

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2018

DELIVERED ON : 21.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.A.Nos.499, 502, 555, 556 and 557 of 2005

State Rep. By

Deputy Inspector of Labour,
Vth Circle, Chennai.

... Appellant in all the Crl.A.s/Complainant

Vs

Kannan, Finance Manager,
Regional Office,
M/s.Blue Dart Express Ltd.,
Courier Division, Old NO.38, New No.11,
Sterling Road, Chennai-34.

... Respondent in Crl.A.No.499/2005/Accused

Krishnakumar,
M/s.Avon Solution,
18, South Boke Road,
T.Nagar, Chennai-17.

... Respondent in Crl.A.No.502/2005/Accused

Giriraj,
Assistant Manager (Operations),
M/s.Blue Dart Express Ltd.,
Cargo Division, SP.4, Industrial Estate,
Boomagal Main Road,
Guindy, Chennai-32.

... Respondent in Crl.A.No.555/2005/Accused

E.Sundar,
M/s.S.M.Express Limited,
S.P.4, Industrial Estate,
Guindy, Chennai-32.

... Respondent in Crl.A.No.556/2005/Accused

Dennisan,
Branch Manager,
M/s.Blue Dart Express Ltd.,
Courier Division, 2, A.S.P.Developed Flats,
Industrial Estate, Guindy,
Chennai-32.

... Respondent in Crl.A.No.557/2005/Accused

Common Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the judgment dated 30.11.2004 in C.C.Nos.4693, 4672, 4694, 4666 and 4692 of 2004 on the file of the learned XI Metropolitan Magistrate Court, Saidapet, Chennai and pray that this Court may be pleased to set aside the order of acquittal and convict the accused.

(In all the Crl.A.s)

For Appellant : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

For Respondents : Mr.S.Haroon
for M/s.T.S.Gopalan & Co.,

COMMON JUDGMENT

These Criminal Appeals were filed by the Appellant/complainant against the judgment of acquittal dated 30.11.2004 passed in C.C.Nos.4693, 4672, 4694, 4666 and 4692 of 2004, on the file of Learned XI Metropolitan Magistrate Court, Saidapet, Chennai.

2.Brief case of the Appellant:

The appellant /Deputy Inspector of Labour 5th circle conducted an inspection at the respondent/accused premises and found that the Blue Dart Express Ltd (Cargo Division) company has engaged contract labourers of Avon Solutions and S.M.Express for delivery of letters and loading and unloading of goods without obtaining registration certificate as Principal Employer and therefore the Deputy Inspector of Labour has issued show cause notice against the respondent/accused and the respondent/accused have failed to submit proper reply for which Deputy Inspector of Labour filed charge sheet before this Court after obtaining sanction from Inspector of Labour and further the Avon Solutions and S.M.Express Limited have no contract Licence and therefore they are not entitled to do any work or service in the Blue Dart Express Limited premises and continued that the Blue Dart Express Limited has failed to register as Principal Employer and therefore the respondent/accused are liable for the offences as alleged in the charge sheet as under mentioned.

3.The appellant/ complainant filed the final report in all the five cases C.C.Nos.4693, 4672, 4694, 4666 and 4692 of 2004 and the learned trial Court framed charges in all the five cases. The specific charges framed against the accused in all the cases are as follows:

4.In C.C.No.4666 of 2004

That on 2.4.2004 at about 1.30 PM when the Deputy Inspector of Labour 5th Circle inspected the work spot at M/s.Blue Dart Express Limited, S.P.4, Industrial Estate,Guindy he found that certain contract labourers of M/s.S.M.Express Limited have been engaged by the Blue Dart Express for loading and unloading without contract licence. Therefore the accused is liable for the breach of rule under 12(1) r/w section 23 of the Contract Labour (Regulation and Abolition) Act 1970. The respondent/accused pleaded not guilty to the offences framed against them. Common trial was conducted on memo filed by the both parties and evidence was recorded in C.C.No.4666 of 2004. The appellant/complainant examined himself was PW1 and close the evidence. The respondent/accused questioned about the incriminating evidence adduced against them under Section 313 of Cr.P.C. The respondent/accused examined them as defence witness as Dws.1 to 3 in C.C.Nos.4672, 4666 and 4693 of 2004. On completion of the trial, the learned trial Court acquitted the accused.

5.Criminal Appeal No.556 of 2005 is filed against the order of the Learned Magistrate in C.C.No.4666 of 2004 acquitting one E.Sundar, Manager (Operations) of SM Express Limited for offence under section 12(1) read with section 23 of the contract labour (Regulation and Abolition) act 1970.

6.In C.C.No.4672 of 2004

That on 2.4.2004 at about 12.50 PM when the Deputy Inspector of Labour 5th Circle inspected the work spot at M/s.Blue Dart Express Limited, S.P.Development Plot, Industrial Estate, Guindy he found that certain contract labourers of M/s.Avon Solutions is doing the works Blue Dart Express (courier division) company for which the accused has not obtained any contract licence and therefore the accused is liable for the breach of rule under 12(1) r/w section 23 of the Contract Labour (Regulation and Abolition) Act 1970.

7.The respondent/accused questioned about the incriminating evidence adduced against them under Section 313 of Cr.P.C. The respondent/accused examined them as defence witness as DW 1 to 3 in C.C.Nos.4672, 4666 and 4693 of 2004. On completion of the trial, the learned trial Court acquitted the accused.

8.Criminal Appeal No.502 of 2005 is filed against the order of the Learned Magistrate in C.C.No.4672 of 2004 acquitting one Krishna Kumar of Avon Solutions for offence under section 12(1) read with section 23 of the contract labour (Regulation and Abolition) act 1970.

9.In C.C.No.4692 of 2004

That on 2.4.2004 at about 12.50 PM when the Deputy Inspector of Labour 5th Circle inspected the work spot at M/s.Blue Dart Express Limited, (Courier Division) 2-A S.P.Development Plot, Guindy, Chennai he found that certain contract labourers of M/s.Avon solutions Limited for delivery of documents without obtaining registration certificate as Principal Employer and thus the accused has committed an offences under Section 7(1) section 9(a) r/w 23 of the Contract Labour (Regulation and Abolition) Act 1970.

10.The respondent/accused questioned about the incriminating evidence adduced against them under Section 313 of Cr.P.C. The respondent/accused examined them as defence witness as Dws.1 to 3 in C.C.Nos.4672, 4666 and 4693 of 2004. On completion of the trial, the learned trial Court acquitted the accused.

11.Criminal Appeal No.557 of 2005 is filed against the order of the Learned Magistrate in C.C.No.4692 of 2004 acquitting Dennison, Manager Blue Dart Express Limited for offence under sections 7(1), 9(a) read with section 23 of the contract labour (Regulation and Abolition) act 1970.

12.In C.C.No.4693 of 2004

That on 2.4.2004 at about 12.50 PM when the Deputy Inspector of Labour 5th Circle inspected the work spot at M/s.Blue Dart Express Limited, (Courier Division) 2-A S.P.Development Flat, Guindy, Chennai he found that certain contract labourers of M/s.Avon Solutions Limited for delivery of documents without obtaining registration certificate as Principal Employer and thus the accused has committed an offences under Section 7(1) and section 9(a) r/w 23 of the Contract Labour (Regulation and Abolition) Act 1970.

13.The respondent/accused questioned about the incriminating evidence adduced against them under Section 313 of Cr.P.C. The respondent/accused examined them as

defence witness as Dws.1 to 3 in C.C.Nos.4672, 4666 and 4693 of 2004. On completion of the trial, the learned trial Court acquitted the accused.

14.Criminal Appeal No.499 of 2005 is filed against the order of the Learned Magistrate in C.C.No.4693 of 2004 acquitting one Kannan, Finance Manager, Blue Dart Express Limited for offence under section 7(1) and section 9(a) read with section 23 of the Contract Labour (Regulation and Abolition) Act 1970.

15.In C.C.No.4694 of 2004

That on 2.4.2004 at about 1.30 PM when the Deputy Inspector of Labour 5th Circle inspected the work spot at M/s.Blue Dart Express Limited, S.P.4, Industrial Estate, Guindy he found that certain contract labourers of M/s S.M.Express Limited have been engaged by the Blue Dart Express for loading and unloading without obtaining registration certificate as Principal Employer and thus the accused committed an offence under Rule 7(1) 9(a) r/w section 23 of the Contract Labour (Regulation and Abolition) Act 1970.

16.The respondent/accused questioned about the incriminating evidence adduced against them under Section 313 of Cr.P.C. The respondent/accused examined them as defence witness as Dws.1 to 3 in C.C.Nos.4672, 4666 and 4693 of 2004. On completion of the trial, the learned trial Court acquitted the accused.

17.Criminal Appeal No.555 of 2005 is filed against the order of the Learned Magistrate in C.C.No.4694 of 2004 acquitting one Giriraj, Assistant Manager (Operations) of Blue Dart Express Limited for offence under section 7(1) and section 9(a) read with section 23 of the Contract Labour (Regulation and Abolition) Act 1970.

18.On completion of the trial, the learned trial Court acquitted the respondent/accused in all the cases holding that the appellant/complainant failed to prove that the Blue Dart Express has engaged employees of Avon Solutions and S.M.Express Limited as Contract Labourers without obtaining registration certificate as principal employer.

19.Rival Submissions in all cases:

The learned counsel for the Appellant/complainant submits that the learned trial Court went wrong in acquitting the respondent/accused on the ground that there was no contract labour as per section 2(1) (b) of Contract Labour (Regulation and Abolition) Act 1970. The trial Court failed to consider the evidence let in by the prosecution in support of the contract worker having been employed in the principal company of M/s Blue Dart Express Limited.

20.The learned counsel for the Appellant/complainant submits that the Trial Court failed to appreciate the evidence adduced by the prosecution to show that more than 20 workers were employed as contract laborers in the accused company M/s Blue Dart Express Limited.

21.The learned counsel for the Appellant/complainant submits that the Trial Court failed to appreciate that the accused, the principal employer M/s.Blue Dart Express Limited have not applied for registration as principal employer as required under section 7(1) of the Contract Labour Act 1970.

22.The learned counsel for the Appellant/complainant submits that the Trial Court failed to note that M/s Avon Solutions private Limited and M/s.S.M. Express Limited have violated Section 12 of Contract Labour Act 1970.

23.The learned counsel for the Appellant/complainant submits that the Trial Court failed to appreciate to consider the evidence of PW1 that he has got no animosity to file a complaint against the accused.

24.The learned counsel for the respondent/accused objected against the submissions made by the appellant and supported the view taken by the learned trial Court and seek dismissal of appeals.

25.The learned counsel for the respondent cited the following decisions in support of his submissions:

- 1) 1970 II LLN 253
- 2) 1983 I LLJ 255
- 3) 1991 II LLJ 190

26.I heard Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the appellant and Mr.S.Haroon for M/s.T.S.Gopalan & Co. learned counsel for the respondent and perused the entire materials available on record.

27.The case of the appellant is that the respondent/accused without obtaining registration certificate as principal employer engaged contract labourers of Avon Solutions and S.M.Express for delivery of letters , loading and unloading of goods and failed to reply the show cause notice issued against them by the complainant and therefore the respondent/accused is liable for the offences stated in the final report.

28.The case of the respondent is that Avon Solutions and S.M.Express Limited companies are not contractors and they have not engaged any contract labourers for the service of the Blue Dart Company.

29.In all the five cases the companies were not charged by the Deputy Inspector of Labour who is the appellant/complainant herein. Admittedly the respondent/accused companies were also registered under the companies act and they are also not charged by the appellant /complainant herein. The respondent/accused through their evidences marked Exhibit D1 and D3 showing the agreement entered between the Avon Solutions, S.M.Express Limited companies with Blue Dart Express for doing Courier and Cargo transport services. Therefore it is not necessary to obtain the contract licence from the authorities and registration certificate as principal employer for the Blue Dart Company as per the Tamil Nadu contract labour (Regulation and Abolition) Act 1970.

30.On careful reading of the provisions of the law, contract labour means "a workman employed in connection with the work or when he is hired in connection with the said work by or through a contractor and the contractor means a person who undertakes to produce a given result for establishment through contract labour". The evidence deposed in this case through DW 1 to 3 categorically states that the Avon Solutions or S.M.Express Company has no direct connection with the works carried out by the Blue Dart Company. Hence the trial Court rightly comes to the

conclusion that there is no question of principal employer by Blue Dart Express and the Avon Solutions and S.M.Express Limited need not obtain any contract licence from the Appellant/complainant.

31. Therefore, I find no perversity in the Judgment passed by the learned trial Court in C.C.Nos.4693, 4672, 4694, 4666 and 4692 of 2004, on the file of Learned XI Metropolitan Magistrate Court, Saidapet, Chennai and the appeals filed by the appellant are dismissed.

Sd/--

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs
To

The XI Metropolitan Magistrate,
Saidapet, Chennai.

2. The Deputy Inspector of Labour
5th Circle, Chennai.

3. The Public Prosecutor, High Court, Madras.

+1cc to M/s.T.S.Gopalan & Co., Advocate SR.No. 3888

CrI.A.Nos.499, 502, 555, 556 and 557 of 2005
A.SK(20/02/2019)



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