

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 03.11.2017  
CORAM  
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN  
Crl.O.P No.8636 of 2011  
and  
M.P.No.1 of 2011

1.Nachimuthu Palanisamy  
2.Ponnusamy Krishnamoorthy  
3.Saminathan Kothandaraman ... Petitioners

vs.

M/s.Bureau of Indian Standards,  
Coimbatore,  
Rep. by Mr.V.Ravichandar,  
Director,  
Bureau of Indian Standards,  
Government of India,  
No.44, 5th Floor, Kovai Towers,  
Balasundaram Road,  
Coimbatore. ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the criminal proceeding pending against them in C.C.No.102 of 2010, on the file of the learned Chief Judicial Magistrate, Coimbatore and Quash the same.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : Mr.D.Kanaga Sundaram

## JUDGMENT

The Criminal Original Petition is filed to call for the records of the criminal proceeding pending against them in C.C.No.102 of 2010, on the file of the learned Chief Judicial Magistrate, Coimbatore and Quash the same.

2.That the instant Criminal Original Petition is filed by the accused 3, 4 and 5 to quash the C.C.No.102 of 2010 on the file of the learned Chief Judicial Magistrate, Coimbatore under Section 482 of Cr.P.C.

3.It is the contention of the petitioners herein that the respondent herein has filed a private complaint under Section 200 of Cr.P.C. against the petitioners herein and two others for the alleged offence under Sections 11(1), 14(b) and 33 of the Bureau of Indian Standards Act, 1986. It is alleged in the private complaint that the petitioners herein and the 2nd accused are the director of the 1st accused company namely M/s Sri Podaramman Cements Private Ltd.

4. According to the learned counsel for the petitioners herein that the private complaint does not disclose any Prima facie case against them and hence taking cognizance of the offence against the petitioners herein by the learned judge is highly arbitrary and against law. It is the further contention of the Petitioners that absolutely there is no allegation in the complaint against the petitioners herein though in the complaint it has been averred that the Petitioners are the directors of the 1st accused company, there is no allegation anywhere in the complaint that they were responsible for the conduct of the Business of the 1st accused company as required under Section 35(1) of the Bureau of Indian Standards Act, 1986. Apart from that there is no specific allegation against the Petitioners herein in the complaint that how they were responsible for the day today affairs of the 1st accused company. Merely because the Petitioners herein being a director of a company, cannot be implicated them in the above said alleged offence, unless there is a specific allegation in the complaint. Hence no offence is made out against the Petitioners herein and therefore the ordeal of trial against the Petitioners herein is unnecessary and hence the impugned private complaint is liable to be quashed in so far as the Petitioners are concerned.

5. Per contra, the learned counsel for respondent argued that private complaint was filed by the Central Government through its Director of Bureau of Indian Standards against the petitioners herein and accused 1 and 2 in C.C.No.102 of 2010 before the learned Chief Judicial Magistrate, Coimbatore alleging that they have violated the provisions of Sections 11(1) and 14(b) of Bureau of Indian Standards Act, 1986. As the petitioners herein being the director of the 1st accused company dealing with manufacturing and sales of cements, not holding proper and valid BIS license and the same is liable for penal prosecution. Hence the respondent herein filed the above private complaint against the petitioners herein and 2 others under Sections 11(1) and 14(b) and Section 33 of Bureau of Indian Standards Act, 1986. The complaint may not be quashed at the threshold without facing the ordeal of trial and the respondent herein/complainant is having valid documents/material evidence to probe the complaint. Hence the learned counsel for respondent prays this court to dismiss the quash petition.

6. I heard Mr.P.M.Duraiswamy, learned counsel for the petitioners and Mr.D.Kanaga Sundaram, learned counsel for the respondent and perused the entire materials available on record.

7. At the outset this Court does not find any prima facie case against the petitioners herein. A careful perusal of the private complaint did not make out any case for commission of offence as alleged in the complaint said to have committed by the petitioners herein. In Para VIII of the complaint, expect an averment to the effect that M/s.Sri Podaramman Cements Private Ltd., is a private limited concern dealing with manufacturing and sales of cements and its directors S.Ravichandran, N.Palanisamy, P.Krishnamoorthi and S.Kothandaraman are the accused herein not holding proper and valid BIS license. Apart from that there is no other specific allegation as regards the involvement of the petitioners herein in the day today affairs of the 1st accused company.

8. At the juncture it is useful to refer the Judgment relied on by the Learned Counsel for petitioners reported in CDJ 2013 SC 237, in the case of M/s. GHCL Employees Stock Option Trust Versus M/s.India Infoline Limited & others, it has been held as follows:

¶12. From bare perusal of the complaint and the allegation made therein, We do not find any of the paragraphs that the complainant has made specific allegation against respondent Nos. 2 to 7. In paragraph 2 of the complaint, it is allegations against respondent Nos. 2 to 6 are looking after the day-to-day affairs of the company. With whom the complainant or its authorized representative interacted has also not been specified. Although in paragraph 11 of the complaint it is alleged that the complainant on numerous occasions met accused Nos. 2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in paragraph 17 of the

complaint, there is no allegation that a particular direction or managing director fabricated debit note. In the entire complaint there are bald and vague allegations against Respondent Nos. 2 to 7.

14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegation made in the complaint supported by satisfactory evidence and other material on record.

20. Through Respondent No.1 has roped all the appellants in a Criminal case without their specific role or participation in the alleged offence with the sole purpose of setting his dispute with appellant-company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 are the Ex- Chairperson, Ex-Director and Senior Managerial Personnel of appellant No.1 Company, Who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role.

9.The principle of law laid down in the above Judgment of Hon<sup>ble</sup> Supreme Court is squarely applicable to the facts of the present case also. In the present case on hand, the complainant/respondent herein has not mentioned the specific role or participation of the petitioners herein in the alleged offence. In the absence of the same, robbing the petitioners herein in the above criminal case without their specific role and participation in the alleged offence instituting the criminal prosecution against them is improper and the same is liable to be quashed. The plain reading of the entire complaint would not make out any case against the petitioners herein.

10.In view of the foregoing reason and in the light of the Judgment cited supra, I am of the considered opinion that the issuing of summon against the petitioners herein is illegal and amount to abuse of process of law. Hence I have no hesitation to quash the above private complaint.

11.In the Result:

(a) this Criminal Original Petition is allowed;

(b) the proceeding in C.C.No.102 of 2010, pending on the file of the learned Chief Judicial Magistrate, Coimbatore, is quashed in respect of these Petitioners/accused Nos.3, 4 and 5;

(c) the learned Chief Judicial Magistrate, Coimbatore, is directed to proceed the C.C.No.102 of 2010 in respect of the accused Nos.1 and 2, without giving any adjournments to either parties and dispose of the same within a period of three months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the C.C.No.102 of 2010. Consequently, connected Miscellaneous Petition is closed.

03.11.2017

Note:Issue order copy on 14.08.2018

vs

Internet : Yes

Index : Yes

To

The Chief Judicial Magistrate,  
Coimbatore.

M.V.MURALIDARAN,J.

vs

Pre-delivery order made in

Crl.O.P.No.8636 of 2011

and

M.P.No.1 of 2011

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