

HON'BLE SMT. JUSTICE ANIS

CRIMINAL PETITION No. 2751 OF 2012

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ORDER:

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This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') by the petitioner/accused requesting to quash the proceedings in S.T.C. No.189 of 2010 on the file of the II Class Special Metropolitan Magistrate, Cyberabad at Hayatnagar, R.R. District.

2. The case of the petitioner/accused is that the petitioner is the Managing Director of 'M/s.Ushakiron Movies Limited', a company incorporated under the Companies Act, 1956, engaged *inter alia* in the business of Tourism. The nature of activities/business carried on by the company essentially is that of a commercial establishment, therefore it has obtained Form-II Certificate of Registration under A.P. Shops & Establishments Act, 1988 (for short 'the Act'). The registration has also duly been renewed from time to time and the renewal of the registration issued by the Inspector, Deputy Commissioner of Labour, R.R. District Zone, Hyderabad in Form No.IV upto 31.12.2011.

While the company has been carrying on its aforesaid business activities, some of the staff members/employees having recorded their attendance in their shifts starting from

6.00 a.m. to 7.30 a.m. on 17.09.2008, refused to attend to their normal duties and also had gone round to the shooting locations in Ramoji Film City, disturbed the shooting schedules of the producers and caused obstruction to peaceful working atmosphere. Under those circumstances, the Management was constrained to suspend 22 members of the staff pending enquiry vide individual Memos dated 17.09.2008. Thereafter, independent charge sheets dated 15.10.2008 have also been issued to all the delinquent employees and the disciplinary proceedings have been initiated, and regular domestic enquiries were conducted against each individual delinquent employees for their proved acts of misconduct pursuant to the domestic enquiries passed the Dismissal Orders dated 19.10.2010. It is also stated that the members of the union

dragged the enquiry proceedings by resorting to delay tactics and repeatedly seeking adjournments on one pretext or other, which the Enquiry Officer was constrained to accommodate. It is also stated that all of them have duly been paid their subsistence allowances @ 50%, 75% and 100% at various stages of enquiries.

While things stood thus, the purported Union under the name and style of 'Ramoji Film City Ushakiron Movies Staff and Workers Union', whose existence is under serious dispute before the authorities concerned, addressed a letter dated 29.09.2009 to the Management alleging that the Management has violated the provisions of Section 47(6) of the Act. The said Union purportedly espousing the cause of the dismissed employees, approached the Joint Commissioner of Labour, Ranga Reddy Zone vide its letter dated 15.10.2009 complaining that the Management has violated the provisions of Section 47(6) of the Act and requested the said authority to act as per law. After receiving the letter, the Joint Commissioner of Labour instructed the 2nd respondent herein i.e. Assistant Labour Officer & Inspector under the Act to prosecute the Management of M/s.Ushakiron Movies Limited situated in Ramoji Film City for the alleged violation of Section 47(6) of the Act vide its Memo No.C/77/2009, dated 18.02.2010.

Accordingly, the 2nd respondent/complainant lodged a complaint before the II Class Special Metropolitan Magistrate, Cyberabad at Hayatnagar, Ranga Reddy District. The learned Magistrate took cognizance and numbered the same as S.T.C. No.189 of 2010. The learned Magistrate also issued summons to the accused on 30.07.2010 calling upon to appear on 06.08.2010. Accordingly, the accused has entered appearance and attending the hearings of the case from time to time.

The petitioner/accused also filed CrI.M.P. No.966 of 2011 under Section 245(2) Cr.P.C. seeking discharge from the charges. The said petition was dismissed by the Magistrate vide order dated 06.01.2012.

Now, the present petition is filed to quash the proceedings initiated by the 2nd respondent/complainant against the petitioner/accused in S.T.C. No.189 of 2010 on the file of the II Class Special Metropolitan Magistrate, Cyberabad at

Hayatnagar, R.R. District.

3. The learned counsel for the petitioner/accused argued that the complaint does not disclose the basic allegation against the petitioner; that the prior sanction of the prosecution was not obtained; that the complaint is barred by limitation as the date of suspension was 17.09.2008 and one year period was completed by 16.09.2009, whereas complaint was filed beyond the limitation i.e. on 23.07.2010, and that the prosecution has not made out any *prima facie* case, but on the other hand, the complaint is in the nature of harassing the petitioner at the instance of alleged union.

The learned counsel argued that issuing of summons to the petitioner is clear abuse of process of law and relied on a case-law reported in *Zandu Pharmaceutical Works Ltd. and others Vs. Md. Sharaful Haque and others*, wherein the Hon'ble Supreme Court held at Para 14 as follows:

“The learned Magistrate has issued process in respect of offence under Section 418 IPC. The punishment provided for said offence is imprisonment for three years. The period of limitation in terms of Section 468(2)(c) is 3 years. That being so, the Court could not have taken cognizance of the offence. Section 473 of the Code provides for extension of period in certain cases. This power can be exercised only when the Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Order of learned Magistrate does not even refer to either Section 468 or Section 473 of the Code. High Court clearly erred in holding that the complaint was not hit by limitation. As noted above, there was not even a reference that the letter dated 5.12.2001 was in response to the letter of complainant dated 24.11.2001. The factual position clearly shows that the complaint was nothing but a sheer abuse of the process of law and this is a case where the power under Section 482 should have been exercised. The High Court unfortunately did not take note of the guiding principles as laid down in Bhajan Singh's case (supra), thereby rendering the judgment indefensible. The judgment of the High Court is set aside, the proceedings initiated by the complaint lodged are quashed. The appeal is allowed.”

The learned counsel also argued that Section 47(6) of the Act will not attract as the employees were dismissed from service and misconduct was established, and relied on a case-law reported in *Srinivasa Resorts Limited and another Vs. State of Andhra Pradesh and others*, wherein the Division Bench of this Court held as follows:

“In so far as the second contention is concerned, for dealing with the same,

we feel it necessary to set out the impugned order dated July 25, 2001, which reads thus :

"In the reference cited, it is represented that the management suspended nine employees on May 28, 2000, and the period of suspension was continued for more than one year and not paid full wages even after expiry of one year as per Section 47(6) of the A.P. Shops and Establishments Act. Section 47(6) of the Act states that: "Where an employee is placed under suspension pending enquiry into grave misconduct, the employer shall pay a subsistence allowance equivalent to fifty per cent of the last drawn wage for the first six months and at seventy-five per cent of the last drawn wage beyond six months during the period of suspension. The total period of suspension shall not, however, exceed one year in any case. If the misconduct is not established or the total period of suspension exceeds one year, the employee shall be entitled to full wages during suspension period and the period of suspension shall be treated as on duty." Therefore, the management is directed to pay the full wages for the total period of suspension which was extended for more than one year to the nine employees as per Section 47(6) by adjusting the payments already made at 50 per cent and 70 per cent."

The learned counsel finally prayed the Court to quash the proceedings in S.T.C. No.189 of 2010 on the file of the

II Class Special Metropolitan Magistrate, Cyberabad at Hayatnagar, R.R. District.

4. On the other hand, the learned Public Prosecutor appearing for the State argued that while dismissing the discharge petition, the learned Magistrate held that there was sufficient material on record to make out the case against the petitioner and there is no provision under Cr.P.C. to discharge the accused in summons procedure cases, and dismissed the petition as devoid of merits; that the petitioner after exhausting the remedy of discharge, filed the present application, therefore the petitioner has not made out any case to quash the proceedings in S.T.C. No.189 of 2010.

The learned Public Prosecutor further argued that non-payment of subsistence allowance by the employer is a continuing offence and relied on the case-law reported in *Bhagirath Kanoria and others Vs. State of M.P.*, wherein the Hon'ble Supreme Court held as follows:

"The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is

intended to be achieved by constituting the particular act as an offence. Turning to the matters before us, the offence of which the appellants are charged is the failure to pay the employer's contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature. The appellants were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply."

and finally, prayed the Court to dismiss the petition.

5. On the other hand, the learned counsel for the third respondent argued that the petitioner suspended 22 employees on 17.09.2008, charge sheet was filed on 15.10.2008, the competent authority conducted the domestic enquiry after giving notices to the employees and thereafter, they were dismissed from service by its order dated 19.10.2010; that the petitioner failed to follow the mandatory provision under Section 47(6) of the Act; that till this day the petitioner has not paid the subsistence allowances to the workmen, therefore it is a continuing offence; that there is no need to obtain sanction; that it is not a delayed or deducted wages, and finally, prayed the Court to dismiss the petition as the petitioner has not made out any case to quash the proceedings in S.T.C. No.189 of 2010.

6. Now, the point for determination is –

Whether the petitioner/accused is entitled to quash the proceedings in S.T.C. No.189 of 2010 on the file of the
II Class Special Metropolitan Magistrate, Cyberabad at Hayatnagar, R.R. District?

7. **Point:**

As per the record, the petitioner has been arrayed as accused in S.T.C. No.189

of 2010 on the file of the II Class Special Metropolitan Magistrate, Cyberabad at Hayatnagar, R.R. District on the complaint given by the Assistant Labour Officer & Inspector under the Act. There is no dispute that the petitioner is the Managing Director of Ushakiron Movies Limited, a company incorporated under the Companies Act, 1956. It is alleged by the petitioner that some of the staff members recorded their attendance in shifts starting from 6 a.m. to 7.30 a.m. on 17.09.2008, refused to attend to their normal duties and disturbed the shooting schedule of other producers, and thus caused obstruction in peaceful atmosphere of the petitioner. It is an admitted fact that the Management suspended 22 employees pending enquiry vide Memos dated 17.09.2008, charges were framed, disciplinary proceedings were initiated and the domestic enquiry was conducted against the said 22 individuals. Thereafter, the services of the 22 employees were terminated for their alleged proved acts of misconduct by issuing the termination orders.

8. The Union under the name and style of 'Ramoji Film City Ushakiron Movies Staff and Workers Union' addressed a letter on 29.09.2009 to the Management alleging that they have violated the provisions of Section 47(6) of the Act. The dismissed employees also approached the Joint Commissioner of Labour, R.R. District vide Letter dated 15.10.2009 for the same grievance. Thereafter, the Joint Commissioner of Labour instructed the second respondent to file a complaint against the Management of M/s.Ushakiron Movies Limited under Section 47(6) of the Act. After receiving the summons from the Court, the petitioner filed Crl.M.P. No.966 of 2011 under Section 245(2) of Cr.P.C. for discharge and the same was dismissed by the Magistrate vide order dated 06.01.2012.

9. After dismissal of Crl.M.P.No.966 of 2011, the petitioner filed the present petition under Section 482 Cr.P.C. on the ground that the complaint is a bald one as it does not disclose any basic allegation; Section 47(6) of the Act will not apply as the employees were dismissed from service on the ground of misconduct; elementary details were not disclosed in the complaint and the respondents have not filed any counter. On the other hand, the learned counsel for the third respondent contended that the petition under Section 47(6) of the Act is maintainable. Further, the Management has to pay the subsistence allowance @ 50% of the last drawn wages for the first six months and 75% of

the last drawn wages beyond six months during the period of suspension, and if the period of suspension exceeds one year and enquiry is not conducted within one year, the employees are entitled for full wages.

10. The contentions of the learned counsel for the petitioner that Section 47(6) of the Act will not apply to the present case and the 22 employees were dismissed from service as misconduct was established, are the matters which have to be decided on merits of the case but not at the preliminary stage. Further, whether the petitioner paid the subsistence allowance or not as per law to the employees, who faced the domestic enquiry, has to be gone into during the course of trial. On the other hand, the learned Magistrate while dismissing CrI.M.P.No.966 of 2011 held that there is sufficient material on record to make out the case against the petitioner. Therefore, pending proceedings in S.T.C.No.189 of 2010, does not amount to abuse of process of law. Consequently, the petitioner is not entitled to quash the proceedings in S.T.C.No.189 of 2010 before the II Class Special Metropolitan Magistrate, Cyberabad at Hayatnagar, R.R. District.

11. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

ANIS, J

Date: 29.04.2015

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