

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.M.C.No. 5857/2005

% Date of reserve : 20.10.2009
Date of decision : 27.10.2009

RAJNISH GOENKA ...PETITIONER
Through: Mr. G.D.Gandhi, Advocate

Versus

RAJ KUMAR GUPTA ...RESPONDENT
Through: None

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

MOOL CHAND GARG, J.

1. This petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing the summoning order in a complaint case filed against the petitioner by Raj Kumar Gupta, the respondent herein, under Section 25-T of the Industrial Disputes Act and the proceedings arising therefrom, which are now pending in the Court of MM, Delhi.

2. The main ground which has been pressed in service by the petitioner is that on the same cause of action a complaint was also filed by the State which has been dismissed by the Court of Shri B.S. Chumbak, MM, Delhi

vide detailed judgment dated 5th May, 2004.

3. I have examined the matter as also the allegations made in the complaint filed by the Inspecting Officer of Labour Commissioner, Govt. of NCT of Delhi, who filed the said complaint after approval was granted by the Lt. Governor for filing of such a complaint against the Management of M/s Tobu Enterprises Ltd. and Mrs. Anita Kejriwal, the Managing Director, who is now represented by Rajnish Goenka, the present petitioner, after Mrs. Anita Kejriwal being the widow was unable to run M/s Tobu Enterprises Ltd.

4. A perusal of the order dated 5th May, 2004, passed by Shri B.S. Chumbak, MM, Delhi goes to show that the complaint filed by the Investigating Officer of Labour Commissioner against M/s Tobu Enterprises Ltd. and Mrs. Anita Kejriwal, the earlier Managing Director, was precisely on the same facts on which the second complaint has been filed by Raj Kumar Gupta, the respondent, who has not even come to support the summoning order.

5. Some of the observations made in order dated 5th May, 2004 by Shri B.S. Chumbak, the learned MM, who was pleased to dismiss the complaint filed by the Investigating Officer of Labour Commissioner and which deals with the factual submissions of this case, are reproduced hereunder:-

10. The order dt. 26.3.99 was passed by Ld. Presiding Officer of Industrial Tribunal on the same ground on which the present complaint was filed.

11. It is also submitted by counsel for accused that in the absence of statement of aggrieved party (workmen) who had filed a complaint before Shri Susheel Kumar, Inspecting

Officer as well as before Shri Som Nath PW-3, Assistant Labour Commissioner, it cannot be said that the complainant has succeeded in proving its case beyond reasonable doubt. It is further stated that the matter has been amicably settled between the management and the workmen and no offence as alleged in the complaint was ever committed by the accused and requested for acquittal of accused.

12. On the other hand counsel for complainant submitted that criminal complaint as alleged was filed by Susheel Kumar which is Ex.PW-1/9 and in his testimony he stated that he has filed the present complaint on the basis of letter received from the President Tobu Mazdoor Sangh addressed the Secretary Labour which is Ex.PW-1/A and he complaint is properly proved. Factum of filing present complaint is again corroborated by PW-2 R.K.Gupta. He stated that he was the President of Mazdoor Sangh affiliated with Bharita Mazdoor Sangh the union is registered body. It is further stated that on 3.4.96 he had made complaint with the Secretary Labour department regarding unfair practices which were being committed by the management of Tobu Enterprises. Complaint is Ex.PW-1/2. He further stated that complaint was further assigned to Som Nath Assistant Labour Commissioner and accordingly, he summoned the management in April, May and July, 1996 but they never appeared. He also submitted that Anita Kejriwal was the Director of M/s Tobu Enterprises on the date of filing the complaint and she was also looking after day to day affairs of the company. This fact is further corroborated by PW-3 Som Nath Assistant Labour Commissioner and in view of all these testimonies counsel for complainant submitted that complainant has succeeded in proving its case beyond reasonable doubt.

13. After hearing arguments, I also peruse the evidence adduced by the complainant as well as material placed on record wherein it appears that neither the office bearer of the union nor the workmen appeared before this court to depose that unfair labour practice had been committed by the Management and the office bearer of the trade union were malafidely transferred from Delhi to Bhivadi. However none of the workmen / aggrieved persons appeared before this court to depose that unfair labour practice had been committed by the management. In the absence of corroborative evidence with regard to the offence as alleged in the complaint it cannot be said that the complainant has succeeded in proving its case beyond reasonable doubt. Accordingly accused Anita Kejriwal is acquitted for the offence under section 25 (T) read with section 25 (U) of the Industrial Disputes Act. Her bail bond cancelled, surety be discharged.

6. It is also a matter of record that name of Mrs. Anita Kejriwal was even deleted under the orders of this Court dated 26.7.2005 as the sanction

was granted only against M/s Tobu Enterprises Ltd. and not against Mrs. Anita Kejriwal. The said order is available on record at page 53. In the present case also one of the submissions made on behalf of the petitioner is that as against the present petitioner there is no fresh sanction awarded and in fact the petitioner became the Managing Director of M/s Tobu Enterprises Ltd. only from 25.8.1998 to 16.9.2002, whereas the dispute related to the period 1990-1991, which is much before his becoming the Managing Director in the year 1998. The factual position about filing of a complaint by the Investigating Officer of Labour Commissioner against M/s Tobu Enterprises Ltd. and earlier Managing Director has not been disputed by the respondent despite the specific averments made in paragraph 3 of the petition. The impugned order dated 1.7.2002 passed by the learned MM also goes to show that the said order has not taken into consideration the filing of an earlier complaint and the effect of the disposal of the said complaint. The impugned order is as under:-

Present complainant with counsel. Accused Ashok Aggarwal on bail. Shr. G.D. Gandhi through whom Anita Kejriwal is exempted is also present.

Learned counsel for the complainant has moved an application under Section 32 of the Industrial Disputes Act for issue of summons to Rajnish, M.D. of accused No.1. Heard on the same. Shri Rajnish appears to be concerned for Management of accused no.1. He be summoned accordingly for 22.5.2002.

7. I have also gone through the complaint, which is the subject matter of the present petition and is available at page Nos. 19 to 32 of the paper book. The averments made therein clearly goes to show that the complaint was against M/s Tobu Enterprises Ltd. for punishing the management and the

officers responsible for it, including the Managing Director of the said company, for the offences committed during the period 1988-89. Thus, the present complaint pertains to the similar allegations which were subject matter of the earlier complaint decided by Shri B.S.Chumbak, learned MM, as aforesaid.

8. It would be appropriate to take note of a judgment delivered by the Apex Court in the case of *Maksud Saiyed Vs. State of Gujarat & Ors.*, 2008 5 SCC 668:

13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section [156\(3\)](#) or Section [200](#) of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian 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 unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and 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

15. This Court in *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.* 1998CriLJ1, held 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.

The learned Magistrate, in our opinion, shall have kept the said principle in mind.

9. In the facts and circumstances of the present case, I have no hesitation but to hold that the summoning order was without any application of mind and thus, it was not in accordance with law. The proceedings taken out against the present petitioner, who is the Managing Director of M/s Tobu Enterprise Ltd., after discharge of the said company and its earlier Managing Director for the same offence on the basis of a complaint filed by the Investigating Officer of Labour Department amounts to double jeopardy. Accordingly, the complaint and all the proceedings arising therefrom are hereby quashed.

10. Petition is allowed. Pending application stands disposed of.

MOOL CHAND GARG, J.

October 27, 2009
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