

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2015

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.O.P.Nos.20098 & 20099 of 2009
and
M.P.Nos.1 & 2 of 2009

1. Neelesh Parmar
C.O.O.,
HSBC Operations and Processing
Enterprises (I) (P) Ltd.
No.30, Rajaji Salai,
Chennai - 600 001.
2. K.J.Michael Rajesh
Manager/HR
HSBC Operations and Processing
Enterprises (I) (P) Ltd.
No.30, Rajaji Salai,
Chennai - 600 001.

...Petitioners in both Cr1.OPs.

Vs.

The State Rep.by
the Labour Enforcement Officer(Central)
Government of India
Ministry of Labour and Employment
Shastri Bhavan
No.26, Haddows Road
Chennai - 600 006.

सत्यमेव जयते

...Respondent in both Cr1.OPs.

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records in C.C.No.322 of 2009 and C.C.No.323 of 2009 respectively pending on file of the XVI Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.P.V.Balasubramaniam
in both Crl.OPs

For Respondent : Mr.B.Rabu Manohar
in both Crl.OPs.

COMMON ORDER

These criminal original petitions have been filed to call for the records in C.C.No.322 of 2009 and C.C.No.323 of 2009 respectively pending on file of the XVI Metropolitan Magistrate, George Town, Chennai and quash the same.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

3. It is seen that on 24.11.2008, officers of the respondent department inspected the office of M/s. HSBC Operations and Processing Enterprises (I) (P) Ltd., No.30, Rajaji Salai, Chennai - 600 001 and found that, they are contractors of HSBC Bank inasmuch as they are managing the back office operations of the Bank as BPO. During the inspection, one Mr.John Robert representative of HSBC Operations and Processing Enterprises (I) (P) Ltd. was present and the office noted certain irregularities, in respect of which, show cause notice dated 24.11.2008 was issued to Mr.Neelesh Parmar and Mr.K.J.Michael Rajesh, pointing out certain deficiencies and calling upon them to give their explanations.

4. The respondent filed two private complaints in CC.Nos.322 & 323 of 2009 before the XVI Metropolitan Magistrate, George Town, for violations of provisions of the Contract Labour (Regulation and Abolition) Act, 1970 against Neelesh Parmar and K.J.Micheal Rajesh, challenging which, these two quash petitions have been filed before this Court.

5. The short point that arises for consideration is, whether the petitioners/accused could be prosecuted individually for the offences under The Contract Labour (Regulation and Abolition) Act, 1970, when the offender is a juristic person viz., HSBC Operations & Processing Enterprises (I) (P) Limited.,

6. Even according to the respondent, the petitioners were employees of M/s. HSBC Operations & Processing Enterprises (I) (P) Limited., as could be seen from the show cause notice itself. Section 25 of The Contract Labour Act, 1970, states as follows;

"25. Offences by companies.-- If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence 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 exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an 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 that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-- For the purpose 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."

7. In this case, the alleged violator is HSBC Operations & Processing Enterprises (I) (P) Limited., which has not been made as an accused. Except designating the first accused as C.O.O and the

second accused as Manager/HR, the complaint does not say the overt acts of the petitioners/accused. Therefore, in the considered opinion of this Court, the prosecution of the petitioners/accused on the Ipse Dixit of the complainant that the first accused is C.O.O and the second accused is Manager/HR without anything more would be an abuse of process of Law. Therefore, these petitions are allowed and the prosecution against the petitioners in C.C.Nos.322 & 323 of 2009 on the file of XVI Metropolitan Magistrate, George Town, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sms

To

1. The XVI Metropolitan Magistrate,
George Town, Chennai.
2. The Labour Enforcement Officer(Central)
Government of India
Ministry of Labour and Employment
Shastri Bhavan
No.26, Haddows Road
Chennai - 600 006.

1 CC to M/s. Kochhar & Co.,, Advocate SR.No. 45579

2 CCs to Mr.B.Rabu Manohar, Advocate SR.No. 45230, 45214

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CrI.O.P.Nos.20098 & 20099 of 2009
and
M.P.Nos.1 & 2 of 2009

KJI (CO)

PSI (10.09.2015)