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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 5th September 2018

+ CRL.M.C. 3963/2015

AJAY GUPTA

..... Petitioner

Through: Mr. Ashish Midha, Advocate

versus

MAHENDER SINGH & ORS.

..... Respondents

Through: Mr. Tushar Chhabra, Adv. for R-2 &
R-5.

Ms. Shradha Karol, Adv. with
Mr. Sarthak Karol, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had lodged a complaint (CC No.1546/1) on 30.08.2006 with the Additional Chief Metropolitan Magistrate (ACMM), New Delhi alleging offences punishable under Sections 120-B/463/468/469/471 of Indian Penal Code, 1860 (IPC) having been committed by the respondents. The ACMM held an inquiry into the said complaint in which the petitioner examined himself (as CW1). The ACMM, however, by his order dated 31.05.2013, found no *prima facie* case made out and, thus, dismissed the complaint.

2. The petitioner challenged the above said order in the court of Sessions invoking its revisional jurisdiction by filing a petition

(Criminal Revision No.34/2015). The said petition was dismissed by the revisional court vide its judgment dated 04.07.2015, endorsing the view taken by the ACMM.

3. It is the aforesaid orders which are under challenge by the present petition presented before this court invoking its inherent power under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

4. It appears from the allegations made in the criminal complaint and certain documents pertaining to the anterior period that the petitioner was running two factories, one in the name and style of M/s. Vijay Fertilizers Private Limited (M/s. Vijay Fertilizers) at property No.6-7, Anand Industrial Area, Mohan Nagar, Ghaziabad, U.P. and the other described as M/s. Shitiz Metals Private Limited (M/s. Shitiz Metals) from property No.32, South of G.T. Road, Industrial Area, Ghazibad, U.P. The petitioner himself is a resident of D-819, New Friends Colony, New Delhi. He claims to have been the Managing Director of both the said concerns, their registered office being 5, Rajdhani Enclave, Preet Vihar, New Delhi and later same as the residential address, *i.e.* D-819, New Friends Colony, New Delhi. According to him, the first respondent (Mahender Singh Chauhan) was engaged in 1994 by M/s. Vijay Fertilizers as an accountant, while second respondent (Satish Chandra Gupta) worked as a receptionist with the said concern from 01.10.1993. He also alleged that the third respondent (Shiv Vir Singh) and fourth respondent (Dinesh Kumar) worked as his employees – being electrician and clerk – with the said company from 07.04.1996 and 17.05.1994 respectively. It is his case

that due to some compelling circumstances, his factories were shut down and the first said company M/s. Vijay Fertilizers was closed on 30.11.1999 followed by similar closure of the second company M/s. Shitiz Metals in April-May, 2001, the latter having been sold to one Rajeshwar Kumar Mittal by agreement to sell dated 28.04.2001.

5. It appears the petitioner was served with a notice (Ex.CW-1/A) dated 16.10.2001 by Assistant Labour Commissioner, Ghaziabad, U.P. referring to petitions having been filed by the respondents herein claiming to have been deprived of their legitimate dues under the labour laws, they being employees of M/s. Vijay Fertilizers, its name having been changed into M/s. Shitiz Metals.

6. Against the above-noted backdrop, the petitioner issued a legal notice (Ex.CW-1/B) dated 23.09.2005 to the first respondent referring to a letter dated 22.11.1999 purportedly issued by him, it being addressed to the other respondents, transferring their employment to M/s. Shitiz Metals, taking exception to such communication on the ground he was not authorized to issue any such letter. The first respondent concededly sent a reply (Ex.CW-1/C) dated 13.10.2005 to the petitioner wherein he asserted that he was working – not as an accountant – but as a Manager in his firm M/s. Vijay Fertilizers and later in the same capacity in his firm M/s. Shitiz Metals till 31.12.2004. He also asserted in the said reply that the petitioner, in spite of being approached, had failed to clear his dues as per law. He also took the position that he had issued the communication in question to the other respondents under oral instructions of the

petitioner himself transferring their employment from M/s. Vijay Fertilizers to M/s. Shitiz Metals, it having been sent in his capacity as manager.

7. The Metropolitan Magistrate was not satisfied with the evidence led in pre-summoning inquiry, *inter alia*, observing that no documents had been produced to show the termination of services to the respondents upon closure of the factory M/s. Vijay Fertilizers on 30.11.1999. He also noted that the averments of the complainant that the registered office of M/s. Vijay Fertilizers had shifted to D-819, New Friends Colony, New Delhi contradicted the claim that the company had been earlier closed down on 30.11.1999.

8. During the course of hearing, the learned counsel for the petitioner was asked as to whether any documents exist or have been shown the light of day as to the terms of engagement of the respondents with M/s. Vijay Fertilizers so as to reach a definitive conclusion as to the capacity in which the first respondent was working in the employment of the petitioner and also as to the termination of his services and that of the other respondents. He was also asked if any documents or records exist showing the termination of services of any of the respondents and disbursal of their legitimate dues at the stage of such termination of services. The counsel conceded that no such documents have been produced or can be shown.

9. Without the documents in above nature being produced, the bald averment that the first respondent had no authority to issue any

communication, as referred to above, because he was working only as an accountant cannot be accepted. The fact remains that it is not disputed that all the respondents were employees of the petitioner. Their services would not have come to an end only upon the factory being closed down under some compulsion. Their claim before the authorities under the labour laws that they had been transferred from M/s. Vijay Fertilizers to M/s. Shitiz Metals will have to be tested on the basis of evidence in the proceedings taken out at their instance. There is nothing brought before the criminal court from which it could be inferred that the letter dated 16.10.2001 had been forged or fabricated to set up or support a false claim.

10. In the above facts and circumstances, this court finds no reason to interfere with the conclusions reached by the court of ACMM and the revisional court in the impugned orders.

11. For above reasons, the petition is dismissed.

SEPTEMBER 05, 2018

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R.K.GAUBA, J.