

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35038 of 2014

Date of Decision: December 14, 2015

Atul Shorewala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms, Poonam Lau, Advocate and
Mr. Ajay Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

Before venturing into the very merits of this petition under Section 482 Cr.P.C. preferred by accused/petitioner-Atul Shorewala, one of the partners of firm M/s Shorewala Overseas necessitates recapitulations of brief factual history of the events leading to this petition. One Imran Khan, who happens to be one of the accused before learned trial Court and is proprietor of M/s Imran Textiles as well as the present petitioner namely Atul Shorewala on behalf of M/s Shorewala Overseas entered into an agreement, whereby, Imran Khan undertook to work as a labour contractor of firm M/s Shorewala Overseas undertaking to carry out the work connected with fabrication and finishing of made ups in the factory premises of petitioner-firm and under the agreement the contractor was supposed to engage workers and staff for carrying out the manufacturing activities, clerical work, technical work, supervisory work and administrative work on the

instructions as per the requirements of the petitioner's firm. During the course of events, an industrial unrest resulted in industrial dispute. The Labour-cum-Conciliation Officer exercising his powers under Section 12 (3) of the Industrial Disputes Act, 1947 (for short, 'the Act') resolved the same. It is undisputed stand of the two sides that a written agreement between workmen and contractor was signed before the Labour-cum-Conciliation Officer whereby, contractor agreed to reinstate the workmen with full back wages and which was to be paid on the first day of rejoining of the service. It is subsequent thereto, when the settlement was not implemented a reference was sent to the competent authority and on receipt of the requisite sanction from the competent authority for prosecution of the accused for commission of offences under Section 29 read with Section 32 of the Act was preferred.

The petitioner has moved an application before the learned Chief Judicial Magistrate, Sonapat on the averments that since the petitioner was not a party to this settlement, thus, he cannot be held liable for this non-implementation and that he was never served with any such demand notice necessitating his intervention and, thus, has sought to absolve himself of these allegations and that he being non-privity to the contract was totally unaware of these obligations of the contract. The Court of learned Chief Judicial Magistrate, Sonapat through impugned judgment dated 22.2.2013 dismissed the application holding that the petitioner who was the principal employer was responsible for implementation of various labour laws as well as the settlement and, therefore, having failed to carry out the same and there was prima facie commission of offences under Section 29 read with Section 32 of the Act and the second assailment comes out of the notice of the accusation served upon accused vide orders dated 23.2.2013 Annexure P/2 for commission of offences under Section 29 read with

Section 32 of the Act. The petitioner had sought to challenge the same in a revision before the learned Sessions Judge, Sonapat and through a common judgment dated 3.6.2013 the said Court upheld the orders of learned Chief Judicial Magistrate, Sonapat and, thus, dismissed the revision of the present petitioner. That is how, the parties are before this Court in this petition.

After hearing at length learned counsel for the parties and on perusal of the records of the case. The very fact that the petitioner is one of the partners of M/s Shorewala Overseas is not a disputed fact and so is the fact that by virtue of labour contract/agreement between Imran Khan and the petitioner the contractor had undertaken to provide services to the petitioner's firm which was purely by way of outsourcing of these services to the contractor. Learned counsel for the two sides have readily accepted the stand during the course of arguments that contractor had contract licence Annexure P/4 and registration certificate Annexure P/5 entitling him to carry on such a trade and, thus, by virtue of this agreement dated 5.5.2003 Annexure P/6 accused/contractor was holding an independent legal entity and had full control and supervision on the workmen being employed by him in the discharge of these obligations arising out of this contract. Furthermore, the fact that industrial dispute had arisen between the two sides and which was settled before the Labour-cum-Conciliation Officer too is not in any manner put to question. This Court has sought clarification from the State counsel as to how or in what manner the petitioner can be held vicariously liable to which the learned counsel for the respondent submits that he was principal employer and is liable for the acts of the contractor. No doubt, by virtue of Section 20 of the Contract Labour (Regulation and Abolition) Act, 1970 casts upon the principal employer to provide amenities for the

benefit of the contract labour employed in the establishment which the contractor failed to provide within the time prescribed and reserving his right to recover such expenses from the contractor. However, in terms of Section 21 of this Act by virtue of sub-Section (1) provides an obligation on the contractor who shall be responsible for payment of wages to each worker employed by him as a contract labour and which shall be paid before the expiry of the period as may be prescribed. Furthermore, sub-Section (2) lays an obligation upon principal employer to ensure that he nominates his representative so duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed. It casts a duty upon the contractor by virtue of sub-section (3) that the disbursement of wages is done in the presence of authorised representative of the principal employer. Above all, sub-section (4) provides that when contractor fails to make payment within the prescribed period or makes short payment then the principal employer shall be liable to make payment of wages in full or the unpaid balance due as the case may be to the contract labour employed, however, reserving his right to recover the same from the contractor.

Reverting back to the instant case, neither the learned State counsel representing the respondent could highlight how or in what manner there is a attribution to the petitioner for having been served with a demand notice by the workmen regarding this non-fulfilment of the obligation of the wages by the contractor or by what means the petitioner who happens to be the principal employer can be held liable when neither the contractor in terms of these provisions have brought to his notice so are matters which certainly impinges upon the judicial conscience and rather what is reflected from the unsubstantiated stand of service of demand notice in terms of Section 2

(A) of the Act and the proceedings before the Labour Commissioner Annexure P/9 are unsubstantiated by any means. The complaint before the learned Chief Judicial Magistrate, Sonapat preferred by the Labour Inspector Annexure P-9/3 does not substantiates these two important documents and there is no such averment to hold the petitioner prima facie liable for such contravention of the provisions of the labour laws. It was in the light of orders of this Court dated 7.10.2010 Annexure P/11 the petitioner as has been canvassed by learned counsel has filed objections before the learned trial Court taking the plea that he was not a privy to such settlement before the Labour-cum-Conciliation Officer and even the demand notice Annexure P/8 was never served upon him which is certainly served upon contractor on his firm M/s Imran Textiles are matters which certainly have a strong bearing on the allegations against the petitioner which the learned trial Court as well as learned revisional Court failed to take notice of. It is the very golden principle that an offence is only deemed to have been committed when it is prima facie proved that the offence has been committed with the consent or connivance attributable to either neglect or intentional act of any of the owners/manager of the principal employer in terms of Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970 read with Section 32 of the Industrial Disputes Act, 1947.

Thus, in the totality of what has been detailed and discussed above there has been total misconstruing of the provisions of the law by the Courts below qua the present petitioner and which impugned orders under challenge Annexure P/1 and Annexure P/2 are legally unsustainable and are hereby set aside. However, in view of the welfare nature of these provisions it would sub-serve the ends of justice if directions are issued to the workmen to have recourse to the provisions of Section 2(A) of the Act by serving demand notice upon the

petitioner as well as his firm afresh and, thereafter, the Labour Commissioner to take recourse under Section 12(3) of the Act after adopting due recourse of law.

The instant petition is disposed off in those terms and the matter is remanded back and after necessary compliance, if so necessitated, the trial Court would proceed ahead into the matter in accordance with law.

The petition stands disposed off in those terms.

Be reported.

**(FATEH DEEP SINGH)
JUDGE**

December 14, 2015

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