

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.26499 of 2009

Sajan Varghese
Managing Director,
M/s.Saj Flight Services (P) Ltd. ... Petitioner

Vs.

The State, rep. by
The Labour Enforcement Officer (Central)
Govt. of India, Ministry of Labour,
26, Haddows Road, Shastri Bhavan,
Chennai – 600 006. ... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records and quash the complaint in CC No.397 of 2003 on the file of the Judicial Magistrate at Alandur, Chennai.

For Petitioner : M/s.Perumbulavil Radhakrishnan
For Respondent : Mr.D.Chandar
Central Government Standing Counsel

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ORDER

The petitioner has filed this petition seeking to call for the records and to quash the complaint in C.C.No.397 of 2003 on the file

of the learned Judicial Magistrate at Alandur, Chennai.

2.The case of the petitioner is the Managing Director of M/s.Saj Flight Services (P) Ltd., a Company incorporated under the Companies Act, 1956, having its Office at No.8A, GST Road, Kathippara Junction, Alandur, Chennai. The Company is also having separate independent units in different parts of the Country and those units are supervised and controlled by separate Managers who are the principal employer of the respective units and Managing Director is not personally responsible for supervision and control of each unit.

3.It is the further case of the petitioner that the respondent has instituted a complaint in C.C.No.397 of 2003 on the file of the learned Judicial Magistrate, Alandur, under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970. The offence complained of is for violation of Rules 81(1)(i), 81(2), 71, 79, 78(1)(a)(i), 78(1)(a)(ii), 8(1)(a)(iii), 78(1)(b) and Rule 76 framed under the said Act. The complaint has been instituted on frivolous grounds without considering the scope and ambit of the Contract Labour (Regulation and Abolition) Act, 1970 and the applicability of the Act to the petitioner.

4.The learned counsel appearing for the petitioner would submit that the complaint under Section 24 of the Contract Labour (Regulation and Abolition) Act is not maintainable in law as the Section envisages contravention of the provisions of the Act regarding contract labour. The petitioner does not fall within the purview of the definition of 'Contractor' under Section 2(c) of the Act.

5.The learned counsel appearing for the petitioner would further submit that the petitioner in an earlier occasion filed criminal original petition in Crl.O.P.No.28466 of 2003 as against the very same respondent and this Court vide order dated 14.09.2009 allowed the said criminal original petition and observed that the contention that the petitioner will not fall under the definition of Contractor is accepted. He would further submit that the respondent has not preferred any appeal as against that order.

6.The relevant portion of the order dated 14.09.2009 made in Crl.O.P.No.28466 of 2003 [Sajan Varghese Vs. State represented by the Labour Enforcement Officer (Central)] reads as follows:

"10.As far as the submission of the learned counsel for the petitioner regarding the point of limitation is concerned, this Court is

unable to accept the contention put forth by the learned counsel for the petitioner. That on 22.12.2001 an inspection was conducted, certain deficiencies were noticed and a show cause notice was issued and reply was also obtained and but admittedly no complaint was filed against the petitioner. But that will not stand in the way of the respondent in filing the complaint in respect of the violation or deficiencies noticed during the course of inspection on 31.01.2003. it is not the contention of the learned counsel for the petitioner that the complaint filed against the petitioner in respect of the 2nd inspection was barred by limitation. Therefore, mere failure to file a complaint in respect of the deficiencies noticed in the first inspection will not prevent the respondent from filing the present complaint. Therefore, the said contention of the learned counsel for the petitioner cannot be countenanced. But however before considering the other contention put forth by the learned counsel for the petitioner, it is useful to refer to the definition of Contractor in Section 2 (1)(c) of the Act which reads as follows:

“(c) “Contractor”, in relation to an establishment, means a person who

undertakes to produce a given result for the establishment, other than mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;""

7.Per contra, the learned Central Government Standing Counsel would submit that earlier the petitioner filed Crl.O.P.No.28466 of 2003 challenging C.C.No.694 of 2003 filed by the respondent for violation of Section 12 (1) of the Act. The said decision is not applicable to the present case. However, the learned Central Government Standing Counsel concede that no appeal was preferred against the order dated 14.09.2009 made in Crl.O.P.No.28466 of 2003.

8.The short issue involved in the present case is whether the petitioner comes under the definition of Contractor in Section 2 (1)(c) of the Contract Labour (Regulation and Abolition) Act, 1970 and whether the respondent is entitled to take action for violation of Rules 81(1)(i), 81(2), 71, 79, 78(1)(a)(i), 78(1)(a)(ii), 8(1)(a)(iii), 78(1)(b) and Rule 76 framed under the said Act.

9.This Court in the order dated 14.09.2009 made in Crl.O.P.No.28466 of 2003, filed by the very same petitioner, has observed that the contention that the petitioner will not fall under the definition of Contractor is accepted. When this Court has categorically expressed such an opinion, I do not find any justification to proceed the case against the petitioner in the capacity of the contractor.

10.The learned counsel appearing for the petitioner has no instruction as to whether any appeal is preferred or not.

11.In view of the above position, this criminal original petition is allowed and the complaint in C.C.No.397 of 2003 on the file of the Judicial Magistrate at Alandur, Chennai, is hereby quashed. Consequently, connected miscellaneous petition, if any, is closed.

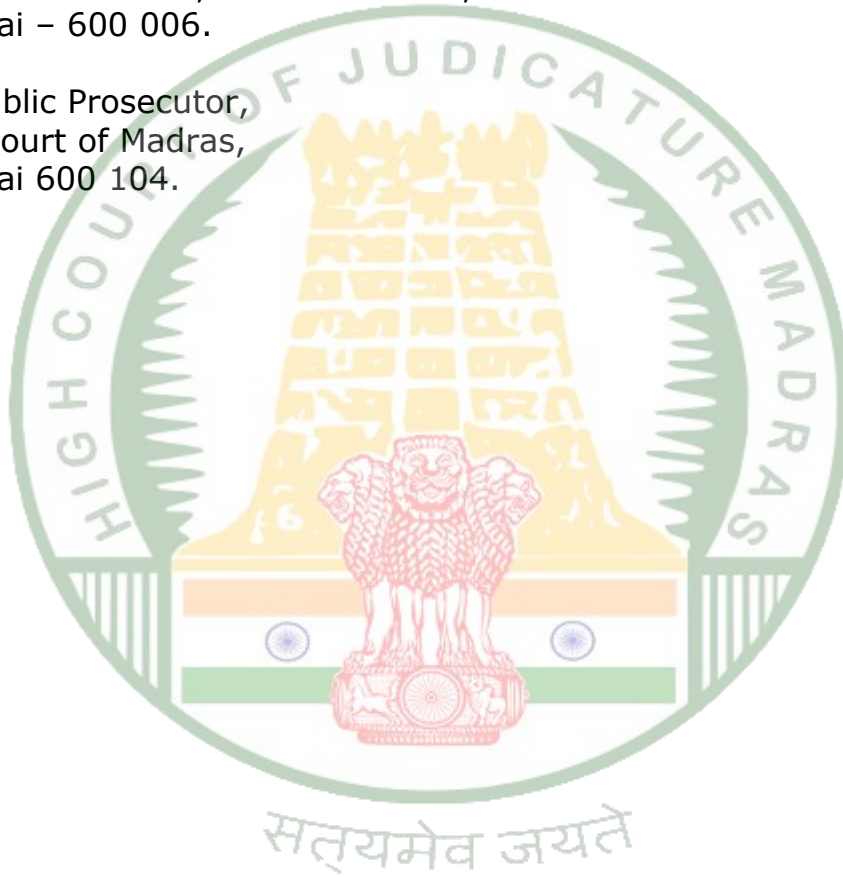
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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

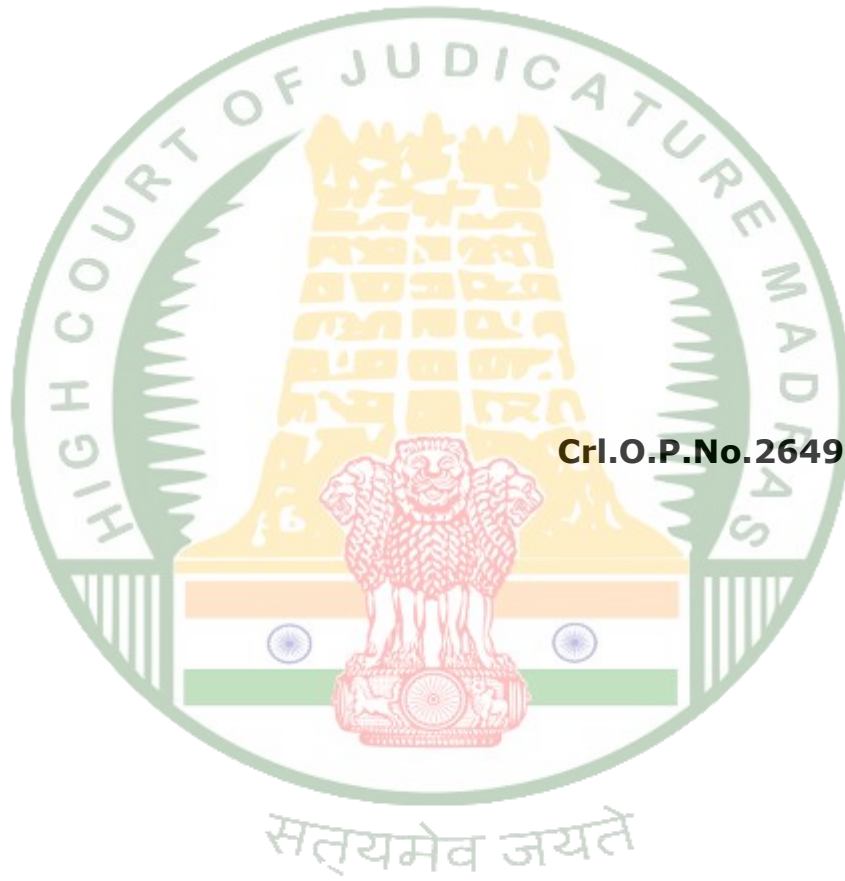
To

- 1.The Judicial Magistrate Court at Alandur,
Chennai.
- 2.The Labour Enforcement Officer (Central)
Govt. of India, Ministry of Labour,
26, Haddows Road, Shastri Bhavan,
Chennai – 600 006.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



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M.DHANDAPANI,J.
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