



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 10.10.2018
ORDERS PRONOUNCED ON : 12.10.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.OP(MD)No.17575 of 2017 and
Crl.MP(MD)Nos.11505 and 11506 of 2017

HCL Technologies Ltd,
ELCOT, Ilanthaikulam,
Madurai - 625 020
Through its Associate Vice President,
B.Subaraman

... Petitioner/Single Accused

Vs

State of Tamil Nadu,
Deputy Inspector of Labour,
III Circle, Madurai
R.Satheesh Kumar

... Respondent/Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the cases in STC No.329 of 2017 pending on the file of the learned Judicial Magistrate-VI, Madurai and quash the same.

For Petitioner	: Mr.V.Karthic, Senior Counsel, for S.Ashok Kumar
For Respondents	: Mrs.S.Bharathi, Government Advocate (Crl side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in STC No.329 of 2017 pending on the file of the learned Judicial Magistrate-VI, Madurai.

2.The respondent has filed a complaint against the petitioner for the alleged offence under Section 4(1) r/w Rule 3(1) and (2) and Section 6, Rule 48 and 53 and Rule 49 and 53(4) of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act and Rules. This complaint has been filed on the ground that when the Deputy Inspector of Labour, visited the office of the petitioner, the relevant records were not produced before him and contract labours were being engaged without obtaining licence from the Authorities.

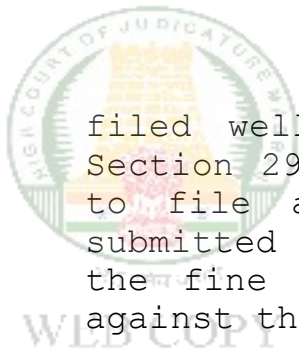


3.The respondent had conducted an inspection on 08.11.2016 and a show cause notice dated 19.12.2016 was issued by the respondent to the petitioner, seeking for explanation from the petitioner, pointing out various violations. The petitioner issued a reply notice on 26.12.2016 to the respondent by answering each and every query that was posed by the respondent in the show cause notice. However, even after the receipt of the reply notice, the respondent has gone ahead and filed a criminal complaint before the Court below.

4.The learned Senior Counsel Mr.Karthic, representing the learned Counsel for the petitioner would submit that the respondent ought to have considered the reply notice given by the petitioner and only on being satisfied that the reply notice did not answer the queries posed in the show cause notice, the respondent ought to have proceeded further to file a criminal complaint. In this case, the respondent has not taken into consideration, the reply notice given by the petitioner. The learned Senior Counsel would further contend that the complaint itself is barred by limitation. For this purpose the learned Senior Counsel brought to the notice of this Court, the provision under Section 29 of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act . The said provision specifically provides that the complaint has to be filed within a period of three months, from the date on which the alleged commission of offence comes to the knowledge of the Inspector. In this case, the Inspection was done on 08.11.2016 and the show cause notice was issued on 19.12.2016. However, the complaint came to be filed only on 04.05.2017. Therefore, according to the learned Senior Counsel, the complaint itself is barred by limitation.

5.The learned Senior Counsel would further contend that the complaint has been filed only as against the Associate Vice President and the Company has not been made as an accused in this case. Pointing out to the provision of Section 27 of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act, the learned Senior Counsel would contend that an Officer of the Company is made liable in this case, only by virtue of the said provision and therefore, the complaint filed without making the company as an accused is clearly not maintainable. For this purpose the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in **Aneeta Hada Vs. Godfather Travels and Tours Private Limited** reported in (2012) 5 SCC 661.

6.The learned Government Advocate would submit that sufficient allegations have been made in the complaint and there is no ground for dismissal of the complaint with the same at the threshold stage. The learned Government Advocate would also submit that the complaint has been



filed well within the time and in this case, the proviso to Section 29 will apply and the said proviso gives six months time to file a complaint. The learned Government Advocate further submitted that the Contractor has already pleaded guilty and paid the fine before the Court below in a separate complaint filed against the Contractor.

7. This Court has carefully considered the submissions made on either side.

8. The proceedings before the Court below has to be necessarily quashed on the only ground that the Company has not been made as an accused in this case. Section 27 of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act, talks about the offences by companies. The said provision provides that if a person who commits an offence is a Company, the Company as well as every person in-charge of and responsible to, the Company for the conduct of its business, at the time of commission of the offence, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. Therefore, the nature of the liability that has been imposed against the petitioner herein is that of a vicarious liability. Therefore, since the petitioner was working as an Associate Vice President at the relevant point of time, the criminal complaint cannot be filed against an Officer alone without adding the Company as an accused, as the complaint goes against the very nature of the offence contemplated under Section 27 of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act.

9. It will be relevant to refer to the judgment of the Hon'ble Supreme Court in **Aneeta Hada Vs. Godfather Travels and Tours Private Limited** reported in (2012) 5 SCC 661 and the relevant portions of the judgment are extracted hereunder:

'58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.



59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V.Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law, and accordingly, is hereby overruled. The decision in Anil Hada is overruled with qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

10. Even though the above judgment was passed taking into consideration the provisions of Section 141 of the NI Act, the provision under Section 27 of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act is *in pari materia* with Section 141 of the NI Act and therefore, the above judgment will squarely apply to the facts of the present case. Admittedly, in this case, the Company has not been made as an accused therefore, the complaint has to be quashed on this sole ground.

11. Insofar as the issue of limitation is concerned, in this case the Inspection was conducted on 08.11.2016 and the show cause notice was issued on 19.12.2016 pointing out certain violations of the provision of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act and Rules. Therefore, the complaint ought to have been filed within three months, at least from the date of show cause notice, since that can be taken to be the date on which the alleged offence came to the knowledge of the Inspector. In this case, the complaint should have been filed on or before 19.03.2017. However, admittedly, the complaint was filed only 04.05.2017.

12. The submissions made by the learned Government Advocate that the proviso to Section 29 of the Act will apply to the present case, has no substance. The proviso will apply only in cases, where the offence consists of disobeying a written order made by the Inspector. In this case there was no written order passed by the respondent and only show cause notice was given to the petitioner. Therefore, the limitation provided in the main provision under Section 29, viz., three months from the date on which the alleged offence comes to the knowledge of the Inspector, will only apply. Therefore, the complaint filed by the respondent is also barred by limitation.



13. In cases of this nature, when show cause notice is issued by the respondent and reply is given by the petitioner, it is the duty of the respondent to consider the reply given by the petitioner. There should also be a specific reference in the complaint and the respondent should say, why the reply given by the petitioner does not satisfy the queries posed in the show cause notice, or else, the entire exercise becomes farcical. The prosecution initiated without any reference to the reply given by the petitioner, clearly points out to the non application of mind by the respondent and the Court below ought to have taken into consideration at the time of taking cognizance of the complaint.

14. In view of the above, the continuance of the complaint before the Court below will clearly amount to abuse of process of Court. This Court has to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure and quash the complaint in order to meet the ends of justice.

15. In the result, the proceedings, in STC No.329 of 2017, pending on the file of the Judicial Magistrate No.VI, Madurai is hereby quashed. Accordingly, this Criminal Original petition is allowed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate-VI,
Madurai.
2. The Deputy Inspector of Labour,
III Circle, Madurai
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.SRINATH SRIDEVAN, ADVOCATE IN SR No. 90661

DSK

TE/PM/SAR-1 : 31/10/2018 : 5P/5C

order made in
Crl.O.P.(MD)No.17575 of 2017
12.10.2018
(2/2)