

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.3235 of 2012

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 is filed by the petitioners/accused 1 and 2 requesting to quash the proceedings against them in STC.No.137 of 2011 on the file of the Court of the II Additional Chief Metropolitan Magistrate, Visakhapatnam taken on file for the offences punishable under Rules 25(2)(ix), 75, 78(1)(a)(i), 78(1)(a)(ii) and 78(1)(a)(iii) under the Contract Labour (Regulation & Abolition) Act, 1970 ('the Act' for short).

2. I have heard the submissions of the learned senior counsel for the petitioners/accused and the learned Assistant Solicitor General representing the 1st respondent/State and the learned counsel for the 2nd respondent/complainant.

3. Now the point for determination is:

Whether the petitioners/accused had made out valid and sufficient grounds for quashing the proceedings against them in STC.No.137 of 2011 on the file of the Court of the II Additional Chief Metropolitan Magistrate, Visakhapatnam?

4. The substance of the complaint against the petitioners/A1 and A2, in brief, is this: - "The 2nd respondent/complainant is the Labour Enforcement Officer (Central), Visakhapatnam. He has been duly appointed as an Inspector under sub section of Section 28 of the Act. The petitioners are the contractors engaged in the work of erection and commissioning of electrical instrumentation, automation and telecommunication for Visakhapatnam steel plant. The Assistant Labour Commissioner(Central), Visakhapatnam had inspected the establishment of the petitioners on 09.12.2010 at 15:00 hours and at the time of inspection of the work spot he had noticed certain violations of the provisions of the aforementioned Act and the Rules made under the

said Act and also that certain offences were committed and had therefore, mentioned the same in the annexure. The said offences as observed by the Assistant Labour Commissioner (Central), Visakhapatnam were incorporated in the inspection report-cum-show cause notice dated 09.12.2010 and a copy of the same was sent to the petitioners requiring them to show cause within ten days of the receipt of the notice-cum-inspection report as to why legal action shall not be taken for the contraventions mentioned in the said report. The petitioners had not submitted any explanation and hence, sanction was accorded vide letter dated 02.03.2011 by the Regional Labour Commissioner (Central), Hyderabad. The petitioners/accused having contravened the provisions of the Act and Central Rules, 1971 had rendered themselves liable for prosecution under Section 24 of the Act.”

5. After the complaint was taken on file and notices were issued, the accused had filed this present petition for quashing the proceedings against them in the above STC. The contentions of the petitioners/A1 and A2, in brief, are as follows: - “Rashtriya Ispat Nigam Limited, which is a Government of India organisation and which is having a steel plant at Visakhapatnam is the principal employer under the Act. It is duly registered under the Act as the principal employer. Under Section 12 of the Act, the contractor has no independent existence and the licence has to be backed up by a certification by the principal employer. On certification of the principal employer, the licence would be granted by the appropriate authority. In fact at the relevant point of time, registration certificate was issued by the very same authority under Section 12 of the Act. Long after the purported visit of the complainant, there was a circular advice from the principal employer to all the contractors on 31.01.2011 advising that since October 2010 on account of the amendment to the Industrial Disputes Act, 1947, the appropriate Government is the Central Government. Therefore, the 2nd petitioner herein took steps to have the licence changed from State authority to the respondent herein. On 01.03.2011 license was granted and the same was valid up to 29.02.2012 and the same has been renewed. Section 27 of the Act unequivocally provides thus: ‘No court shall take cognizance of an offence punishable

under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector: provided that where the offence consists of disobeying a written order made by an inspector, complaint, thereof may be made within six months of the date on which the offence is alleged to have been committed.' There is no provision for condonation of delay under this special enactment. Therefore, the entire proceedings are vitiated for want of jurisdiction and for violation of principles of natural justice. The petitioners are contractors under the Act. The allegation in the complaint is that no license has been taken out from the Central Government authorities and was displayed at the work spot and that the Register of persons employed, the muster roll, the register of wages, the register of fines, deductions for damages or loss and advances and the register of over time have not been kept at the work spot. In fact, such compliances have been made to the State authority. The respondent had visited the premises of the principal employer i.e., Steel Plant and had carried out some inspection and about the same the petitioners have no information. The respondent had not visited the work site where the petitioners' company has been carrying on its activities. The work site of the petitioners is also not inspected. Had a visit been made to the said places, the petitioners would have shown to the inspecting officer concerned the license and all the registers and records as per the rules aforesaid. The principal employer is the actual person responsible but the complaint is confined to the petitioners without making the principal employer a party. The complaint was filed beyond the time allowed under law. The court below erred in taking cognizance beyond the prescribed statutory period of limitation. Without impleading the principal employer as a party, the complaint is not maintainable. There is no intentional violation of the provisions; and in the absence of which the proceedings are an abuse of process of law. Therefore, the proceedings may be quashed."

6. At the time of hearing, the learned senior counsel reiterated the submissions urged in the petition and had further contended that under Section 27 of the Act, no court shall take cognisance of the offence

punishable under this Act unless the complaint thereof is filed within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector and that in the present case the inspection was admittedly made on 09.12.2010 and that after receiving the sanction on 04.03.2011, the complaint was filed on 15.03.2011 though the last date for filing the complaint was 08.03.2011 and that therefore, the taking cognizance beyond the period of limitation is itself bad and illegal.

7. The learned Assistant Solicitor General had submitted that there is no valid and effective licence is not in dispute and that at the time of inspection it is noticed that the registers as noted in the annexure are not displayed at the work spot and that as the complaint could not be filed within time, an application under section 473 of the CrPC was filed seeking condonation of delay and that the other contentions raised are mixed questions of fact and law and that no valid grounds are made out for quashing the proceedings at the threshold. He would further submit that where the allegations made in the complaint, when taken at their face value and accepted in their entirety, do prima facie constitute any offence or make out a case against the accused, then the proceedings need not be quashed.

8. Coming first to the aspect of licence or the lack of it and the failure to display the same at the work spot, the contentions of the petitioners are as under: “Rashtriya Ispat Nigam Limited, which is a Government of India organisation and which is having a steel plant at Visakhapatnam is the principal employer under the Act. It is duly registered under the Act as the principal employer. Under Section 12 of the Act, the contractor has no independent existence and the licence has to be backed up by a certification by the principal employer. On certification of the principal employer the licence would be granted by the appropriate authority. In fact, at the relevant point of time, registration certificate is issued by the very same authority under Section 12 of the Act. Long after the purported visit of the complainant, there was a circular advice from the principal employer to all the contractors on 31.01.2011 advising that since October 2010 on account of the amendment to the Industrial Disputes Act, 1947, the appropriate Government is the Central

Government. Therefore, the 2nd petitioner herein took steps to have licence changed from the State authority to the respondent herein. On 01.03.2011 license was granted and the same was valid up to 29.02.2012 and the same has been renewed.” The above contentions lay bare that no sooner the advice from the Principal Employer was received advising that since October 2010 on account of the amendment to the Industrial Disputes Act, 1947, the appropriate Government is the Central Government, the 2nd petitioner herein took steps to have licence changed from State authority to the respondent herein. According to the petitioners, registers were maintained and compliances have been made to the State authority and that the violations, if any, are by the principal employer who is the actual person responsible and answerable and that therefore, without making the principal employer a party, the complaint against the petitioners is not maintainable. There is acceptable merit in the contentions. Therefore, no *mens rea* is evident from the facts borne out by the material record and hence, it can be said that the allegations made in the complaint, even if they remain uncontroverted, the same do not disclose the commission of any offence and make out a case against the accused/petitioners.

9. Coming next to the contention on the aspect of limitation, it is to be noted that the inspection was made on 09.12.2010; and the sanction order was received on 04.03.2011; 05.03.2011 and 06.03.2011 are public holidays; however, the complaint was filed against the accused by the complainant/2nd respondent herein on 15.03.2011 before the court of the learned Magistrate. Therefore, it is clear that the complaint was not filed within the time allowed under law. Admittedly, the complainant filed a petition under Section 473 of the CrPC for condonation of delay. On that application, no notice was ordered to the accused. Be that as it may, a perusal of the proceedings sheet of the Court below would show that the date of filing of the complaint in the court is 15.03.2011. No orders on the application for condonation of delay were passed. However, the case was taken on file as STC.137 of 2011. It is fairly submitted that there is no provision under the special enactment for condonation of delay. The learned senior counsel forcefully contended that

when there is no provision for condonation of delay and when there is no specific provision that Section 473 of the CrPC can be made applicable to the complaint filed under the provisions of the special enactment, Section 473 of the CrPC cannot be invoked. At this juncture, it is relevant to refer to the provision of Section 468 of the CrPC which reads as under:-

"468. Bar to taking cognizance after lapse of the period of limitation –

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

Section 473 of the CrPC which deals with the extension of period of limitation in certain cases reads as under:

‘Notwithstanding anything contained in the foregoing provisions of this chapter, any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.’

A reading of the above provisions would show that the CrPC provides a minimum period of limitation of six months if the offence is punishable with fine only and higher periods of limitations for offences punishable with imprisonments; there is no limitation, if the offence is punishable with

imprisonment for a term exceeding three years. But, if the offence is punishable for a term not exceeding one year, the period of limitation is one year. But in the case on hand, the penal provision provides punishment of three months under Section 23 of the Act and the period of limitation is three months under section 27 of the Act. Therefore, on a plain reading of the provisions of the special enactment and the CrPC in juxtaposition it appears that Section 473 of the CrPC cannot be invoked for condonation of delay as rightly contended by the learned senior counsel for the petitioners. Even assuming for a moment that section 473 of the CrPC can be invoked, in this case on hand no notice on the application filed for condonation of delay was issued to the accused/petitioners. And, without notice to the petitioners/accused and without any order, much less a speaking order on the application for condonation of delay, the court below has taken cognizance and the case in STC.137 of 2011 was taken on file. Therefore, apparently, the cognizance was taken and the STC was taken on file beyond the period of limitation; and there is nothing on record of the trial court to show that the delay was condoned by passing a reasoned order. Therefore, when the cognizance was taken beyond the period of limitation provided under law that itself is a ground to quash the proceedings against the petitioners in STC. In

State of Haryana v. Bhajan Lal ^[1] the Hon'ble Supreme Court had held that 'Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party the inherent power under section 482 of the CrPC can be exercised by this Court in quashing the proceedings.'

10. Viewed thus, this Court finds that this is a fit case to grant the relief to prevent the abuse of the process of the Court.

11. In the result, the Criminal Petition is allowed and the proceedings against the petitioners/A1 and A2 in STC.No.137 of 2011 on the file of the

Court of the II Additional Chief Metropolitan Magistrate, Visakhapatnam are hereby quashed.

Miscellaneous petitions pending, if any, in this petition shall stand closed.

M.SEETHARAMA MURTI, J

19th January 2015
Vjl

[\[1\]](#) 1992 Cr.L.J 527