
(2010) 05 BOM CK 0006

In the Bombay High Court

Case No : C.A.J. Criminal W.P. No. 1986 to 1992 of 2009

ICICI Bank Ltd. and Ors.

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

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

Citation : (2011) 2 LLJ 46

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : J.P. Cama and R.S. Pai, Faisal Sayyed, Mayur Bhojwani, i./b., Manilal Kher Ambalal and Co, for the Appellant; J.P. Kharge, Lata Desai, Bhavana Solanki and Pallavi Divekar, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Rule in all the matters, returnable forthwith. Heard by consent.

2. The learned Counsel for the Petitioners seeks leave to withdraw the petitions in so far as Petitioner No. 1 is concerned with liberty to make an appropriate application before the learned trial Court. The petitions therefore stand disposed of as withdrawn in so far as Petitioner No. 1 is concerned. The petitions are therefore restricted only in so far as the case of the remaining Petitioners except the Petitioner No. 1 are concerned.

3. In all these matters Petitioners are either the Managing Directors or officers of the original Petitioner No. 1. Since the facts and issues are identical in all the matters, they are disposed of by this common order.

4. The Respondent No. 2 herein filed complaints alleging therein that the accused are employing Private Security Guards in contravention of Clause 14 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 1981. It has been averred that the accused are the employers within

the meaning of Clause 14 of the said Scheme. It has further been averred that the accused also committed an offence under Clause 39 of the said Scheme read with Section 3(3) of The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981.

5. The learned Magistrate issued process in the said complaints. Being aggrieved thereby, criminal revision applications were filed before the learned Sessions Judge. The learned Sessions Judge vide common judgment and order passed in all these revisions dated April 1, 2009 dismissed the revisions, hence the present petitions.

6. The basic contention of the Petitioners is that the Petitioners are either the Managing Directors or employees of the accused No. 1. It is submitted that they cannot be held vicariously liable for the offences committed by the accused No. 1 and therefore criminal proceedings in so far as the present Petitioners are concerned are liable to be quashed and set aside.

7. The learned Counsel for the Respondent No. 2 on the contrary submits that apart from the accused No. 1 rest of the accused are arrayed as accused in their capacity as employers and as such there is no question of vicarious liability. It is submitted that as such no case is made out for interference.

8. While dealing with a similar issue in Writ Petition No. 1773/2009 Tops Security Ltd. and Anr. v. S.P. Aspingekar, Inspector, Security Guard Board for Greater Mumbai and Thane District and Another relying on the judgment of the Apex Court in the case of S.K. Alagh Vs. State of U.P. and Others, , I have held that unless a statute specifically provides for vicarious liability of a director or any other employee for an offence committed by the employer such a director or employee cannot be vicariously held liable. While considering the provisions of the Act along with provisions of 2002 Scheme, specifically Clause 42(2) of the said Scheme, I have held that unless the conditions specified in sub Clause 2 of Clause 42 are satisfied, a director or an officer of an employee cannot be made liable for offences committed by an employer.

9. However it is to be noted that the present cases are under 1981 Scheme. Clause 39 in the said Scheme which deals with penalties, reads as under:

Penalties: Whoever contravenes the provisions of Clause 14, 26 or 27 shall on conviction be punished with imprisonment for term of three months or with fine which may extend to rupees five hundred or with both, where such contravention is a first contravention; and with imprisonment for a term of six months or with fine which may extend to rupees one thousand or with both, where such contravention is any subsequent contravention. If the contravention is continued further after conviction he shall be punished with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued.

It could thus be seen that under the 1981 Scheme under consideration there is

not even a provision for vicarious liability as provided under Clause 2 of Clause 42 of the 2002 Scheme.

10. In this background it will be necessary to refer to the averments made in the complaints in so far as the present Petitioners are concerned:

Accused No. 1 is an Establishment. The Accused No. 2 is Managing Director and Accused No. 3 is a HRD Head of Accused No. 1. They are the person who are in charge of and have ultimate control over the affairs of Accused No. 1. The Accused are therefore employers within the meaning of the said Act and the Scheme.

It could thus be seen the Petitioners are arrayed on account of the vicarious liability of they being directors or officers of accused No. 1. From perusal of the complaints it would reveal that there is no whisper regarding any specific act by any of the Petitioners so as to constitute an offence. In these circumstances, I find that the complaints against the present Petitioners are not maintainable in law.

11. In that view of the matter, the petitions in so far as the Petitioners except Petitioner No. 1 are concerned, the rule is made absolute in terms of prayer Clauses (a) and (b).