

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.No.20943 of 2012

and

M.P.Nos.1 and 2 of 2012

S.W.Park

S/o.Chaseon Park

...Petitioner/Accused

Vs.

The Labour Enforcement Officer [Central],
Government of India,
Ministry of Labour,
No.26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.1232 of 2012 on the file of learned XIV Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.A.R.Karunakaran
for M/s.IPN Associates

For Respondent : Mr.B.Rabu Manohar,
Senior Central Government Panel Counsel

O R D E R

Petitioner seeks quash of proceedings in C.C.No.1232 of 2012 on the file of learned XIV Metropolitan Magistrate, George Town, Chennai. Proceedings under challenge complained of offences u/s.24 of the Contract Labour (Regulation & Abolition) Act, 1970, for breach of Rule 81(1)(i), 74, 81(3) and 72.

2. Heard learned counsel for petitioner and learned Senior Central Government Panel Counsel for respondent.

3. In response to the initial notice, petitioner caused a reply. Learned Senior Central Government Panel Counsel for respondent informs that the person presently in charge is before this Court today and states that as many as 150 complaints of similar nature had been filed in routine manner and admits that the reply of the petitioner to the show cause notice dated 27.02.2012 has not received consideration.

4. A certificate of registration under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 and Tamil Nadu Contract Labour Rules 1975 has been issued by the Government of Tamil Nadu through the Deputy Chief Inspector of Factories, Kancheepuram at Chennai-600 006 on 12.01.2012 recognizing M/s. Hyundai Motor India Limited as the Principal employer. In Verkey and Co Vs. Regional Labour Commissioner reported in 1985 ILR 3359 (Kar), it has been observed as follows:

"... So long the Company/Contractor cannot be regarded as carrying on its industry by or under the authority of the Central Government/ Railway Administration, the appropriate Government which could, require the Company, by rules framed by it to take licence to carry on its industry in conformity with the licence from the licensing authority appointed by it will be the State Government. Therefore, since HMIL is not carrying any industry under the authority of Central Government/ Chennai Port Trust and is registered with the State Government under the CLRA Act, the Appropriate Government is State Government and not the Central Government. Hence, the respondent initiating penal proceeding under the Act is arbitrary and colourable exercise of power/authority and is illegal."

We concur.

5. The complainant in the instant case being a Central Government official cannot initiate proceeding in respect of a concern holding a Certificate of Registration issued by appropriate State Government authority. In any event Sec.27 of the Contract Labour (Regulation and Abolition) Act, 1970, informs that no Court shall take cognizance of offence punishable thereunder unless the complaint is made within three months from the date on which the alleged commission of offence came to the knowledge of the Inspector. In the instant case, the respondent informs such knowledge to be of the date 27.02.2012. The seal of the Court below makes clear that the complaint was preferred on 05.06.2012 i.e., beyond the period of limitation.

The Criminal Original Petition is allowed. The proceedings in C.C.No.1232 of 2012 on file of learned XIV Metropolitan Magistrate, George Town, Chennai, is quashed. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gm/kpr

To

- 1.The XIV Metropolitan Magistrate,
George Town, Chennai.
2. The Chief Metropolitan Magistrate,
Chennai.
- 3.The Labour Enforcement Officer [Central],
Government of India, Ministry of Labour,
No.26, Haddows Road, Shastri Bhavan, Chennai - 600 006.
- 4.The Senior Central Government Panel Counsel
Chennai.

+1 CC to Mr.B.Rabu Manohar, Senior Central Government Panel
Counsel Sr.No.17141

CrI.O.P.No.20943 of 2012

CA(CO)
KP(27/02/2018)