

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 24.04.2017

CORAM  
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.Nos.9789 & 9790 of 2010  
and  
M.P.Nos.1, 2, 3, 4, 1 & 2 of 2010

Pramoda Karkal  
Son of Ramakant Karkal  
Johnson Controls (India) Pvt. Ltd.  
Contractor  
Motorola India Private Limited  
Plot No.M-1, Phase III, Hi Tech SEZ  
Thirumangalam Village, Sriperambudur,  
Kanchipuram District. ... Petitioner/Accused in both  
OPs

Vs.

The Inspector of Factories,  
Government of Tamilnadu  
Circle I, Kancheepuram,  
130/1, Gandhi Road,  
Sriperambudur - 602 105. ...Respondent/ Complainant in both OPs

COMMON PRAYER: Criminal Original Petitions are filed under  
Section 482 of Cr.P.C., to call for the records in C.C.Nos.98  
and 97 of 2010, pending on the file of the Chief Judicial  
Magistrate, Chengelpattu, and quash the same.

For Petitioner : Mr.Thriyambak J.Kannan  
for M/s.Kochhar and Co.

For Respondent : Mrs.Shabana  
Government Advocate (Crl.Side)

COMMON ORDER

Heard the learned counsel appearing for the petitioner and  
the learned Government Advocate (Criminal Side) appearing for  
the respondents.

2. For better appreciation, this Court refers to the facts  
in Crl.O.P.No.9789 of 2010, as a lead case. The petitioner has  
been arrayed as an accused in C.C.No.98 of 2010 on the file of  
the Chief Judicial Magistrate Court, Chengelpattu for the  
alleged offences under Sections 29(1) and (2) of the Contract  
Labour (Regulation and Abolition) Act, 19709 and Rules 77,80(4)

and 78(1)(a)(i) of the Tamil Nadu Contract Labour (Regulation and Abolition) Rules, 1975. The allegation levelled against the petitioner is that registers and records in the form prescribed under the above said enactments have not been maintained.

3. It is the contention of the learned counsel appearing on behalf of the petitioner that the petitioner is permanently working at Mumbai and is not in-charge of the establishment where the inspection has been made and in any event, the petitioner ought not to have been arrayed in his individual capacity.

4. He further submitted that all requisite records are maintained in the establishment and available with the Sub-Contractors, who are deemed to be Contractors as per the provisions of the Act. He added that the Global Workplace Solutions acts as a Contractor and the said company has obtained a licence as a Contractor as required under Section 12 of the Act and as per the Board Resolution dated 16.8.2007, one Sandeep Deshpande is the person incharge and responsible for the business of Global Workplace Solutions.

5. The learned Government Advocate (Criminal Side) justified the initiation of proceedings by the respondent authorities and prayed for dismissal of these petitions.

6. Heard the learned counsel on either side and perused the documents available on record.

7. A bare perusal of the power of attorney given by Johnson Controls (India) Private Limited in favour of one Sandeep Deshpande, which is dated 16.8.2007, more particularly clauses (2) and (10), which read as under:

"2. To represent the Company before local authorities, all the departments of Central and State Government and Statutory and non-statutory authorities of the said Governments and any other authority in order to comply with applicable labour laws relating to employees of GWS business including Contract labour, consultants, etc., but not limited to the Shops & Establishment Act of any State, Employees' Miscellaneous Expenditure and Provident Fund Act, Contract Labour, Employees State Insurance Act, etc.

10. To recruit and appoint personnel required for the operations of GWS business and to negotiate and fix remuneration to be paid to them subject to the guidelines and/or policy the company as approved by the Board of Directors and to issue letter of appointments, letter of increments, discharge

letters and such other papers and documents (in accordance with the Service Rules of the Company) as may be required in that behalf provided that the total remuneration of the individual employee does not exceed the limits prescribed in the Discretionary Authority Limits issued by the company. To approve the travelling and other expenditure incurred by the personnel related to GWS business."

(emphasis supplied)

makes it crystal clear that it is Sandeep Deshpande, General Manager - Read Estate and Facility Management, who has to represent the company before all authorities with regard to issues relating to contract labour, etc. Therefore, the proceedings initiated against the appellant, in his individual capacity, does not hold water.

8. Be that as it may, at this juncture, this Court feels it apposite to refer to a decision of the Karnataka High Court in Sanjay Jain v. State of Karnataka, reported in 2013 (5) KarLJ 696, wherein it has been held as under:

"3. The point of law raised in these petitions is whether the prosecution launched against the petitioners for the aforesaid offence as Directors and authorised signatories of the Company without the Company having been arrayed as accused is tenable.

4. Section 25 of the Act deals with the Offences by Company and it reads as under:

'25. Offences by companies.--(1) If the person committing an offence under this Act is a company, the company as well as every person incharge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent that commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it

is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such Director, Manager, Managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.'

5. Thus from reading of the aforesaid section, it is clear that if the offence alleged, is committed by the company, then the Company as well as all other persons, who at the time of commission of offence were incharge of the conduct of the company are deemed to be guilty and are directed to be punished accordingly.

6. Similar provision contained in Section 141 of the Negotiable Instruments Act, 1881 (in short, 'the NI Act') came up for consideration before the larger Bench of Apex Court in the case of Aneeta Hada v. Godfather Travels and Tours Private Limited 2012 (4) Kar. L.J. 296 (SC) : AIR 2012 SC 2795 : (2012) 3 SCC (Cri.) 241 : (2012) 172 Comp. Cas. 75 (SC): 2012 Cri. L.J. 2525 (SC): 2012 AIR SCW 2693 : (2012) 5 SCC 661. The Apex Court has held that to prosecute the functionaries of the company for the offence committed by the company, there should be specific averments in the complaint to the effect that such person/s was/is incharge of and being responsible for conduct of business of the Company and in the absence of such specific averment, the functionaries of the Company cannot be prosecuted. It is further held in the said decision that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. It is further held that the words "as well as the company" appearing in Section make it clear that when the Company can be prosecuted, then only persons mentioned in the other categories could be vicariously liable for offence subject to the averments in the petition and proof thereof.

7. Section 141 of the NI Act, is analogous to Section 25 of the Act. Therefore, the principles of law laid down in Aneeta Hada's case squarely applies to the facts of the case. Admittedly, in the case on hand the Company which is the principal

offender has not been prosecuted. The petitioners in the present case are stated to be the Directors and authorised signatories of the company and are being prosecuted in that capacity.

8. In the light of the law laid down in the aforesaid decision, the prosecution launched against the petitioners as functionaries of the company, is not maintainable since the company is not being prosecuted. In this view of the matter, the prosecution launched against the petitioners are liable to be quashed. Accordingly, the petitions are allowed."

9. In the case on hand, this Court has already observed that the petitioner was not incharge of and/or responsible for the conduct of the business of the company at least with regard to Contract Labour, which work has already been assigned to one Sandeep Deshpande, General Manager - Read Estate and Facility Management, vide the power of attorney referred supra.

10. For the foregoing reasons, these original petitions are allowed and the prosecution launched against the petitioner is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Chief Judicial Magistrate,  
Chengelpattu.

2.The Inspector of Factories,  
Circle I, Kancheepuram,  
130/1, Gandhi Road,  
Sriperumbudur-602105.

+1cc to M/s.Kochhar and Co, Advocate, S.R.No.25152

Cr1.O.P.Nos.9789 & 9790 of 2010  
and

M.P.Nos.1, 2, 3, 4, 1 & 2 of 2010

LN(CO)  
rrs 08/03/2019