

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.06.2018

DELIVERED ON: 11.06.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.Nos.3563 and 3565 of 2012 &
Crl.M.P.Nos.1 of 2012

P.Rajagopal, Managing Partner,
Hotel Saravana Bhavan, 230, N.S.K.Salai,
Vadapalani, Chennai 600 026

... Petitioner in both Crl.O.Ps/2nd Accused

//vs//

Government of India,
Represented by Labour Enforcement Officer-Central,
Ministry of Labour, Government of India,
26, Haddows Road, Shastri Bhavan,
Chennai 600 006.

.... Respondent in both Crl.O.Ps/Complainant

Prayer in Crl.O.P.No.3563 of 2012

Criminal Original Petition filed under Section 482 of
Cr.P.C. to call for the records in C.C.No.3096 of 2011 pending
on the file of the XVI Metropolitan Magistrate, George Town,
Chennai and quash the same.

Prayer in Crl.O.P.No.3565 of 2012

Criminal Original Petition filed under Section 482 of
Cr.P.C. to call for the records in C.C.No.3095 of 2011 pending
on the file of the XVI Metropolitan Magistrate, George Town,
Chennai and quash the same.

For Petitioner : Mr.Gupta
(in both Crl.O.Ps.)

For respondent : Mr.Dr.D.Simon,
(in both Crl.O.Ps.) Central Government Standing Counsel

COMMON ORDER

Heard Mr.Gupta, learned counsel appearing for the
petitioner and Mr.Dr.D.Simon, learned Central Government
Standing Counsel appearing for respondent.

2. These petitions are filed under Section 482 of Code of Criminal Procedure for quashing the C.C.No.3095 of 2011 and C.C.No.3096 of 2011 on the file of XVI Metropolitan Magistrate, George Town, Chennai,

3. The brief facts of the case of the petitioner is summarized below. The petitioner P.Rajagopal, Managing Partner, Hotel Saravana Bhavan is a sub licensee of M/s Oriental Cuisines Private Limited, who is the license holder for establishing and running food plaza in Chennai Central Railway Station. The license has been issued by the IRCTC, having its Corporate office at New Delhi. The respondent, who is the Labour Enforcement Officer (Central), Chennai from the Ministry of Labour and Employment in the Government of India, inspected Hotel Saravana Bhavan, located in Chennai Central Railway Station on 24.08.2011 and observed certain irregularities and consequently issued a show cause notice seeking the explanation of the petitioner as to why legal action under Section 23 and / or 24 of the Contract Labour (Regulation and Abolition) Act, 1970 should not be initiated for the irregularities observed. The petitioner allegedly did not reply to the show cause notice and therefore, resulting in the criminal complaints in (i) C.C.No.3095 of 2011 for the breach of Section 12(1) of the Contract Labour (Regulation and Abolition) Act, 1970 and (ii) C.C.No.3096 of 2011 for the breach of Section 25(2)(VIII), 81(1)(i), 71, 79, 75, 78(1)(a)(i), 78(1)(a)(ii), 78(1)(a)(iii), 78(1)(b), 76, 19 of the Contract Labour (Regulation and Abolition) Act, 1970, before the XVI Metropolitan Magistrate, George Town, Chennai,

4. The learned counsel for the petitioner has focussed on two grounds which according to him would be sufficient to quash the C.C.No.3095 of 2011 and C.C.No.3096 of 2011 under Section 482 of Code of Criminal Procedure. The first ground is that the petitioner is not a contractor as per Section 2(c) of the Contract Labour (Regulation and Abolition) Act, 1970 (herein after referred to as "the Act"), since his entity is only sub licensee of M/s Oriental Cuisines Private Limited, who is the main licensee. Secondly, according to the petitioner, the appropriate Government as defined under Section 2(1)(a) of the Act is only a State Government, whereas, the respondent represents the Central Government and therefore, the complaints are not maintainable.

5. It is relevant to extract Section 2(c) of the Act.
"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 "

The petitioner himself has admitted that the salaries and other benefits to the workers are taken care of only by them and that neither IRCTC nor M/s Oriental Cuisines Private Limited have any role to play in the employment of the persons. It is also evident that the petitioner hotel is a place, where a business, which is merely not supply of goods, is carried on and therefore, is an establishment, as defined in the Act. In such circumstances, it is opined that any interference, at this stage, on this ground, may not meet the ends of justice.

6. As regards the second ground about the jurisdiction of the Central Government, the learned counsel for the petitioner has contended that the petitioner hotel does not fall under the purview of Section 2(a) of Industrial Dispute Acts 1947 and therefore, cannot be proceeded against by the respondent, who is the Central Government. This has been countered by the learned counsel for the respondent by citing Clause 34 of the Agreement dated 15.07.2005 between Oriental Cuisines Private Limited and M/s Hotel Saravan Bhavan, which reads as under

34. The Sub-Licensee will obtain various licenses/permission as and when required as per the local regulations. In case of any offence, the Sub-Licensee will be solely responsible for its penalty and consequences.

More over, IRCTC being managed by the Central Government and have not appointed the licensor of M/s Oriental Cuisines Private Limited to establish and operate a food plaza in Chennai Central Railway Station and the petitioner being the sub licensee, I hold that the petitioner's unit which is located in the Chennai Central Railway Station and which is agreed upon to comply with all the statutory requirements, the criminal complaints filed by the respondent cannot be said to be illegal. Inview of all the aspects observed above, it would not be

appropriate for this court to interfere with the juridical process at this juncture.

7. In the result, the CrI.O.P.No.3563 and 3565 of 2012 are dismissed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mst

To

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

2.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Dr.D.Simon, advocate sr.no.36767 & 36766

+2cc to M/s. Gupta & Ravi, Advocate sr.no.36355

Common Order in

CrI.O.P.Nos.3563 & 3565 of 2012

skv(co)
nr 14/06/2018

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