

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CR1.P.Nos.4105, 4106 & 4107 of 2014

COMMON ORDER:

The quash petitioners in all the three petitions are self same persons, accused 1 and 2 by names S.Pallam Raju, General Manager and B.P.Rao, CMD of BHEL, Jaipur, Adilabad District and New Delhi respectively. In the Summary Trial Cases 62/2013, 50/2013 and 58/2013 on the file of Judicial First Class Magistrate at Chenoor, cognizable for the offences under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the 1970 Act') in STC.Nos.62 and 58 of 2013 and under Section 200 Cr.P.C and Section 22 of the Payment of Wages Act, 1936 and Payment of Wages (Mines) Rules, 1956.

2. In all the matters, Labour Enforcement Officer, Central is the complainant whose complaint for the respective offences taking cognizance by the learned Magistrate by allowing the Summary Trial Cases, same after service of summons now seeking for impugment. One of the grounds urged common in all the petitions is that without impleadment of BHEL, even a Government owned company, a statutory body, jurisdictional persona, under the principle the question of impleadment of officers does not arise. Leave about the other contentions that arise in seeking to quash the cognizable proceedings. On that ground, the argument is two fold. One is particularly by referring to Section 25 of the 1970 Act which speaks management of the company as accused vis-à-vis any person respectively for day to day affairs in management is mandatory and by not impleading BHEL as accused as non-arrary

and cognizance not even the accused but only the accused officer thereby unsustainable.

3. Coming to STC.No.50/2013 covered by CrI.P.No.4106 of 2014, it is the further contention that based on the same principle, even there is no similar provision under the Payment of Wages Act, 1936 and Payment of Wages (Mines) Rules, 1956 that in the absence of any provision of maintainability of the complaint against the officers without arraying the company, there can be no question about the liability for the officers for the acts of the company and thereby on that ground also under the general law, prosecution is not sustainable.

4. The learned counsel for the petitioners in all the three matters reiterated the same in seeking to quash all the three case proceedings. Whereas the other submission of the learned Assistant Solicitor General representing the respondents that cognizance is rightly taken by the Court below from the complaint and if at all there is any say, it is left open to raise as defense during trial and there are no grounds to quash the proceedings. It is also submitted that, if at all to cure the defect, the complainant is proposed to implead the BHEL the 'entity' as co-accused and the same may be recorded by giving that concession by disposal of the petitions. Heard both sides as referred supra and perused the material on record.

5. The wording of Section 25 of the Act, 1970 supra is almost same and otherwise pari-materia to Section 141 of the Negotiable Instruments Act, 1881 and Section 49 of the Legal Metrology Act, 2009 in saying the word 'as well as the company' and 'and the company'. From this analogy to maintain a complaint for the acts

of the officers on behalf of the company the company must be impleaded as accused vis-à-vis the officers vicariously and in this regard, a three Judge Bench of the Apex Court in ***Aneetha Hada v. M/s.Godfather Travels & Tours Private Limited***¹ observed particularly at paragraph No.59, it is very clear that for maintaining the prosecution arraigning of a company as an accused, it is imperative and the other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. It was observed further as under:

“We say so on the basis of the ratio laid down in ***State of Madras v. C.V.Parekh***² which is a three Judge Bench decision. Thus, the view expressed in ***Sheoratan Agarwal v. State of M.P.***³ does not correctly lay down the law and accordingly, is hereby overruled. The decision in ***Anil Hada v. Indian Acrylic Limited***⁴ is overruled with the qualifier as stated in para 51. The decision in ***U.P. Pollution Control Board v. Modi Distillery***⁵ has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

6. Thus, it is very clear from the settled law supra that without array of the company the persons responsible for day-to-day affairs can not be made liable, for their liability is only vicarious with that of the company, from the use of “as well as” and even from use of “and” respectively from the respective wording of the Section 141(1) of the N.I.Act, 49(1) of the L.M.Act and Section 25 of the Contract Labour Regulation and Abolition Act, 1970 on keeping juxta position of the same and the expression in ***Aneeta Hada’s*** case (supra 1) on this principle by its referring to several expressions

¹ (2012) 5 SCC 661

² (1970) 3 SCC 491

³ (1984) 4 SCC 352

⁴ (2000) 1 SCC 1

⁵ (1987) 3 SCC 684

was reiterated by the subsequent two Judge Bench expression of the Apex Court even including the **Standard Chartered Bank v. State of Maharashtra**.⁶

7. Having regard to the above, on the core point the prosecution is not sustainable. Coming to the submission by the learned Assistant Solicitor General representing the respondent-complainant, it is sought the indulgence of the Court to permit the complainant to implead the entity. In this regard no purpose will be served for the reason when the very complaint and the cognizance are not sustainable, a subsequent impleadment will not cure the defect.”

8. Insofar as even no similar provision under Payment of Wages Act, 1936 and Payment of Wages (Mines) Rules, 1956, the Apex Court Constitution Bench expression in **Sunil Bharathi Mittal vs. Central Bureau Investigation**⁷ is very clear that in the absence of any specific provision to the extent of fixing liability, there is no question of vicarious liability to fasten. Here the acts of the accused officers are not of their own and for their benefit exclusive, but on behalf of the entity the BHEL. Can the principle of atterego the company is represented for its acts by officers of it as done by it to be made liable and the officers cannot be personally liable for acts of the entity but for vicariously with the entity of any. Thus, without addition of principle offender the company, the officers cannot be liable. The same is also observed referring to **Aneeta Hada's case**.

9. Having regard to the above and in the result all the Criminal Petitions are allowed. No order as to costs.

⁶ (2016) 6 SCC 62

⁷ (2015) 4 SCC 609

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt. 29.01.2019
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