

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2014

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Crl.O.P. Nos.33016 to 33019 of 2014
& M.P.Nos.1 & 2 of 2014

Mr. Shapoor Pallanji Mistry,
Employer, Shapoor Pallanji & Co. Ltd.,
Plot No.A-19/2, SIPCOT Industrial Growth Centre,
Oragadam Village,
Sriperumbudur Taluk .. Petitioners in all Crl.O.Ps

Vs

The State of Tamil Nadu,
Represented by its Deputy Director (IC),
Industrial Safety and Health BOCW,
Kancheepuram,
Chennai - 600 032 .. Respondent in all Crl.O.Ps

Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code to call for the records in C.C.Nos.325, 324, 326 and 323 of 2014, respectively, on the file of the learned Chief Judicial Magistrate, Chengalpattu, and to quash the same with regard to the petitioner / accused.

For Petitioner in all O.Ps. : Mr. B.Kumar, Sr. Counsel, for,
M/s.G.Vijay Anand Associates
For Respondent in all O.Ps. : Mr. M.Maharaja, APP.,

C O M M O N O R D E R

The petitioner is the sole accused in C.C.Nos.325, 324, 326 and 323 of 2014, respectively, on the file of the learned Chief Judicial Magistrate, Chengalpattu. The respondent has laid the private complaints against the petitioner / company alleging that the petitioner has committed offence punishable under Section 47 of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter will be referred to as "the Act"). Seeking to quash the same, the petitioner has come before this Court with these petitions.

2. I have heard the learned senior counsel for the petitioner, learned Additional Public Prosecutor for the respondent and perused the materials on record carefully.

3. According to the private complaints filed by the respondent, on 15.04.2014, the Deputy Director, Building and Other Construction Workers (BOCW), Kancheepuram, inspected the workplace, where some construction was under progress. It was constructed by a company known as M/s.Shapoorji Pallanji and Company Private Limited. The petitioner is stated to be the chairman of the said company. It is alleged that, during such inspection, it was found that Sections 40, 37, 34 and 37 (b) and Rules 47 (6), 50, 209 (1) (2) Schedule VIII, 244, 247 and 226 were found to have been violated by the petitioner and the company. A show cause notice was issued, for which, a reply was also received. Thereafter, after getting sanction from the competent authority, the respondent has laid the above complaints, on which the learned Magistrate has taken cognizance.

4. Now, the petitioner wants to quash these proceedings on the following grounds:-

(i) There was no sanction obtained by the respondent from the Director General or the Chief Inspector, as required under Section 54 of the Act.

(ii) As per Section 53 of the Act, since, in these cases, the company is the owner, who is alleged to have committed the offence, in the absence of the company being arrayed as an accused, the prosecution against the petitioner, who is only the Chairman of the company, is illegal.

(iii) The petitioner was not the person in-charge of the day-today affairs of the company.

5. The learned Additional Public Prosecutor for the respondent would submit that it is not correct to say that no such sanction was obtained by the petitioner. According to him, sanction was obtained on 09.07.2014; only in accordance with the said sanction, private complaints came to be lodged. Such sanction copy was filed, as document No.7, along with the private complaints.

6. A copy of such sanction issued by the Directorate of Industrial Safety and Health, Royapettah, Chennai, under No.C2/11299/2014, dated 09.07.2014, has also been produced for perusal. In view of the same, the first ground raised by the petitioner falls to the ground.

7. The next ground raised by the petitioner is that the petitioner is not the person in-charge of the day-to-day affairs of the company and therefore, the prosecution lodged against him is not maintainable. In this regard, we may refer to Section 53 of the Act, which reads as follows:-

"53. Offences by companies - (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in

charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

8. Whether the petitioner was responsible for the conduct of the day-to-day affairs of the company or not is a factual aspect, which has to be resolved only by the trial court on evidence. It is stated that the petitioner was the Chairman of the company and he was in day-to-day affairs of the company also. Therefore, I do not find any reason to simply accept the ipsi dixit statement made by the petitioner, so as to hold that the petitioner was not responsible for the day-to-day affairs of the company. Therefore, this ground is also rejected, leaving it open for the petitioner to raise it before the trial court.

9. The last contention raised by the petitioner is that in the absence of the company being a party to the proceeding, the prosecution of the petitioner alone is illegal and the same is therefore liable to be set-aside. I find some force in the said submission. This provision is similar to Section 141 of the Negotiable Instruments Act. The Hon'ble Supreme Court has been repeatedly holding that when the person, who has committed offence is the company, the company as well as the persons responsible for the day-to-day affairs of the company would be prosecuted. In other words, the persons, who are responsible for the day-to-day affairs of

the company, are only constructively liable for punishment, when the main offender namely the company itself is prosecuted and ultimately punished. Therefore, the Hon'ble Supreme Court has held on several occasions that in the absence of the company being prosecuted, the prosecution of the Directors of the company or the other officers of the company is not at all maintainable. I have no dispute regarding the said legal proposition. But the question is, whether on that ground the entire case is to be quashed.

10. It is needless to point out that under Section 190 of the Criminal Procedure Code, the Court is required to take cognizance of the offence and not cognizance of the offenders. Here, in these cases, a perusal of the complaints would go to show that allegations have been made against the company as well as the petitioner, that the company had committed offence. Therefore, under Section 190 of the Criminal Procedure Code, the learned Magistrate was right in taking cognizance of the offence.

11. In a case instituted on a private complaint, it is only after taking cognizance under Section 190 of the Criminal Procedure Code, inquiry commences. During such inquiry, the complainant and witnesses are examined under Sections 200 and 202 of the Criminal Procedure Code. On completing the inquiry, the Court has to find out whether the complaint should be dismissed under Section 203 of the Criminal Procedure Code, if the offenders could not be identified or if all the materials do not make out any offence, warranting further proceedings. If the Court finds that there is a case to be proceeded further, then the Court has to issue summons and accordingly, summons would be issued under Section 204 of the Criminal Procedure Code.

12. In these cases, the learned Magistrate, having taken cognizance of the offence, rightly after holding inquiry, ought to ascertain the persons, who have committed the offence and then to issue summons. In that obligation, in the present cases, I hold that the learned Magistrate has failed. The learned Magistrate ought to have issued summons to the company also, since the allegations clearly make out an offence that the company has committed offence.

13. It may be true that the company was not arrayed as an accused in these cases by the complainant. But it is immaterial, because, every offence is treated to have been committed against the State and therefore, it is the duty cast upon the Court to ascertain the persons against whom the allegations are there, making out offence.

14. In such view of the matter, I am inclined to issue direction to the learned Magistrate to issue summons under Section 204 of the Criminal Procedure Code to the company, namely, M/s.Shapoorji Pallanji and Company Private Limited, arraying it as

the second accused and then proceed with the cases. Thus, for the reasons stated above, on the third ground raised by the learned senior counsel for the petitioner also, the entire case cannot be quashed.

15. In the result, these Criminal Original Petitions fail and the same are accordingly dismissed, however leaving it to the Magistrate to issue summons under Section 204 of the Criminal Procedure Code to the company namely, M/s.Shapoorji Pallanji and Company Private Limited, and then to proceed with the trial, in accordance with law. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Director (IC), The State of Tamil Nadu,
Industrial Safety and Health BOCW,
Kancheepuram, Chennai - 600 032
- 2.The Chief Judicial Magistrate, Chengalpattu
3. The Public Prosecutor, Madras High Court,
Chennai - 600 104.

8 cc to M/s.G.Vijay Anand Associates,Advocate, SR.No.63686, 63687,
63688, 63689

Crl.O.P. Nos.33016 to 33019 of 2014
& M.P.Nos.1 & 2 of 2014

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