare) Act, 1981 (hereinafter referred as "the Act"). The word "Employer" is defined in Sub-section (3) of Section 3 of the said Act and also there is a definition of word "Principal Employer" :

"employer", in relation to a security Guard engaged by or through an agency or agent, means the principal employer, and in relation to any other Security Guard, the person who has ultimate control over the affairs of the factory or establishment and includes any other person to whom the affairs of such factory

or establishment are entrusted, whether such person is called an Agent, Manager or by any other name prevailing in the factory or establishment";

"principal employer" means an employer who has engaged Security Guards through an agency or agent";

3. The petitioner was accused No. 3 in the complaint filed by Respondent No. 1 before the Metropolitan Magistrate, 30th Court, at Ballard Estate, Bombay. Original accused No. 1 was Standard Chartered Bank and original accused No. 2 was John Docherthy and the present petitioner was the original accused No. 3. It was the allegation in the complaint that on 2-3-1994 the complainant visited the establishment of the accused Nos. 1 and 2 at 2325, Mahatma Gandhi Road, Bombay. At that time accused No. 3 was present. On further inquiries the complainant learnt that the accused were engaging three security guards through M/s. Jay Detectives and Investigators. A correspondence between the complainant and original accused Nos. 1 and 2 followed thereafter and, the complainant was informed by the accused by letter dated 25-4-1994 that they have terminated the services of Jay Detectives and investigators and have engaged the guards through M/s. Allwyn Security services.

4. It is in this background, the complaint filed by the complainant against the three accused u/s 39 read with Section 3(3) of the aforesaid Act.

5. The contention of the petitioner is that, he is not the employer because even if he was the Manager/Administration at the relevant time of which original accused No. 2 was the Chief Executive India. According to the counsel for the petitioner, even if, the definition of word "Employer" under Sub-section (3) of Section 2 is taken into consideration, it clearly exonerates, the petitioner because even if accused No. 1 has engaged three guards through Jay Detectives and Investigators, the employer was original accused No. 1 Bank.

6. The definition of word "Employer", given in the said Act reproduced above, shows that employer, in relation to a security guard engaged by or through an agency or agent means the principal employer. Admittedly, in this case, the principal employer is the original accused No. 1 who engaged three security guards through agency or agent Jay Detectives and investigators. The petitioner in these circumstances and in view of the aforesaid definition is certainly not principal employer though he may be employee of the Bank in the capacity of Manager/Administration.

7. Very short point as aforesaid is involved and since the interpretation of the word "Employer" exonerates the petitioner, the petition is required to be allowed. Hence the order:--

ORDER

The revision application is allowed.

The complaint filed by Respondent No. 1 is quashed so far as it relates to the

present petitioner.

No order as to costs.