

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.8472 of 2009

ORDER:-

The petition is filed under Section 482 Cr.P.C., for quashing all further proceedings in S.T.C.No.5 of 2009 on the file of the II-Additional Judicial Magistrate of First Class, Tanuku, West Godavari District. The said petty case was filed by the 1st respondent – the Assistant Commissioner of Labour, Kovvur, against the petitioners/accused alleging offences punishable under Section 2(ra) read with Schedule-V and Section 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

2. The allegations in brief are that the petitioners/accused are the Managing Director and General Manager of Sri Satyanarayana Spinning Mills Limited, Tanuku, and they have indulged in unfair trade practices and also committed the offence punishable under Section 33 of the Act and hence they are liable to be prosecuted.

3. The petitioners seek to quash the further proceedings both on facts and on the question of the petty case as having been filed not maintainable in view of the provisions of the Act. It is submitted that the prosecution is launched by the Assistant Commissioner of Labour who is not competent to file the complaint and therefore all further proceedings are liable to be quashed. It is submitted that there is a specific bar in continuing the proceedings launched by the Assistant Commissioner of Labour and hence the same is liable to be quashed.

4. The petty case is filed under Section 34 of the Act. Section 34 of the Act reads as under:-

“Cognizance of offences:- (1) NO Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class shall try any offence

punishable under this Act.”

5. As per the above provision, it is clear that a complaint alleging offences punishable under the provisions of the Act, or abetment of any such offence, should be made by or under the authority of the appropriate Government. Since it is a private Company, it is the State Government or under the authority of the State Government, a complaint can be filed. The State Government has issued G.O.Ms.No.63, dated 02-08-2008, Labour Employment Training and Factories (Lab-I) Department. This notification was issued by the State Government in exercise of the powers conferred under sub-clause (c) of Section 39 notifying that the powers that are exercisable by the State Government shall also be exercisable by the Commissioner of Labour, Additional Commissioner of Labour and Joint Commissioners of Labour in their respective jurisdictions. The jurisdictions are shown in the Annexure appended to the Government Order. As per the said Annexure, the Joint Commissioner of Labour, Eluru, has been conferred with the power of exercising the powers exercisable by the Government over the District of East Godavari District, West Godavari District and Krishna District. Therefore, the prosecution alleging violations of the provisions of the Act can be launched either by the State Government or by the Joint Commissioner of Labour in exercise of the powers conferred on him vide the above Government Order.

6. In the instant case, the Joint Commissioner of Labour has issued proceedings No.B/6554/2004 dated 01-06-2009 authorizing the Assistant Commissioner of Labour to prosecute the petitioners/accused. The Assistant Commissioner of Labour is not an Officer authorised by the Government. The Joint Commissioner of Labour instead of himself exercising the powers conferred on him has sub-delegated the same in favour of the Assistant Commissioner of

Labour an Officer subordinate to him.

7. Section 34 of the Act postulates that a complaint alleging offences punishable under the Act is maintainable only when it is made by the appropriate Government or under its authority. It does not say that there should be sanction by the appropriate authority for launching the prosecution. In the complaint, that is filed, the complainant/Assistant Commissioner of Labour stated that after careful examination, the Government of A.P., accorded permission under Section 25(U) and Section 31 of the Act to the Assistant Commissioner of Labour to prosecute the petitioner/accused for violating Section 2(9) read with Schedule-V and Section 33 of the Act. Based on the said Government Orders, the Joint Commissioner of Labour issued the Sanction Orders to prosecute the petitioner/accused and directed the Assistant Commissioner of Labour to file the charge sheet. As already noticed, G.O.Ms.No.63, which is referred to in all the proceedings, dated 02-08-2008, refers to the powers exercisable by the Government to be exercised by the Commissioner of Labour, Additional Commissioner of Labour and Joint Commissioners of Labour. That Order does not authorise an Assistant Commissioner of Labour to exercise the powers that are exercisable by the competent Government. No material is placed along with the complaint to show that the appropriate Government authorised the Assistant Commissioner of Labour to exercise the powers of launching prosecution as envisaged under Section 34 of the Act. If the complainant viz., the Assistant Commissioner of Labour in his complaint refers to the proceedings of the Government authorizing him to exercise the powers that are exercisable by the Government, the complaint could have been satisfying the requirement of law. In the absence of any proceedings being placed on record, that the appropriate Government has authorized the Assistant Commissioner of Labour to exercise the powers of the

appropriate Government, the present complaint which is based upon a Sanction said to have been issued by the Joint Commissioner of Labour cannot be sustained.

8. When the law specifically provides about the authorities who are competent to launch prosecution that should be strictly interpreted and when the Government issued the order authorizing the Joint Commissioner of Labour to exercise the powers, which are exercisable by the State Government, it is he who has to exercise the powers but he cannot delegate the powers upon his subordinate which were delegated upon him by the Government.

9. In **STATE OF HARYANA AND OTHERS v. BHAJAN LAL AND OTHERS**^[1], wherein the Supreme Court laid down the following as one of the aspect which needs to be considered at the stage of considering as to whether it is a fit case to quash the proceedings:

“Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings 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.”

10. In that view of the matter, since the complaint is not launched by the person competent to prosecute the petitioners/accused, all further proceedings are liable to be quashed.

11. In the result, Criminal Petition is allowed quashing all further proceedings in S.T.C.No.5 of 2009 on the file of the II-Additional Judicial Magistrate of First Class, Tanuku, West Godavari District, insofar as the petitioners are concerned.

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

M.S.K.Jaiswal, J

September, 2015

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[\[1\]](#) AIR 1992 S.C., 604