

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.1794 to 1803 of 2014 and
M.P.Nos.2,2,2,2,2,2,2,2 & 2 of 2014

Sri.Basker

... Petitioner
in Crl.O.P.Nos.1794 &
1800 of 2014

1.M/s.Tamil Nadu Ex-Servicemen

Corporation Ltd, (TEXCO),
Major Parameswaran Memorial Building,
Sri Nagar Colony, No.2, West Mada Street,
Saidapet, Chennai-15
Represented by it's
General Manager Mr.P.Ramar

2. Basker

... Petitioners
in Crl.O.P.Nos.1795, 1796,
1797, 1798, 1799,
1801, 1802 & 1803 of 2014/Accused 1 & 2

Vs.

State Rep by
The Labour Enforcement Officer(Central)
Govt of India / Ministry of Labour
No.26, Haddows Road, Shastri Bhavan,
Chennai-600 006

... Respondent
in all Crl.O.P.'s/Complainant

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C. praying to call for the records in S.T.C.Nos.1260, 373, 398 & 388 of 2012, C.C.Nos.112, 118, 563, 1261, 564, 330 of 2012 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai, XVI Metropolitan Magistrate, George Town, Chennai, XIV Metropolitan Magistrate, George Town, Chennai, Judicial Magistrate at Ranipet, IX Metropolitan Magistrate, Saidapet, Chennai respectively and quash the same.

For Petitioners

in all Crl.O.P.'s : Mr.S.Siva Shanmugam

For Respondent

in all Crl.O.P.'s : Ms.Sunita Kumari,

Central Government Standing Counsel

COMMON ORDER

These complaints have been filed under Section 23 of the Contract Labour (Regulation and Abolition) Act, 1970 for the offence punishable under Section 12(1) of the same Act.

2. The learned counsel for the petitioners submitted that the petitioner is the contractor as defined under Section 2(i) (c) of the Contract Labourer (Regulation and Abolition) Act, 1970. He has been executing the work of security work at IIT, Chennai by employing 30 contract labourers. While being so, on 10.02.2012, the Labour Enforcement Officer(Central), Chennai inspected the work place and detected the infringement and violation of Section 12 (1) of the Contract Labourer (Regulation and Abolition) Act, 1970 and thereby engaged contract labours numbering 30 without obtaining Labour Licence from the Assistant Labour Commissioner(Central), Chennai. Hence, the complaint.

2.1. The learned counsel for the petitioners further submitted that the respondent is a Labour Enforcement Officer and lodged a complaint without any sanction obtained as contemplated under Section 197 Cr.P.c. and filed the complaint before the Magistrate. The Magistrate without even considering whether the prosecution was initiated after obtaining sanction or not mechanically have taken cognizance and issued summons to the petitioner. The petitioner is a public servant under the Government of Tamil Nadu and having been deputed as General Manager of TEXCO i.e. Tamil Nadu Ex-Servicemen Corporation Limited, hereinafter called TEXCO, the undertaking of the Government of Tamil Nadu. While discharging his official duty, he failed to obtain Labour Licence to engage contract labours and as such while discharging his official duty, the offence was committed. Therefore, necessarily the respondent ought to have obtained sanction as contemplated under Section 197 Cr.P.C. to prosecute the petitioner.

2.2. Further he submitted that the Tamil Nadu Government Undertaking is including the TEXCO and the General Manager of the TEXCO is a public servant coming under the State Government. Therefore Section 197 Cr.P.C. is mandatory and it cannot be dispensed with to prosecute the petitioner. Further he submitted that the petitioner being the State Government undertaking Corporation, the respondent being the Central Government official, he has no power to prosecute the petitioner under the alleged violation as under the Contract Labourer (Regulation and Abolition) Act, 1970. In this regard, he also cited the judgment of the Hon'ble High Court of Karnataka in

Crl.Petition No.851 of 2005 in the case of Sri Victor Joseph and Anr. Vs. the State rep. by the Labour Enforcement Officer dated 21.07.2005 and the judgment of this Court in Crl.O.P.No.7317 of 2017 dated 01.03.2010 in the case of Munianathan Vs. Labour Enforcement Officer(Central).

3. Per Contra, the learned counsel appearing for the respondent filed counter and submitted that the petitioner is a contractor defined under Section 2 (1) (c) of the Contract Labourer (Regulation and Abolition) Act, 1970 and he has been awarded contract work from IIT, Chennai for which the Central Government is the appropriate Government to take action as against the petitioner. The respondent is the competent person to lodge a complaint against the petitioner. Further she submitted that the petitioner does not have any immunity under Section 197 Cr.P.C. for the reason that the petitioner is not a public servant. The petitioner is engaged in contractual work with IIT which is a Central Government organisation and as such the sanction required under Section 197 Cr.P.C. does not arise.

3.1.Further she submitted that as per Section 24 "if any person contravenes any of the provisions of this act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to Rs.1000/- or with both". Therefore, the petitioner is the company registered under the Companies Act and as such the petitioner is bound by the rule of law and cannot attempt to take shelter under Section 197 Cr.P.C. She also relied upon the judgment in the case of State of U.P. and Anr. Vs. Synthetics and Chemicals Ltd. and Anr reported in (1991) 4 SCC 139 and also the judgment in the case of V.C.Chinnappa Goudar Vs. Karnataka State Pollution Control Board and Another reported in (2015) 14 SCC 535.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

5.The respondent lodged the complaint under Section 23 of the Contract Labourer (Regulation and Abolition) Act, 1970 for the offences punishable under Section 12(1) of the same Act. The petitioner is the sole accused in the complaint. The crux of the allegation is that the petitioner failed to obtain licence from the Assistant Labour Commissioner (Central), Chennai for engaging contract labours numbering 30 for the contractual work with IIT, Chennai. It is also seen that infringements found on the inspection of the respondent and issued show cause notice to the petitioner. After receipt of the same, the petitioner did not reply and hence the complaint.

6.The learned counsel for the petitioner raised two grounds. The first one is that the petitioner is the General Manager of the TEXCO and it is completely controlled by the Government of Tamil Nadu. Therefore, he is a Government servant of Tamil Nadu and as such the respondent is being the Central Government has no power to initiate any complaint. In this regard, the Section 2(1)(a) of the said Act is extracted as follows:

"2(1) (a) "Appropriate Government means:

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated."

7.In the case on hand, the TEXCO Limited is functioning within the State of Tamil Nadu and it is an establishment of which the appropriate Government is not the Central Government. As contemplated under Section 2(1) (a) of the said Act provides that in respect of certain establishment the appropriate Government would be Central Government. Therefore, the complaint lodged by the respondent of the Central Government is not maintainable as against the petitioner.

8.The second point raised by the petitioner is that the petitioner presently is a contractor and he has been executing the work of security work at IIT, Chennai by employing 30 contract labours. He has been deputed as General Manager of TEXCO and he is a public servant under the Government of Tamil Nadu. While he was discharging his duty to lodge complaint, the respondent has to obtain sanction under Section 197 Cr.P.C. A reading of Sections 4 and 5 of Cr.P.C. would make it clear that unless it is so specifically stated to the contrary only special enactment, the provisions of the Code of Criminal Procedure are very much applicable for investigation, enquiry or trial otherwise while dealing with the offence. In the case on hand, Section 23 of the Contract Labourer (Regulation and Abolition) Act, 1970 provides as to who is competent to present the private complaint in respect of the offence committed by the contractor. Section 23 of the said Act reads as follows:

"23. Contravention of provisions regarding employment of contract labour.-Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes

any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention."

9.The provision says that except the act done by the person shall be punishable. It does not say about the sanction to be obtained for prosecuting a public servant without recourse to Section 197 Cr.P.C. Thus, it is clear that neither Section 23 nor any other provision of the Contract Labourer (Regulation and Abolition) Act, 1970 is explicitly or implicitly excluding portion of the Section 197 Cr.P.C. As repeatedly held by the Hon'ble Supreme Court of India, unless there is a specific provision excluding the applicability of any of the provisions of the Code of Criminal Procedure, the said provision in the Code of Criminal Procedure should be followed. Therefore, to prosecute a person covered under Section 197 Cr.P.C., if the offence alleged to have been committed under the Contract Labourer (Regulation and Abolition) Act, 1970 is in discharge of official duty, the sanction is mandatory and in the absence of such sanction no Court shall take cognizance of the offence.

10.In the case on hand, the petitioner while in discharge of his official duty alleged to have committed the offence under Section 12(1) of the said Act and it falls under Section 197 Cr.P.C and therefore before taking cognizance sanction from the Central Government should have been obtained by the respondent. Therefore without any sanction the learned Magistrate ought not to have take cognizance of the impugned complaint. In this regard, the learned counsel for the petitioner relied upon the judgment of this Court in CrI.O.P.No.7317 of 2017 dated 01.03.2010 in the case of Munianathan Vs. Labour Enforcement Officer(Central), wherein it is held as follows:

"5.The second contention is that the complainant was an authority functioning under the Central Government. Section 2(1)(a) of the Act reads as follows:

"2.Definitions. -- (1) In this Act, unless the context otherwise requires,--

[(a) "appropriate Government" means, --

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government:

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;]"

In the instant case, the establishment in which the petitioner was functioning viz., M/s.TEXCO Ltd. is within the State of Tamilnadu. As such, the appropriate Government in respect thereof would be the State Government. Section 2(1)(a) of the Act provides that in respect of certain establishments, the appropriate Government would be the Central Government. Towards falling into such category, the establishment would have to be one whereof the appropriate Government is declared to be the Central Government under the Industrial Disputes Act, 1947. Section 2(a)(i) of the Industrial Disputes Act inform the category of concerns or establishments in respect of which the appropriate Government would be the Central Government. The establishment in which the petitioner was functioning is not a concern so covered. While so, the complainant in the case who was working under a central enactment could not validly prefer a complaint for the violations alleged since it was only the State Government and officials acting thereunder who could do so. The learned counsel for the petitioner placed reliance on the decision of the Karnataka High Court in Victor Joseph Regl. M.D., Group 4 Securities Guarding Ltd., and another vs. State 2006-I-LLJ wherein it was held as follows:

"4.As could be seen from the definition of the appropriate Government as found in Section 2(1)(a) of the Act, the definition of appropriate Government as found in the Industrial Disputes Act is adopted therein. Under the definition of "Appropriate Government" as contained in Industrial Disputes Act, certain Industries/establishments are notified which will come under the authority of Central Government. Admittedly, the petitioners' company does not come within the list of the establishments found therein. It is also not the case of the respondent that the Central Government has got control over the petitioners' organization. Under such circumstances, the second petitioner viz., Group 4 Securities Guarding Ltd., is an establishment of which the appropriate Government is not the Central Government. Therefore, the complaint lodged by the respondent/Officer of the Central Government is not maintainable."

6.I have heard the learned counsel for the respondent in answer to the above contentions.

7. On consideration of the facts and the rival submissions, this Court is of the view that the petition is to be allowed. Though the contention regarding the want of sanction is well founded, the same would arise for consideration only when the complaint case has been preferred by a person competent to do so. The Central Government, it is found, is not the appropriate government. Hence, the complaint which has been filed by an official thereof is bad in law.

11. This Court held that the petitioner was deputed as General Manager to the Tamil Nadu Ex-Servicemen Corporation Limited (M/s. TEXCO Ltd.) fully controlled by the State of Tamil Nadu and he was a Government servant. Therefore this judgment squarely applies to the case on hand and the impugned complaint cannot be sustainable as against the petitioner.

12. The learned counsel for the respondent relied upon the judgment in the case of V.C. Chinnappa Goudar Vs. Karnataka State Pollution Control Board and Another reported in (2015) 14 SCC 535, wherein it is held as follows:

"7. Having considered the respective submissions, we find force in the submission of Mr A. Mariarputham, learned Senior Counsel for the respondents. As rightly pointed out by the learned Senior Counsel under Section 48, the guilt is deemed to be committed the moment the offence under the 1974 Act is alleged against the Head of the Department of a government department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the government department to seek umbrage under Section 197 CrPC and such a course if permitted to be made that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act.

8. In this context, when we refer to Section 5 CrPC, the said section makes it clear that in the absence of specific provisions to the contrary,

nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 CrPC is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 CrPC that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of a government department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 CrPC by resorting to reliance placed by Section 4(2) CrPC would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an overriding effect over any other enactment other than the 1974 Act."

13. The above judgment held by the Hon'ble Supreme Court of India arising out of Section 48 of the Water (Prevention and Control of Pollution) Act, 1974 and held that the outcome of the application of Section 197 Cr.P.C. by resorting to reliance placed by Section 4 (2) Cr.P.C. would directly conflict with Section 48 of the Water (Prevention and Control of Pollution) Act, 1974 and consequently Section 16 of the Water (Prevention and Control of Pollution) Act, 1974 would automatically come into play which has a overriding effect over any other enactment other than the Water (Prevention and Control of Pollution) Act, 1974. Therefore the said statutory prescription contained in Section 48 of the said Act there is no scope for invoking Section 197 Cr.P.C. In the case on hand Section 23 of the Contract Labourer (Regulation and Abolition) Act, 1970 does not say about the sanction to be obtained to prosecute a public servant. Therefore, the above judgment is not applicable to the case on hand and it is not helpful to the case of the respondent.

14. In view of the above discussions, the complaint lodged by the respondent is not maintainable as against the petitioner. Accordingly these criminal original petitions are allowed and the proceedings in S.T.C.Nos.1260, 373, 398 & 388 of 2012, C.C.Nos.112, 118, 563, 1261, 564, 330 of 2012 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai, XVI Metropolitan Magistrate, Goerge Town, Chennai, XIV Metropolitan Magistrate,

George Town, Chennai, Judicial Magistrate at Ranipet, IX Metropolitan Magistrate, Saidapet, Chennai respectively are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Labour Enforcement Officer(Central)
Govt of India / Ministry of Labour
No.26, Haddows Road, Shastri Bhavan,
Chennai-600 006
 - 2.The XI Metropolitan Magistrate, Saidapet, Chennai,
 - 3.The XVI Metropolitan Magistrate, Goerge Town, Chennai
 - 4.TheXIV Metropolitan Magistrate, George Town, Chennai
 - 5.The Judicial Magistrate at Ranipet
 - 6.The IX Metropolitan Magistrate, Saidapet, Chennai
- +2cc to Ms.Sunita Kumari, Advocate sr.41754
+3cc to M/s.S.Siva Shanmugam, Advocate sr.42930

Cr1.O.P.Nos.1794 to 1803 of 2014 and
M.P.Nos.2,2,2,2,2,2,2,2,2 & 2 of 2014

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