

GAHC010052262019



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Crl. Pet. No. 261 of 2019

SANJIB BHATTACHARJEE

S/O- LT D.N.BHATACHARJEE, REGISTRAR, ASSAM UNIVERSITY, DORGKONA, SILCHAR-788011

.....Petitioner

VERSUS

UNION OF INDIA

ASSTT. LABOUR COMMISSIONER (CENTRAL) COLLEGE ROAD, SILCHAR- 788004, DIST-CACHAR, ASSAM AND INSPECTOR UNDER THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

.....Respondent.

Advocates for the appellant : Mr S C Keyal

Advocate for the respondent : Mr K K Parashar, CGC

BEFORE

HON'BLE MRS. JUSTICE MALASRI NANDI

Date of hearing and Judgment : 08.05.2023

JUDGEMENT AND ORDER (ORAL)

Heard Mr S C Keyal, learned counsel appearing on behalf of the petitioner and Mr K K

Parashar, learned CGC appearing on behalf of the respondent, i.e., the Assistant Labour Commissioner (Central), Silchar, and Inspector under the Contract Labour (Regulation and Abolition) Act, 1970.

2. Although the case is fixed for admission hearing, after hearing both the parties, the same is taken up for final disposal at the admission stage.

3. The petitioner has preferred an application under Section 482 CrPC, 1973, against the impugned order dated 07.12.2017, passed by the learned JMFC, Silchar, in CR Case No. 492/2017, taking cognizance of offence under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter, in brevity, referred to as "the Labour Act"), against the petitioner.

4. The petitioner was the Central Government Employee, being the Registrar of Assam University, Dorgakona, Silchar. A complaint was filed by the Labour Enforcement Officer (Central), against the petitioner before the Chief Judicial Magistrate, Silchar, under Section 24 of the Labour Act, indicating the irregularities found during his inspection of Assam University at Dorgakona, Silchar. The following irregularities were shown in the complaint against the petitioner:-

1) The accused failed to intimate the changes in regard to the particulars of the certificate of registration to the Registering Officer-cum- Assistant Labour Commissioner (Central), Silchar. As for example, while certification of registration was issued, the principal employer was in the name and favour of Registrar, Assam University, Dorgakona, Silchar, but subsequently, the post/nomenclature changes to Sri Sanjib Bhattacharjee, Registrar, Assam University, Dorgakona, Silchar, but the certification of registration not amended and the particulars of the

contractors submitted at the time of obtaining certificate of registration have already been changed and new contractors engaged, but no intimation for the same was sent to the Registering Officer- cum- Assistant Labour Commissioner (Central), Silchar, by violating the provision of Rule 18 (4).

2) The accused failed to display the notices in English, Hindi and local language, Bengali, showing rates of wages, hours of work, date of payment of wages, wage period, names and addresses of the Inspectors, having jurisdiction and date of payment of unpaid wages, as required under Rule 81 (4).

3) The accused failed to submit Notice of Commencement of work in Form VII to the Inspector, ie., Assistant Labour Commissioner (Central), Silchar, in respect of the contractors, i.e., M/s North Eastern Security Services, M/S HRD Commercial & Industrial Security Forces Pvt. Ltd., Sri Dipak Nath and Sudeep Nath.

4) The accused failed to submit Annual Return in duplicate for the year ending 31.12.2016, in Form XXV, to the Registering Officer, i.e., Assistant Labour Commissioner (Central), Silchar of the area within the prescribed time limit.

5) The accused failed to maintain Register of Contractors in Form XII, by violating the provision of rule 74, read with Rule 80 (1).

5. It is also stated in the complaint petition that the Inspector intimated the accused regarding the observation on irregularities by sending the inspection report by registered post with A/D on 22.09.2017, which was received by the accused, but no reply was submitted, which shows that the accused was not interested to comply with the provision of law and hence, the complaint.

6. Learned counsel for the petitioner has submitted that the petitioner has already retired from the service and none of the ingredients of the Section 24 of the Labour Act are present in the instant case and the learned Magistrate acted erroneously in taking cognizance against the petitioner.

7. It is also the submission of the learned counsel for the petitioner that there was no change in the nomenclature to the particulars of the certificate of registration to the Registering Officer-cum- Assistant Labour Commissioner (Central), Silchar, as Form XXV, VII, XII, reflects full name and address of The Principal Employer and as such, there is no contravention of the provisions of Labour Act, 1970. Furthermore, the petitioner was displaying all the notices time to time as required.

8. It is also submitted that the Annual Return in duplicate was submitted on 21.01.2019, to the Office of the Assistant Labour Commissioner (Central), Silchar and as such allegation in the complaint case that the petitioner failed to submit notice of Commencement of Work in Form VII to the Inspector, i.e., Assistant Labour Commissioner (Central), Silchar, in respect of the contractor does not arise. It is further submitted that the University has always been maintaining the Register of the contractors in full details in Form XII and as such, there is no contravention of any of provisions of the Labour Act. As such, the proceeding of the complaint case be quashed.

9. On the other hand, Mr K K Parashar, learned CGC submits that though he informed the matter to the respondent authority, i.e., Assistant Labour Commissioner (Central), Silchar, regarding institution of the present petition, but he has not received any communication from their end. As such, he is not in a position to pursue the matter filed against the present

petitioner.

10. It appears from the record that the criminal petition has been instituted in the year 2019 and accordingly, the learned CGC has entered appearance to represent the respondent authority. From the submission of learned CGC, it appears that the respondent authority is not interested to proceed further with the matter.

11. I have considered the submissions made by the learned counsel for both the parties. I have also gone through the record along with the documents available thereon.

12. Section 23 of the Labour Act relates to contravention of provisions regarding employment of contract labour. Since as per the documents filed on record the present petitioner has not contravened any of the provisions of the Act. Therefore, the proceeding initiated against the petitioner should be quashed, inasmuch, as the foundation of any offence is not laid against the present petitioner.

13. The Hon'ble Apex Court in the case of ***Amit Kapoor vs. Ramesh Chander & Another;*** reported in **(2013) 1 SCC (Cri) 986**, has laid down certain principles in respect of exercise of jurisdiction under Section 482 of CrPC. One of the principles is that the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not

appear to be satisfied if there is substantial compliance with the requirements of the offence. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

13.1. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

14. In the instant case, the ingredients of the complaint against the petitioner are *prima facie* not made out. It is well settled law that the inherent powers of this Court under Section 482 CrPC should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section. In the case in hand, the accused petitioner is able to pass those tests, and it is a fit case, where such jurisdiction should be exercised.

15. In view of above, the application under Section 482 CrPC is allowed and the order dated 07.12.2017, of taking cognizance against the petitioner under Section 24 of the Labour Act, along with the complaint case, being CR Case No. 492 of 2017, pending in the Court of

learned JMFC, Silchar, is hereby set aside and quashed.

16. With the aforesaid directions, the criminal petition stands disposed of.

JUDGE

Comparing Assistant