

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.2.2019

CORAM :
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.623 of 2019 & CMP.No.5096 of 2019

V.Saravanan, Manager-HR, Cavin
Care Private Limited, Trends
Division, Chennai-18

...Appellant

Vs

The Assistant Provident Funds
Commissioner, Employees Provident
Funds Organization, S.J.Plaza,
Swarnapuri, Salem-4.Respondent

APPEAL under Clause 15 of the Letters Patent against
the order dated 19.11.2018 passed W.P.No.23752 of 2018.

Prayer in W.P.No.23752 of 2018:

Writ Petitions under Article 226 of the Constitution
of India praying for the issuance of a Writ of
Certiorari, Calling for the records in proceedings
No.CB/RO/SLM/COMP-II/1700531/E-III/2018 dated 03.08.2018
issued under Section 193 Indian Penal Code and Proceedings
No. CB/RO/SLM/COMP-II/1700531/E-III/2018 dated 03.08.2018
issued under Section 196 of Indian Penal Code on the file
of the Respondent quash the same.

For Appellant : Mr.D.Abdullah

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.D.Abdullah, learned counsel for the
appellant.

2. This writ appeal is directed against the order
dated 19.11.2018 in WP.No.23752 of 2018.

3. The appellant herein filed the said writ petition
challenging the show cause notice dated 03.8.2018 issued by
the respondent under Section 193 of the Indian Penal Code
(IPC).

4. In the said show cause notice, it has been stated
that an enquiry under Section 7A of the Employees'
Provident Fund and Miscellaneous Provisions Act, 1952 was
initiated against the appellant's establishment and that
such enquiry was deemed to be a judicial proceedings within

the meaning of Sections 193 and 228 and for the purpose of Section 196 of the IPC. The said show cause notice further stated that during the hearing on 10.7.2018, the appellant stated that the enquiry was limited to three franchisees and that the respondent was going out of bounds with the enquiry. The respondent would further state that it was proven to the representative with the summons notice of 7A of the said Act itself that the enquiry was pertaining to M/s.Green Trends/Trends in Vogue, that none appeared in the enquiry dated 25.7.2018 and that though the establishment, through the authorized representative, requested one more week's time to submit the details of the employees pertaining to their franchisees, vide letter dated 31.7.2018, they refused to submit the records as requisitioned by the respondent. Therefore, the respondent alleged that the appellant was constantly changing their statement/giving false statement amounting to misleading the authority with contradictory versions forcing the respondent to invoke the provisions of Section 196 of the IPC.

5. The appellant's case is that the said show cause notice does not disclose any offence and that the respondent is harassing the appellant by threatening to initiate prosecution every time they appear before the respondent.

6. It is seen that the respondent issued the notice dated 07.2.2018 under Section 7A of the said Act calling upon the appellant's establishment to produce documents and records to determine as to what would be the dues payable by the appellant's establishment under the provisions of the said Act. The appellant's establishment gave a reply dated 26.3.2018. Hearing notices were given and for the said show cause notice dated 03.8.2018 issued under Section 196 of the IPC, the appellant's establishment again gave a reply dated 21.8.2018. The respondent fixed the hearing on 11.9.2018 and on receipt of the hearing notice dated 28.8.2018, the appellant's establishment approached this Court by filing the said writ petition.

7. The proceedings initiated pursuant to the said show cause notice under Section 7A of the said Act cannot be interdicted. However, the respondent should proceed with the matter in a judicious manner and there should not be any unnecessary threat of prosecution against the appellant, who is the Manager-HR or the authorized representative of the establishment.

8. The learned Single Judge refused to entertain the said writ petition as the same was filed challenging the said show cause notice. The learned Single Judge was right in doing so. However, we make certain observations so that the enquiry proposed to be conducted by the respondent is

proceeded with in a proper manner without any unnecessary pressure on the appellant. Equally, it is the responsibility of the appellant to cooperate with the enquiry by producing records and documents.

9. Accordingly, while declining to interfere with the order passed in the said writ petition, we direct the respondent to commence the enquiry pursuant to the said show cause notice dated 07.2.2018 issued under Section 7A of the said Act after considering the reply given by the appellant's establishment dated 26.3.2018, take note of the records, which have been produced, give a fair hearing to the appellant's establishment and pass a speaking order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this judgment.

10. The writ appeal is dismissed with the above observations. Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

To

The Assistant Provident Funds Commissioner,
Employees Provident Funds Organization,
S.J.Plaza, Swarnapuri,
Salem-4.

+1cc to Mr.D.Abdullah , Advocate SR.No. 18774

WA.No.623 of 2019 &
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A.SK(08/04/2019)

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