



CRL.P No. 6595 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 6595 OF 2022

BETWEEN:

1. MR. KANDULA RAGHAVA RAO
S/O KANDULA RAMA RAO
AGED ABOUT 50 YEARS
DIRECTOR
AMAZON SELLER SERVICE PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE
AT 8TH FLOOR
BRIGADE WORLD TRADE CENTER
26/1, DR. RAJKUMAR ROAD
BENGALURU - 560 055.
2. MR. NOORULAMIN MOHD. SAHEB PATEL
S/O MOHD. SAHEB ISMAIL PATEL
AGED ABOUT 50 YEARS
DIRECTOR
AMAZON SELLER SERVICE PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
8TH FLOOR, BRIGADE WORLD TRADE CENTER
26/1, DR. RAJKUMAR ROAD
BENGALURU - 560 055.

...PETITIONERS

(BY SRI. SANDESH J. CHOUTA SR. COUNSEL FOR
SRI. VIKRAM UNNI RAJAGOPAL, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY INDIRANAGAR POLICE STATION
THROUGH EXCISE SUB-INSPECTOR
BENGALURU - 560 038





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REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
AMBEDKAR VEEDHI
BENGALURU - 560 001.

2. MR. HIDAYATH KHALEEL
INSPECTOR OF EXCISE
DC SQUAD
BANGALORE URBAN DISTRICT - 05
NO. 542, 16TH CROSS
HAL 2ND STAGE, INDIRANAGAR
BENGALURU - 560 038.

...RESPONDENTS

(BY SMT. K.P YASHODHA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CR.P.C. PRAYING TO a) QUASH THE FIR NO.19/2020-21/40IE/400204 DATED:24.10.2020 (ANNEXURE-A) REGISTERED IN RELATION TO OFFENCES UNDER SECTIONS 8, 13(1)(A), 15, 32 AND 38(A) OF KARNATAKA EXCISE ACT, 1965, BY RESPONDENT NO.1. b) QUASH CHARGE SHEET/FINAL REPORT DATED:07.09.2021 BEARING CS/19/2020-21/40IE/400204 (ANNEXURE-B) IN RELATION TO OFFENCES 8,13(1)(A), 15, 32 AND 38(A) OF KARNATAKA EXCISE ACT, 1965, FILED BY THE MR.SOOGURESH (EXCISE SUB INSPECTOR)/RESPONDENT NO.1 IN C.C.NO.11489/2022 PENDING ON THE FILE OF LEARNED METROPOLITAN MAGISTRATE TRAFFIC COURT -1, MAYOHALL, BENGALURU.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are before this Court calling in question charge sheet/final report dated 07.09.2021 in F.I.R.No.19/2020-21/40IE/400204 of Indiranagar Police Station registered for the offence punishable under Sections 8,



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13(1)(a), 15, 32, 34 and 38(A) of the Karnataka Excise Act, 1965.

2. Heard the learned senior counsel Sri.Sandesh J.Chouta for petitioners and Smt. K.P.Yashodha, learned High Court Government Pleader for respondents.

3. Brief facts as borne out from the pleadings are as follows:

The petitioners are Directors of Amazon Seller Service Private Limited, which owns and operates an online market place in the name and style of "Amazon". It is a market place of 'E' commerce. The complainant is the Department of Excise. The Department of Excise purchased certain products from a Company by name "Happy and Healthy Foods" and the purchase is routed through Amazon. Therefore, Amazon in the case at hand is an intermediary, which facilitated the purchase for the Excise Department from the seller "Happy and Healthy Foods". The Department of Excise registers a crime against the petitioners and other accused, on an allegation that the purchases made by them through Amazon – online market, from the hands of "Happy and Healthy Foods" contained alcoholic bitters by name "Angostura Aromatic Bitters", which



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contain 44.7% alcohol in a 200 ml bottle. This was construed to be alcohol that was used for making cocktail and was sold interstate through Amazon – E-market Place without having valid licence from the Department of Excise, State of Karnataka. The further allegation is that, these products were routed through Amazon without paying import duty and additional excise duty. "Happy and Healthy Foods", the seller is charge sheeted along with the petitioners herein, who are members of Amazon, the E-commerce place, on the allegations of violation of provisions of Excise Act as afore-quoted. The Police, after investigation, have filed a charge sheet against the petitioners. On filing of the charge sheet, the petitioners have knocked the doors of this Court in the subject petition.

4. Learned senior counsel Sri.Sandesh J.Chouta appearing for the petitioners, would vehemently contend that the petitioners are hauled into the proceedings though they have nothing to do with the product that is manufactured by "Happy and Healthy Foods" or the purchaser - the Department of Excise. The allegation of not paying excise duty or additional excise duty on the import, can at best be laid against Accused No.1 and not the petitioner, as it has only facilitated through 'E'



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commerce site and placed reliance upon several Judgments. The liability of the intermediary cannot be seen in the case at hand, as there is no violation of any law, committed by an intermediary.

5. Learned senior counsel would further submit that Directors are made as accused in the proceeding without arraigning the company as an accused, as it is 'Amazon Company', which is the intermediary and the Directors are only office bearers of the said company.

6. On the other hand, learned HCGP would seek to justify the action of the Department against the petitioners refuting the contentions of the learned senior counsel, to contend that "Angostura Aromatic Bitters" was a product that was manufactured by "Happy and Healthy Foods", which contain 47% of alcohol and that had to be sent through the intermediary and therefore, cannot escape liability. She would submit that it is a matter of trial for the petitioners to come out clean.

7. I have given my anxious consideration to the submissions made by the learned senior counsel and the HCGP and perused the material on record.



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8. The afore-narrated facts about generation of a complaint by the Department of Excise is not in dispute and therefore, not reiterated. Whether an intermediary can be hauled into the proceedings is no longer *res integra* as this Court while considering an identical circumstance, with regard to the role of an intermediary in the case of **KUNAL BAHL AND OTHERS vs. STATE OF KARNATAKA (CRIMINAL PETITION Nos.100653 and 100652/2021)**, has held as follows:

"8. The petitioners are Directors of Snapdeal Private Limited. It is not in dispute that the petitioners are intermediaries or a platform that would enable sale or purchase of any goods. Whether an intermediary like the Snapdeal Private Limited can be hauled into these proceedings need not detain this Court for long or delve deep into the matter, as this Court in Criminal Petition No.4676 of 2020 and connected matter decided on 7th January 2021 between the same parties and on identical allegations has held that the petitioners being intermediaries cannot be seen to be hauled up in criminal proceedings. Points No.(vi) and (vii) in the aforesaid judgment is what covers the present case on all its fours and are therefore relied on for the purpose of ready reference. They read as under:

"12. Point No. (vi): Whether an intermediary as defined under Section 2(w) of the Information Technology Act would be liable for any action or inaction on party of a vendor/seller making use of the facilities provided by the intermediary in terms of a website or a market place?

12.1 It is stated that Snapdeal has established a a Marketplace on the World



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Wide Web, more popularly known as the internet, enabling a Seller to upload, sell or even 'offer for sale' any product on Snapdeal. For this purpose, a seller has to create an account with Snapdeal and contractually agree to Snapdeal's Terms of Use, Snapdeal's Terms of Offer for Sale, Snapdeal's Policies, Seller Agreement: which contains the basic terms and conditions of selling products over Snapdeal which every Seller has to agree with.

12.2 Snapdeal's business as per its 'Terms of Offer for Sale', is "a platform that facilitates the online sale and purchases of branded merchandise and services ("Services") offered by Snapdeal's various affiliate/ registered merchants/ vendors/ service providers ("Vendor/s").

12.3 Snapdeal being an intermediary can not be disputed, it comes with the meaning and definition of Intermediary under Section 2(1)(w) of the Information Technology Act, 2000, as amended by the Information Technology (Amendment) Act, 2008. Snapdeal would be entitled to the exemption from liability in terms of Section 79 Information Technology Act, 2000 if the requirements thereof are met.

12.4 Snapdeal is not the Seller, it is the Vendors registered with Snapdeal who are the Sellers of products and services on its platform, it is the Vendors who are solely responsible to the purchaser/customer.

12.5 For its part Snapdeal has entered into seller agreements with various sellers, the seller agreements are accompanied by a Schedule of banned products, which categorically includes "21. Prescription Medicines and Drugs".



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12.6 *The Seller Agreement, details out the terms and conditions relevant to the transaction, which are extracted hereinabove.*

12.7 *Snapdeal has also published a document titled 'Prohibited Seller Activities and consequences Policy Document', where one of the Prohibited seller activities is clearly specified to be the sale of the drug subject matter of the present criminal proceedings.*

12.8 *It cannot be expected that the provider or enabler of the online marketplace is aware of all the products sold on its Website. It is only required that such provider or enabler put in place a robust system to inform all sellers on its platform of their responsibilities and obligations under applicable laws in order to discharge its role and obligation as an intermediary. If the same is violated by the Seller of goods or service such seller can be proceeded with but not the intermediary.*

12.9 *The manner in which the above documents have been executed, contents thereof as also the obligation of the parties stated therein establishes the due diligence exercised by Snapdeal to be in accordance with and compliance of Section 79(2)(c) of the Information Technology Act, 2000, read in conjunction with the Information Technology (Intermediaries Guidelines) Rules, 2011, in ensuring that Vendors/Sellers who register on its Website to conduct themselves in accordance with and in compliance with the applicable laws.*

12.10 *The Consumer Protection (E-Commerce) Rules, 2020, makes a*



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distinction between marketplace e-commerce websites and inventory e-commerce websites. As such Snapdeal would come within the meaning of a marketplace e-commerce website, thereby affording the above exemption to Snapdeal so long as the requirements under section 79 are followed by Snapdeal.

12.11 In the present case as detailed above Snapdeal has complied with the requirements of sub-sections (2) and (3) of Section 79, as well as the Information Technology (Intermediaries Guidelines) Rules, 2011.

12.12 In my considered opinion Snapdeal has exercised 'due diligence' under Section 79(2)(c) of the Information Technology Act, 2000, read in conjunction with the Information Technology (Intermediaries Guidelines) Rules, 2011.

12.13 When Snapdeal/Accused to. 2 Company is exempted from any liability under Section 79 of the Information Technology Act, 2000, no violation can ever be attributed or made out against the directors or officers of the intermediary, as the same would be only vicarious, and such proceedings as initiated against them would be unjust and bad in law.

12.14 The only liability of an intermediary under Section 79(3)(b) of the IT Act is to take down third-party content upon receipt of either a court order or a notice by an appropriate government authority and not otherwise, which as per the Complaint filed indicates has been complied with by Snapdeal, by removing 11 the information regarding the sale of the offending item.

12.15 I answer Point No. (vi) by holding that an intermediary as defined under Section 2(w) of the Information Technology



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Act or its directors/officers would not be liable for any action or inaction on part of a vendor/seller making use of the facilities provided by the intermediary in terms of a website or a market place.

13. POINT NO. (vii): Whether Snapdeal/accused No.2 would be responsible and/or liable for sale of any item not complying with the requirements under the Drugs and Cosmetics Act, 1949 on its platform accused No.2 being an intermediary?

13.1 Section 18(1)(c) of the Drugs and Cosmetics Act, 1949 applies to a manufacturer of a drug or cosmetic, coming within the perview and ambit of the Act. Such manufacture is also required to be for sale or for distribution of any drug or cosmetic.

13.2 The only allegation in the present matter is as regards Snapdeal having made available its platform for sale by Accused No.1 of a drug. There are no allegation that Snapdeal has either manufactured for sale or distributed or sold, or stocked or exhibited or offered for sale, any drug or cosmetic.

13.3 Though the platform is owned and operated by Snapdeal it is Accused No. 1, who has exhibited and offered its products for sale on the Snapdeal's platform. Snapdeal being an intermediary is exempt from criminal prosecution as aforesated.

13.4 In this background neither Snapdeal nor its Directors can be or made liable for alleged offences punishable under Section 27(b)(ii) of the Drug and Cosmetics Act.



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13.5 Hence I answer Point No. (vii) by holding that Snapdeal/accused No.2 would not be responsible and/or liable for sale of any item not complying with the requirements under the Drugs and Cosmetics Act, 1949 on its platform by accused No.1 since the essential ingredients of Section 18 (1)(c) of the Act not having been fulfilled neither Snapdeal nor its Directors can be prosecuted for the offence under Section 27(b)(ii) of the Act.

14. Point No. (viii): Effect of delay in filing a Criminal Complaint?

14.1 The object and essence of prompt lodging of FIR had been explained by the Hon'ble Apex Court in State of Andhra Pradesh vs M. Madhusudhan Rao (2008) 15 SCC 582, observed as under:

14.1.1 That delay in lodging the FIR, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought.

14.1.2 That a delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity.

14.1.3 Therefore, it is essential that the delay in lodging the report should be satisfactorily explained. Resultantly, when the substratum of the evidence given by the complainant is found to be unreliable, the prosecution case has to be rejected in its entirety.

14.2 It is in that background that there is required to be a Prompt and early reporting of the incident by the informant with all its vivid details gives an assurance regarding



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its true version. In case, there is some delay in filing the FIR, the complainant must give an explanation for the same.

14.3 In Sahib Singh v. State of Haryana (AIR 1997 SC 3247) and Gorge Pentaiah v. State of A.P. & Ors. (2008) 12 SCC 531 it has been held that delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the Complaint may prove to be fatal. In such cases the Court has to carefully examine the facts before it, for the reason, that the complainant party may initiate criminal proceedings just to harass the other side with mala fide intentions or with ulterior motive of wreaking vengeance. The proceedings before a court ought not to be permitted to degenerate into a weapon of harassment and persecution. In cases, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the Court may take a view that it amounts to an abuse of the process of law.

14.4 In the present case the Complaint was filed with an inordinate delay of nearly six years, though the transaction is stated to have occurred in the year 2014.

14.5 In the Complaint filed there is no explanation or justification w h i c h has been given for the unreasonable delay caused by the Respondent, 14 more so when the Respondent/Complainant is a government official.

14.6 Such a delay would result in arriving at a rebuttable presumption that there was no offence committed.



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14.7 Even if there may be no embellishments, criminal proceedings cannot be initiated after a period of 6 years, irrespective of the applicability of limitation period in terms of Section 468 of the Cr. P.C or not. The only excuse for the delay provided is that the complainant being a government employee the process of obtaining permission to file the complaint took some time. In my considered opinion a period of 6 years cannot be said to be some time. It is required for the state to act with alacrity, the fact that there was a delay of 6 years in filing would itself indicate and/or establish that even the authorities might have probably considered that there is no offence as such made out.

14.8 In the present case, I'am of the considered opinion that there being no acceptable explanation for the highly belated lodging of the Complaint, the delay is fatal to these proceedings.

15. What Order:

16. The answers to the above points formulated are summarised as under:

16.1 The order of Cognisance dated 8.6.2020 is not in compliance with the requirement of Section 191(1)(a) of the Cr.P.C and further does not indicate the procedure under Section 204 of Cr.P.C having been followed. At the time of taking Cognisance and issuance of process, the Court taking Cognisance is required to pass a sufficiently detailed order to support the 15 conclusion to take cognisance and issue process, in terms of the discussion above. The judicious application of mind to the law and facts of the matter, should be apparent on the ex-facie reading of the order of Cognisance.



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16.2 When the accused is having an office, branch office, corporate office, sales office or the like within the Jurisdiction of the Magistrate where the offence has been committed and or continues to be committed, there would be no requirement for any enquiry under Section 202 of Cr.P.C. It would, however, be required for the Magistrate to in the order of issuance of summons/process record as to why the enquiry under Section 202 of Cr.P.C is not being held.

16.3 In the event of accused being an individual, if the said accused has a temporary residence within the Jurisdiction of the Magistrate, again merely because he does not have a permanent residence, there is no enquiry which is required to be conducted under Section 202 of Cr.P.C. It would, however, be required for the Magistrate to in the order of issuance of summons/process record as to why the enquiry under Section 202 of Cr.P.C is not being held.

16.4 When the accused has no presence within the Jurisdiction of the Magistrate where the offence has been committed, then it would be mandatory for an enquiry under Section 202 of the Cr.P.C to be held.

16.5 In the event of accused being aggrieved by the issuance of Summons, the said accused immediately on receipt of the Summons and/or on appearance before the Magistrate is required to make out his grievance before the Magistrate Court and/or by petition under Section 482 Cr.P.C. If there is any delay, in such challenge and/or if challenge has not made within reasonable time, the accused would not be entitled to raise the grievance that the procedure under Section 202 of Cr.P.C. has not been followed on account of delay and latches.



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16.6 Only a Court in which the accused has a presence, like registered office, branch office, corporate office or the like could exercise Jurisdiction as regards an offence relating to an e-commerce transaction.

16.7 This of course would not apply to a Cyber Crime, which comes under global jurisdiction according to the IT Act, 2000. This means that any cyber- crime complaint can be registered with any of the cyber cells in India, irrespective of where the crime was originally committed.

16.8 An intermediary as defined under Section 2(w) of the Information Technology Act or its directors/officers would not be liable for any action or inaction on part of a vendor/seller making use of the facilities provided by the intermediary in terms of a website or a market place.

16.9 An intermediary would not be responsible and/or liable for sale of any item not complying with the requirements under the Drugs and Cosmetics Act, 1949 on its platform since the essential ingredients of Section 18 (1)(c) of the Act not having been fulfilled. Neither Snapdeal nor its Directors can be prosecuted for the offence under Section 27(b)(ii) of the Act.

16.10 There being no acceptable explanation for the highly belated lodging of the Complaint, the delay is fatal to these proceedings.

17. In the result, both the petitions are allowed. The proceedings in C.C.No.156/2020 pending before the Court of the Principal Senior Civil Judge and CJM, Mysuru are quashed."

In the light of an identical issue being answered by a Co-ordinate Bench of this Court holding that intermediaries cannot be



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hauled into criminal proceedings for alleged violation of the provisions of the Act, the subject petitions have to succeed.

9. *No document has been placed before this Court by the respondent-State to demonstrate that the judgment of the Co-ordinate Bench is taken to any higher forum and a stay of the said judgment is operating. In the circumstances, I deem it appropriate to obliterate the impugned proceedings following the judgment rendered by the Co-ordinate Bench (supra).*

10. *For the aforesaid reasons, I pass the following;*

ORDER

(i) The Criminal Petitions are allowed.

(ii) The proceedings in C.C. No.2 of 2019 pending before the JMFC-II Court, Belagavi against the petitioners stand quashed.

(Emphasis supplied)

This Court following the Judgments rendered by the High Court of Bombay in the case of **AMAZON INDIA vs. STATE OF MAHARASHTRA (2021 SCC LONLINE BOM 3631)**, where the Bombay High Court had held that the petitioner therein Amazon, neither seller nor supplier of the product in question could not have been hauled into the proceedings of a crime and has quashed the impugned proceedings therein against '**AMAZON INDIA**'. Therefore, the said issue whether the proceedings against the intermediary can be initiated,



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stands covered on all its fours with the reasons rendered in the afore-quoted judgment and further proceedings, if permitted to be continued would become abuse of process of law. The other issue also goes in favour of the petitioners, Amazon company / Amazon 'E' commerce Company is not made an accused in the proceedings. The petitioners are Directors of the Company. Without arraigning the Company as an accused, the Directors of the company cannot be hauled into the proceedings or proceedings against them cannot be permitted to be continued. The said issue also no longer *res integra*, in the light of the judgment of the Apex Court in the case of **SUSHIL SETHI AND ANOTHER vs. STATE OF ARUNACHAL PRADESH AND OTHERS (2020)3 SCC 240**), wherein the Apex Court holds as follows:

"8.2 It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat, it is observed and held by this Court that 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. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided



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any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that 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. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

(Emphasis supplied)

In the light of the issue standing covered by the aforesaid Judgments and the facts obtaining in the case at hand, permitting further proceedings to continue against the petitioners, would become an abuse of the process of the law and result in miscarriage of justice.

9. For the aforesaid reasons, the following:

ORDER

- i. Criminal Petition is allowed.
- ii. Proceedings in C.C.No.11489/2022 pending on the file of the Metropolitan Magistrate Traffic Court-1, Bengaluru, stand quashed *qua* the petitioners.

**Sd/-
JUDGE**

BNV