

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.15417 of 2014

ORDER :

The Petitioner is V.Prabhu Kishore, Employer of M/s.Varun Motors Private Limited and the STC No.670 of 2014, pending on the file of XII Addl.Chief Metropolitan Magistrate, Nampally, is from the complaint of the 2nd respondent- Assistant Labour Officer, Circle 27, Hyderabad, taken cognizance for the offences punishable U/s.12(1), 3(2), Rule 29(10)(e) of the A.P.Shops and Establishment Act 1988 (for short, 'the Act'). It is the same now under impugment.

The allegation is that, the accused failed to close the shop on 23.02.2014 at 6.30 p.m. i.e. Sunday, even a holiday and found transacting the business which is a violation U/s.12(1) of the Act and failed to display the Registration Certificate in Form No.11 in a format U/s.3(2) of the Act and failed to produce visit book when demanded for recording remarks, which is a violation under Rule 29(10) e of the Act.

Now the contention in the quash petition is cognizance order not sustainable. What is drawn attention of the court is G.O.Rt.No.1156, Labour Employment Training and Factories (Lab-IV) Department of Government of A.P., dated 11.12.2013, which speaks of the proposal of the Varun motors Private Limited examined and carefully considered and Government exempts the entity of M/s.Varun Motors Private Limited, Visakhapatnam, from the provisions U/s.7(1), 12(1) & 31(1) of the Act for a period of two years. It is to say till 11.12.2015. Now a perusal of the accusation covered by the charge sheet taken cognizance not confined to Section 12(1) of the Act even that is exempted. This also covered Section 3(2) and Rule 29(10)(e) of the Act. For this, the G.O. is not an answer as

contended by the learned Public Prosecutor representing the respondents.

So far as the contention of photographs filed with the quash petition showing pasting outside the shop is not a cure as the only allegation as on the date of visit, the visit book not maintained and not handed over and there is no pasting. So, it is a matter for trial, as subsequent insertion will not cure the panic. There is also force in the submission of the learned Public Prosecutor with reference to the G.O. that the exemption is granted to Varun Motors Private Limited, Visakhapatnam. There is no mention for all the branches in the entire State. Leave it as it is, there is nothing to show the pre-requisite of sanction as contemplated U/s.64 of the Act which says, no Court shall take cognizance of complaint against an employer under sub-section 61(2) of the Act which speaks of penalties for violation of the offences punishable U/s.3,4,7,9 to 12 of the Act which are covered by the present accusation relating to wages or service compensation payable to employee unless application constituting an offence presented U/s.51 of the Act granted wholly or in part and Authority empowered under later or Appellate Authority and before sanctioning the making of a complaint against the employer for any such offence, the Authority empowered U/s.50 of the Act or the Appellate Authority as the case may be, shall give such employer an opportunity of showing cause against the granting of such sanction and sanction shall not be granted if such employer satisfies the authority or court that his default was due to bonafide error or bonafide dispute as to the amount payable to the employee or existence of exceptional circumstances for any other evidence or failure of the employee to accept payment and further no court shall take cognizance of complaint against any person for an offence U/s.61 of the

Act other than offences relating to sub-section 1 or for any contravention of any Rule made or U/s.71 of the Act except on complaint by and with the previous sanction in writing by Inspector under this Act within six months from the date of which the alleged offence or contravention taken place. A perusal of the same not confined to wages or delayed payment of wages to the employee, for all penalties and prosecution, including for section 3, sections 7, 12 of the Act and for violation of contravention of any Rule.

Having regard to the above, in the absence of which leave about Varun Motors is the entity and Prabhu Kishore is only atleast a manager, the question of vicarious liability without impleadment of Varun Motors Private Limited wont lie.

Accordingly, the petition is allowed quashing the proceedings against the petitioners in S.T.C.No.670 of 2014 on the file of XII Addl.Chief Metropolitan Magistrate Court, Nampally, Hyderabad.

Miscellaneous petitions if any, pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.02.2019

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.15417 of 2014

5th February, 2019

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