

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.7455 of 2010

ORDER:

1 This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioner in S.T.C.No.124 of 2010 on the file of the Court of the Special Judicial II Class Magistrate, Nizamabad.

2 The learned counsel for the petitioner submitted that the learned Special Judicial II Class Magistrate, Nizamabad has no right whatsoever to take cognizance of the offence against the petitioner under the provisions of the Motor Transport Workers Act, 1961. He further submitted that the petitioner, which is a company, will not fall within the definition of Section 2 (g) of the Motor Transport Workers Act, 1961.

3 Per contra, the learned Public Prosecutor submitted that this is not the stage to go into the merits of the main case.

4 A perusal of the record reveals that the petitioner is a company engaged in Beedi manufacturing business by engaging workers. The petitioner had obtained licence under Section 4 of the Beedi And Cigar Workers (Conditions of Employment) Act 1966 to carry on its business. In order to carry on the business, the petitioner owned mini vans for the purpose of transportation of its raw material and final products to different places in Nizamabad district. While the things stood thus, the Assistant Commissioner of Labour, Circle II, Nizamabad got issued a notice to the petitioner on 21.03.2009 alleging that the petitioner has not followed the conditions as stipulated in Section 12 read with Rules 8 and 26 of the Motor Transport Workers Act, 1961. To the said notice, the petitioner submitted a detailed explanation stating that it is not carrying on motor transport business. The Assistant Commissioner, not being

satisfied with the explanation offered by the petitioner, has filed a complaint on the file of the Special Judicial II Class Magistrate, Nizamabad and got issued summons to the petitioner.

5 For better appreciation of the contentions of the learned counsel for the petitioner it is not out of place to extract the Section 1 (4) and Section 2 (g) of the Motor Transport Workers Act, 1961, which read as follows:

Section 1 (4): It applies to every motor transport undertaking employing five or more motor transport workers..

Section 2 (g): "motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier.

6 A fascicular reading of these two sections clearly demonstrate that the provisions of the Motor Transport Workers Act, 1961 are applicable to any organisation, which has been carrying on transport business.

7 Similarly this Court feels it apt to extract Rule 26 of the A.P. Motor Transport Workers Rules, 1963, which read as under:

Rule 26. First-Aid Facilities:- A first-aid box containing the equipment mentioned in Schedule-III shall be provided in every motor transport vehicle. Every First-aid box shall be clearly marked "First-Aid" and shall be kept stocked and in good order.

Rule 8 of the A.P. Motor Transport Workers Rules, 1963 deals with renewal of certificate of registration.

8 The above referred two Rules are applicable to the company which has been exclusively carrying on transport business only. Admittedly, the petitioner has been carrying on business in Beedi and Cigars after obtaining due licence from the competent authority under section 4 of the Beedi And Cigar Workers (Conditions of Employment) Act 1966. No where in the complaint it is mentioned that the petitioner has been carrying on Motor Transport business.

Moreover, it is not the case of the Labour Inspector that the petitioner is using the vehicles for transportation of passengers or goods for hire or reward. On the other hand, it is the case of the petitioner that it has been using the vehicles for transportation of its raw material and final products only. The allegations made in the complaint do not constitute the offence much less the offence alleged to have been committed by the petitioner.

9 Further, it is not in dispute that the complaint is filed before the Special Judicial II Class Magistrate, Nizamabad. It is not out of place to extract Section 35 of the Motor Transport Workers Act, 1961 which reads as follows:

35. Cognizance of offences.—No court shall take cognizance of any offence under this Act, except on complaint made by, or with previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

10 A perusal of the above provision of law clearly demonstrates that a Magistrate of First Class alone has the power to take cognizance of the offence against the person who alleged to have violated the provisions of the Motor Transport Workers Act, 1961. Taking cognizance of the offence by the Court below is contrary to Section 35 of the Motor Transport Workers Act, 1961. Therefore, the cognizance taken by the Special Judicial II Class Magistrate, Nizamabad is not valid in the eye of law.

11 Having regard to the facts and circumstances of the case on hand and also the principle laid down in **R.P.Kapoor v. State of Punjab**^[1], **State of Haryana v. Bhajan Lal**^[2], **V.Y.Jose v State of Gurajat**^[3] and **Teeja Devi v State of Rajasthan**^[4], I am of the considered view that continuation of proceedings against the petitioner would certainly amount to abuse of process of law and

hence the impugned proceedings are liable to be quashed.

13 In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner in S.T.C.No.124 of 2010 on the file of the Court of the Special Judicial II Class Magistrate, Nizamabad. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 08-03-2016

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[\[1\]](#) AIR 1960 SC 866

[\[2\]](#) AIR 1992 SC 604

[\[3\]](#) (2009) 3 SCC 78

[\[4\]](#) 2015 (1) ACR 564 (SC)