

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.11850 of 2011

ORDER :

This petition under Section 482 Cr.P.C. is filed to quash the proceedings in STC No.5 of 2011 on the file of the Additional Judicial First Class Magistrate, Gudur.

2. The contention of the petitioner is that the Director (Operations) and General Manager (Commercial) of the petitioner company, who were shown as accused in the complaint, have resigned from the company, hence, the petitioner is assailing the prosecution in STC No.5 of 2011. It is further contended that the complaint was filed beyond the statutory period of three months from the date of knowledge of commission of the offence and the condonation of the delay under Section 473 Cr.P.C. is unsustainable, further, the Inspector, who was appointed by the Central Government, has no jurisdiction to inspect and file complaint in respect of the petitioner-company.

3. *Per contra*, the learned Public Prosecutor contended that the complainant is a Labour Enforcement Officer (Central) who was appointed by the Government of India, Ministry of Labour, having jurisdiction over the State of Andhra Pradesh and

he got jurisdiction over the petitioner-establishment. The complainant filed a petition under Section 473 Cr.P.C. to condone the delay, which was properly condoned. The petitioner is authorized to represent the company.

4. The undisputed facts are that the complainant has inspected the petitioner-establishment on 16.9.2010 at 12.15 hours at Manubolu under the Contract Labour (Regulation & Abolition) Act, 1970 and rules made thereunder and observed certain defects which were incorporated in the Inspection Report-cum-Show Cause Notice No.35/13/2010-LEO/GDR, dated 16.9.2010, and copies of the same were served upon the accused and directed them to rectify the irregularities and report compliance within fortnight, failing which, it was stated, legal action would be taken. The inspection report was also submitted to the petitioner.

5. The petitioner gave reply on 22.11.2010 to the show cause notice dated 16.9.2010 and clarified that loading and unloading is their responsibility, they will engage their licenced contract workmen for unloading their own iron ore for their own usage and they never entered into agreement either with Railways or with any others for unloading of material either on piece rate/time rate basis and hence Principal Employer-Contract

relation does not arise. They also furnished certificate of registration.

6. The respondent – Labour Enforcement Officer (Central) specifically mentioned that accused are the contractors within the meaning of Section 2(1)(c) of the Contract Labour (Regulation & Abolition) Act and Rules made thereunder and they are responsible for the compliance of the provisions of the said Act and Rules made thereunder. It is further stated that the Labour Enforcement Officer (Central), Gudur, is having jurisdiction over the establishment of the accused. Therefore, *prima facie* there is specific averment in the complaint that accused are responsible for the conduct of its business and liable to be prosecuted under the Act, they being Director (Operations) and General Manager (Commercial) of the petitioner company.

7. With regard to the delay, the Apex Court in the case of *P.P.Unnikrishnan and another Vs. Puttiyottil Alikutty and another* (AIR 2000 SC 2952) held that provisions of Section 473 of Criminal P.C. which provide for extension of period of limitation in cases where applications are filed to condone delay by explaining delay occurred or to condone delay to meet ends of justice, deals with reference to period of limitation fixed in S.468 Cr.P.C. It was further held the extension of period contemplated

in the said Section is only by way of an exception to the period fixed as per the provisions of Chapter XXXVI of the Code.

8. On the face of the record, in the case on hand, the complainant filed a petition under Section 473 Cr.P.C. to condone the delay of 93 days in filing the complaint, which was condoned and the complaint was taken on file as STC No.5 of 2011. Admittedly, the petitioner has not preferred any revision or appeal against the said order of condoning the delay. The period of limitation is concerned, it is a mixed question of law and fact, which has to be proved during the trial of the case. On the face of the record, it is clear that since there is delay of 93 days, the complainant filed petition under Section 473 Cr.P.C., which was condoned having satisfied with the reasons stated and also having not satisfied with the explanation submitted by the petitioner for such objections raised by the complainant in the inspection report in respect of which show cause notice was issued lodging the complaint, which is legal.

9. In view of the facts and circumstances stated above and findings therein, I am of the considered view that *prima facie* there is material on record to establish that the complainant is having jurisdiction over the petitioner-establishment, which is under the control of the State Government and accordingly, he inspected and observed defects in the inspection report in respect

of which show cause notice was issued, for which the petitioner submitted explanation and having not satisfied with the same, the complainant filed the complaint with condone delay petition which was condoned. I find no reason in this application to quash the proceedings. Absolutely there is no material that the complainant abused any process of law and filed the complaint. Accordingly, the Criminal Petition fails.

10. In the result, the Criminal Petition is dismissed.

11. Consequently, miscellaneous petitions pending, if any, shall stand closed.

23th October, 2018.

skmr

JUSTICE N.BALAYOGI

