

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11 .2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

Crl.OP No.8784 of 2013
and
M.P.Nos.1 & 2 of 2013

Mrs.Florina Benoid
W/o.Dr.Glaston,
Chief Zonal Officer,
Church's Auxillary For Social Action,
No.4, Church Road,
Vepperi, Chennai-7

...Petitioner/Accused

Vs.

State rep by.

1.The Assistant Inspector of Labour,
27th Circle,
No.1, Mugapare Road,
Tamil Nadu Housing Board Commercial Complex,
Chennai-1.

2.The Commissioner of Labour
Chennai-6.

...Respondents/Complainant

(2nd respondent is suo-motu impleaded
as per order in Crl.O.P.8784 of 2013 and
M.P.Nos.1 and 2 of 2013 dt:28.08.2018)

Prayer:- Criminal Original Petition is filed under Section 482
Cr.P.C, to call for the records in C.C.No.778 of 2013 on the
file of Metropolitan Magistrate No.2, Egmore and quash the same.

For Petitioner : Mr.K.Shakespeare

For Respondents : Mr.T.Shunmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This petition has been filed by the accused to quash the proceedings against her in C.C.No.778 of 2013 on the file of the Metropolitan Magistrate No.2, Egmore, Chennai.

2.The first respondent herein has filed a complaint alleging that on 10.08.2012 at 10.40 a.m., she has inspected the premises of the petitioner and found the following violations:

' (i)When the Inspector of Labour came to inspect the premises, on 10.08.2012 at 10.40 a.m, he was prevented from discharging his duty which is contrary to Section 46 of Tamil Nadu shops and Establishments Act, 1947 and Rules.

(ii)The Register which ought to be maintained as per Rule 16(1) was not produced when the same was sought to be produced.

(iii)No notice was available to specify about the holiday in a week as specified in Section 11(1) of the Act.

(iv)The Register for deductions for damages or loss and fines in Form "P" which has to be maintained as per Rule 11(4), and 16(B) was not produced when the same was sought to be produced.

(v)The Register for service conditions for employees, and Leave Register in Form "Q" which has to be maintained as per Rule 16(1) and 16(B) were not produced when the same was sought to be produced. '

(vi)Wage Register for employees in Form "R" which has to be maintained as per Rule 11(5) and 16(B) were not produced when the same was sought to be produced.

(vii)The list which contains the names of employees, duty time in Form "S" was not exhibited in the premises and the copy of the same was not sent to the Assistant Labour Officer.

3. The first respondent herein has issued a show cause notice dated 16.08.2012 alleging that there are contraventions of the Sections 46 and 11(1) of Tamil Nadu Shops and Establishment Act 1947 and Rule 16(11) and 16(B) 11(1) and 11(4) r/w 16(b), 16(1) r/w 16(B), 11(5) and 16(B) and 16(4)(a) of the Tamil Nadu Shops and Establishments Rules 1948, and sought for explanation as to why case should not be registered against the petitioner. The petitioner herein has sent a reply, but not satisfying with the said reply, the first respondent has filed a complaint stating that the petitioner has contravened the

Provisions of Sections 46 and 11(1) of Tamil Nadu Shops and Establishment Act 1947 and Rules 16(11) and 16(B) 11(1) and 11(4) r/w 16(b), 16(1) r/w 16(B), 11(5) and 16(B) and 16(4)(a) of the Tamil Nadu Shops and Establishments Rules, 1948 and hence she has to be punished under Section 45(1) of the Tamil Nadu Shops and Establishments Act 1947 and under Rule 18 of the TamilNadu shops and Establishments Rules, 1948.

4. Based on the said compliant, the learned Metropolitan Magistrate No.2, Egmore, Chennai has taken the case on file in C.C.No.778 of 2013 and issued summons to the petitioner/accused. The petitioner/accused, after receipt of the said summons, has filed the present petition under Section 482 Cr.P.C. to quash the proceedings against her.

5. The second respondent has filed a counter stating that on 10.08.2012, the first respondent made an inspection and at that time, the petitioner has not co-operated and did not come forward to provide any information sought for. In fact, the petitioner had tried to prevent the inspection by keep on arguing instead of providing any information. It was noticed that the petitioner has not maintained any records prescribed under the Tamil Nadu Shops and Establishments Act and Rules. He further stated that though the petitioner has stated in the reply for the show-cause notice that they are rendering service, they engaged employees only for salary and none of them are rendering any voluntary or honorary service and therefore, the Provisions of Tamil Nadu Shops and Establishments Act, will apply for the petitioner's church. The first respondent also has taken the same stand in his counter statement.

6. The learned counsel for the petitioner has submitted that Church's Auxiliary for Social Action (In short CASA) which is a non-Governmental Organisation registered under the Societies Registration Act, having branches all over India, and its head office is at New Delhi. He further submitted that the main mission of the said CASA is to support and work for just and sustainable society by creating opportunities for the participation of socially and economically marginalized section in the development process through networking. He further submitted that the said CASA is not working for any profit or doing any business or any commercial activities and it is functioning from the donations, funds from other organizations and hence the provisions of Tamil Nadu Shops and Establishments Act, 1947 will not attract to the said CASA. He further submitted that already one Justus N.Daniel has filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the Special Deputy Commissioner of Labour in TSE.No.IA./9/2006, wherein the Special Deputy Commissioner of Labour has specifically observed that none of the activities of

the said CASA will come under the definition of Commercial Establishment (Section 2(3), Establishment (Section 2 (6) or shop (Section 2(16) as defined under Tamil Nadu Shops and Establishment Act, 1947. He further submitted that in the inspection report, it is stated that certain registers not maintained, but in the show cause notice, it is stated that the petitioner herein prevented the first respondent from inspecting the premises and therefore, he prayed to quash the proceedings against the petitioner herein.

7.The learned Government Advocate (Crl.Side), who is appearing for the respondents has submitted that since the petitioner has engaged employees and salary also paid to them, a relationship of employer and employees is in existence and therefore, the Provisions of Tamil Nadu Shops and Establishments Act will apply to the said CASA. He further submitted as per the Section 51 of Tamil Nadu Shops and Establishments Act, if any question arises whether all or any of the provisions of this Act apply to an establishment, it shall be decided by the Commissioner of Labour and his decision thereon shall be final and hence, the petitioners would have filed an appeal before the Commissioner of Labour to decide whether the provisions of the said Act will apply to the said CASA and without adopting the said procedure, the petitioner cannot take a plea that the aforesaid Act will not apply to the said CASA. He further submitted that in the order passed in TSE.No.IA./9/06, the first respondent is not a party and the said appeal was filed with regard to the dispute between the employee and employer and the findings rendered in that case will not bind upon the first respondent and therefore, he prayed to dismiss the petition.

8.For deciding the allegation as to whether the provisions of Tamil Nadu Shops and Establishment Act, 1947, will attract to the petitioner church, the following definitions are relevant :

'Commercial Establishment' is defined under Section 2 (3) of the Act, which reads thus:

'Commercial Establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purposes of this Act;

'Establishment' is defined under Section 2(6) of the

Act, which reads thus:

'Section 2(6) 'establishment' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the [State] Government may by notification declare to be an establishment for the purpose of this Act;''

'Shop' is defined under Section 2(16) of the Act, which reads thus:

'Section 2 (16) 'shop' means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns and warehouses, whether in the same premises or otherwise, used in connection with such business but does not include a restaurant, eating-house or commercial establishment;''

9. Relying upon the definition for shop, the learned Government Advocate (Crl.Side) submitted that, since the petitioner herself has admitted that in the said church, they are providing service, the petitioner Church will fall under the definition of Shop. In this petition, the petitioner has not stated that the church is rendering service to any customers. On the contrary, it is stated in the petition that they are doing only social work and therefore, it cannot be said that the petitioner church will come under the definition of shop.

10. In Pappi Chetty Raghaviah Chetty's Charities by its President Vs. Commissioner of Labour, 1972 AIR (Madras) 139 a Division Bench of this Court has held that shop referred to in the said Act, used in the popular sense of a shop where commercial activity is found. In this Case, admittedly no commercial activity is carried on and therefore, the provisions of the said Act would not attract.

11. It is seen from the typed set of papers filed by the petitioners that one Justice N.Daniel has filed an appeal, against the Management of M/s.Church's Auxiliary for Social Action (CASA), Challenging his dismissal, under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 in TSE.No.IA/9/2006, before the Special Deputy Commissioner of Labour, Madras, wherein the Special Deputy Commissioner of Labour by the order dated 31.10.2006, has observed as follows:

'In his appeal petition, the appellant also stated that the business of CASA (Respondent) include Agricultural development like digging, irrigation

wells and tanks, construction of cannals, construction of houses, worksheds, community halls, village roads and streets, constructing open wells and establish bore wells for drinking purposes, organizing youth and women to take up economic activities, providing work equipments etc., None of these activities will come under the definition of Commercial Establishment (Section 2(3), Establishment (Section 2(6) or shop (Section 2(16) as defined under Tamilnadu Shops and Establishment Act, 1947.''

12. From the aforesaid findings, it is clear that the petitioner's Church will not come under the definition of commercial establishment, establishment or shops as defined under the Tamil Nadu Shops and Establishments Act, 1947. Merely because the first respondent herein was not a party in the said proceedings, he cannot ignore the order passed by the Special Deputy Commissioner of Labour.

13. Admittedly, for the show-cause notice issued by the first respondent, the petitioner herein has sent a reply stating that the provisions of the said Act will not apply to the petitioner church. Under the said circumstances, the first respondent should have referred the matter to the Commissioner of Labour under Section 51 of the Act and get clarification. Instead of that, he has directly filed the complaint before this Court.

14. It is also to be pointed out that in the Inspection Report it is stated that the inspection was done by Mr.R.Ravichandran, Inspector of Labour assisted by the Assistant Inspectors of Labour, but the said Inspector of Labour has not signed in the said report. Further, in the said report it is not stated that the petitioner herein has prevented either the Inspector of Labour or Assistant Inspectors of Labour from discharging their duty. But in the show cause notice it is stated that the inspection was done by one Ms.R.Eswari, Assistant Inspector of Labour and she was prevented from discharging her duty.

15. The typed set of papers filed by the petitioner would show that Mr.R.Ravichandran, Inspector of Labour gave sanction to the Assistant Inspector of Labour to launch prosecution, but he has not mentioned any provision of law under which he is empowered to give such a sanction.

16. For the aforesaid said reasons, this Court is of the view that the continuance of the proceedings against the petitioner herein would amount to abuse of process of Court.

Hence, this petition is allowed. The proceedings against the petitioner in C.C.No.778 of 2013 on the file of the Metropolitan Magistrate II, Egmore, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

jen/vsa

To

1.The Metropolitan Magistrate No.II,
Egmore.

2.The Assistant Inspector of Labour,
27th Circle,
No.1, Mugapare Road,
Tamil Nadu Housing Board Commercial Complex,
Chennai-1.

3.The Commissioner of Labour
Chennai-6.

4. The Public Prosecutor,
Madras High Court.

+1cc to Mr.Sakespeare, Advocate SR.No.75812

Cr1.OP. No.8784 of 2013

MG(CO)

GMV(19/12/2018)

WEB COPY