

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.01.2017

PRONOUNCED ON: 10.02.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.13968 of 2003 & W.P.M.P. No.26990 of 2003

The Management of
Foundation Garments Pvt. Ltd.
Represented by its Managing Director
"Divine Grace"
F.66 Anna Nagar (East)
Chennai 600 102

Petitioner

vs.

Government of Tamil Nadu
Labour & Employment (A1) Department
represented by its Principal Secretary
Fort St. George
Chennai 600 009

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the respondent relating to the issue of Government Order in G.O. (D) No.1119 dated 30.12.2002 and quash the same.

For petitioner Mr. V. Prakash, Sr. Counsel
for Mr. P. Chandrasekaran

For respondent Mr. V. Jayaprakash Narayanan
Special Government Pleader

ORDER

The Management of Foundation Garments Private Ltd. (for brevity "the Management") has filed the present writ petition challenging G.O. (D) No.1119, Labour and Employment Department dated 30.12.2002 passed by the respondent under Section 34(1) of the Industrial Disputes Act, 1947 (for brevity "the ID Act"), directing the Inspector of Labour-II, Chennai, to file a complaint against the Management for an offence punishable under Section 25-O of the ID Act.

2 Heard Mr. V. Prakash, learned Senior Counsel appearing for the Management and Mr. V. Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondent.

3 Mr. V. Prakash, learned Senior Counsel for the Management contended that the impugned order dated 30.12.2002 has been passed by the Government without application of mind and is therefore void. In support of this contention, he placed strong reliance on a Division Bench judgment of the High Court of Karnataka in F.K. Menzlin vs. B.P. Premakumar [(1991) 1 LLJ 55 Kant] and also upon the following passage of a Full Bench judgment of the High Court of Karnataka in S.N. Hada and others vs. Binny Limited Staff Association [(1988) 1 LLJ 405 Kant]:

"13 The intent of the Legislature in enacting a provision like Section 34 is to save the party against whom the complaint is to be filed, from harassment, and it is for that reason that the Government is required to apply its mind and determine the propriety of filing a complaint. The phrase 'under the authority of the appropriate Government' implies a sanction by the Government after it has considered the desirability of prosecution. If such a provision had not been enacted there could be every likelihood of filing of frivolous complaints indiscriminately. Moreover, there are certain offences which have importance either to the Employer or the Employee only. In such matters why should the Government at all involve its officers in filing the complaint and not allow the real aggrieved party to prosecute the complaint properly and diligently. What interest can the Government or its agency have in filing and prosecuting a complaint in which the rights of some private individuals are involved and which does not require determination of some question which may be of some importance and may warrant intervention of the State Government or its agency. As is clear, authorisation is a pre-requisite essential for taking cognizance of an offence under this Section. The appropriate Government, therefore, is required to apply its mind and satisfy itself before it grants the authority. It is this satisfaction which is material and sufficient for the purpose. Once on consideration of the relevant material the State Government finds it to be a fit case for prosecution, then who should file the complaint is not of much importance."

4 He further attributed mala fides in the action of the Government on the ground stated in paragraph no.5 of the affidavit filed in support of the writ petition, the relevant portion of which reads as under:

"5. I respectfully submit that I am married to Mr. V. Prakash, Advocate, who also happens to be the Trade Union Leader and he has appeared for

the workers before this Hon'ble Court in a number of cases. Therefore, the management of big companies in this part of the country have exerted pressure on the Labour Department of the Government of Tamil Nadu to prosecute us for alleged violation of Section 25-O of the Industrial Disputes Act, 1947, even though none of them in the first place complied with the provisions of the Labour Welfare Legislations. The respondent Government also has prosecuted none of the other companies for the alleged violation of this provision till date. . . . "

He further contended that Section 25-O of the ID Act can be pressed into service only if there are more the 100 workers employed in the company for the previous 12 months prior to the closure, whereas, the petitioner-company does not fulfil this condition.

5 It is his further submission that the Founder of the company J.B. Canthaswamy died on 12.10.1997 and his son Jonathan V.Canthaswamy also died on 28.09.2000 and that only Anna Marie Canthaswamy is presently managing the affairs of the company. Lastly, he contended that in the absence of any counter affidavit filed by the Government refuting the allegations made by the petitioner-company, this Court should accept the averments in the affidavit as truth and quash the Government Order.

6 Per contra, Mr. V. Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondent refuted the contentions raised on the side of the petitioner-company.

7 To appreciate the arguments of the learned Senior Counsel appearing for the petitioner-company, it may be necessary to extract Section 34(1) of the ID Act as under:

34 Cognizance of offences:

(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government."

8 It is trite that criminal law can be set in motion by anyone except where the statute provides otherwise. For offences under the ID Act, a private individual cannot file a complaint in view of Section 34(1) of the Act. The issue before the Full Bench of High Court of Karnataka in S.N. Hada and others (supra) was whether a complaint lodged by a private individual securing permission from the Government, could be regarded as a complaint made under Section 34 of the ID Act.

9 In the case at hand, the Commissioner of Labour had sent a report to the Government stating that the Management of Foundation Garments Private Ltd. has not observed the provisions of Section 25-O of the ID Act regarding the closure of the unit and there are 117 workers working in the unit who have been denied employment. On the strength of the report sent by the Commissioner of Labour, the Government has passed the impugned order dated 30.12.2002 directing the Inspector of Labour, Chennai, to file a complaint before the competent Court.

10 The Supreme Court, in Mysore Structurals Ltd. and Others vs. State of Karanataka and another [(2002) 1 SCC 477, has declared the law on the subject, as under:

"7. As observed by this Court in Raj Kumar Gupta v. Lt. Governor, Delhi [(1997) 1 SCC 556 : 1997 SCC (L&S) 181] the provisions of Section 34 of the Act are in the nature of a limitation on the entitlement of a workman or a trade union or an employer to complain of offences under the Act. It was pointed out that they should not, in the public interest, be permitted to make frivolous, vexatious or otherwise patently untenable complaints, and to this end Section 34 requires that no complaint shall be taken cognizance of unless it is made with the authorization of the appropriate government."

11 On a reading of the above, it is clear that Section 34 of the ID Act is in the nature of "a limitation on the entitlement to lodge a complaint under the Act", albeit, in the broad sense, it is called a sanction order, though it is not one stricto sensu.

12 In Prakash Singh Badal and another vs. State of Punjab and Others [AIR 2007 SC 1274], the Supreme Court, while discussing the scope of judicial review of an order of sanction granted under Section 19 of the Prevention of Corruption Act, has held that absence of sanction can be agitated at the threshold, but, omission, error or irregularity is considered fatal, unless it has resulted in failure of justice, that too, in the opinion of the Court.

13 In this case, the impugned order dated 30.12.2002 clearly states the circumstances in which it has been passed, viz., on the report given by the Commissioner of Labour that the Management had violated the provisions of Section 25-O of the ID Act. A reading of the impugned order prima facie shows that the Commissioner of Labour has forwarded the necessary materials to the Government for prosecuting the petitioner.

14 As regards the allegation of mala fides, in State of Bihar vs. J.A.C. Saldhana [(1980) 1 SCC 554], it has been held by the Supreme Court that mala fides or bias of an informant

is of secondary importance, if, at the trial, impeccable evidence disclosing the offence has been brought on record.

15 In State of Bihar and another vs. P.P. Sharma, IAS and another [1992 Supp (1) SCC 222], the Supreme Court has categorically held as follows:

"55. It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them. Nothing has been alleged, nor brought to our notice that preceding laying the complaint before the police, R.K. Singh, had any personal animosity against the respondents. Nothing has also been brought to our notice, nor alleged either in the High Court or in this Court that after his filing the complaint he had any say in the investigation conducted by the Investigating Officer or exercised any pressure to investigate the case in any particular way to secure the conviction of the respondents. The only allegation relied on by the High Court is that R.K. Singh before laying the first information report did not look into certain documents or did not deliver them up for a week to the investigating officer. Had he considered them things would be favourable to the respondents and that no administrative sanction was obtained. That by itself in our considered view would not lead to any irresistible conclusion that R.K. Singh was actuated with any personal bias or mala fides against Sharma or Ganesh Dutt Mishra. At the most it may be said that he had not properly exercised his discretion before laying the complaint. Equally no personal bias was alleged to the Investigating Officer nor found in this regard by the High Court. The ground on which reliance was placed and found acceptable to the High Court is that when the documents said to be favourable to the respondents were brought to his notice, he did not investigate into those facts on the ground of being 'irrelevant'. Freedom from bias is an integral part of the principles of natural justice. When bias was imputed to exist, he ought not to take part in a decision making process. Police officer has a statutory duty to investigate into the crime suspected to have been committed by the accused, by collecting necessary evidence to connect

the accused with the crime. Investigator exercises no judicial or quasi-judicial duty except the statutory function of a ministerial nature to collect the evidence. With his expertise, skill or knowledge he has to find whether the accused committed the offence alleged against. If the accused is aware that the Investigating Officer was personally biased against him, it is his primary duty to bring it to the notice of the higher authorities or the court at the earliest, of the circumstances or on the grounds on which he believed that the Investigating Officer is actuated with malice and impartial investigation cannot be had. If he allows the Investigating Officer to complete the investigation and the report submitted, it amounts to his waiving the objection and he would not be allowed to impeach the charge-sheet on the ground of the alleged bias or mala fides. Moreover, the Investigating Officer would be available to cross-examination at the trial of the case and it would be open to the accused to elicit from the Investigating Officer necessary circumstances or grounds to throw doubt on the impartiality of the Investigating Officer and must establish its effect on the prosecution evidence adduced at the trial. It is for the court to consider how far it has affected materially the result of the trial. The evidence collected during investigation would be subject to proof as per Evidence Act and tested by cross-examination. The reasoning of the courts below that if an authority does not act impartially or in good faith then a reasonable mind can definitely infer the bias for reason best known to the authorities is too wide a statement of law in the context of police/Investigating Officer."

16 In this case, except making a vague allegation in paragraph no.5 of the affidavit that some competitors inimical to Mr.V.Prakash have engineered the prosecution, there is no other averment in the affidavit. As held in P.P. Sharma, IAS (supra), the petitioner-company has not even impleaded the person against whom mala fides has been imputed, as a party respondent. Thus, in the absence of the minimum requirements for sustaining the plea of mala fides, the non-filing of the counter affidavit by the State Government refuting the allegations is a non-issue. At this juncture, it may be apposite to extract the words of the Supreme Court in P.P. Sharma, IAS (supra) as under:

"68. . . . The State quite legitimately and in my view rightly did not choose to file the counter-affidavit denying or contradicting the version of the respondents, in those documents. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short

course "in annihilating the still born prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits. Grosset error of law has been committed by the High Court in making pre-trial of a criminal case in exercising its extraordinary jurisdiction under Article 226. . . .
."

17 As regards the contention of the learned Senior Counsel appearing for the petitioner that there were less than 100 workers in the unit, this is a question of fact which cannot be decided in writ proceedings.

18 Further, in this case, the Labour Officer has not even filed a complaint against the petitioner-company and even before that, the petitioner-company has filed the present writ petition and has obtained stay of all further proceedings on 04.08.2003 and has successfully enjoyed the order of stay till date. This Court, in exercise of powers under Article 226 of the Constitution of India, cannot stifle a prosecution that is yet to be born.

In the result, this writ petition is dismissed as being devoid of merits. No costs. Connected W.P.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cad

To

The Principal Secretary
Labour & Employment (A1) Department
Fort St. George
Chennai 600 009

+1cc to M/s. K. Sudalaikannu, Advocate, S.R.No.8597
+1cc to the Government Pleader, S.R.No.9065

NR(CO)
EU 01.03.17

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