

CRM-M-45898 of 2016

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-45898 of 2016
Date of Decision: 14.01.2019

M/s Priti Amrita Choudhry

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Akshay Bhan, Sr. Advocate,
with Mr. P.R. Kumar, Advocate,
and Mr. Deepak Verma, Advocate, for the petitioner.
Mr. Raj Kumar Makkar, Sr. DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., Secretary of the management – M/s CBN Foundation, Peach Tree Complex, Gurgaon, has sought quashing of summoning order dated 25.02.2016 of the Chief Judicial Magistrate, Gurgaon (Annexure P-1) and complaint under Sections 29/31 read with Section 32 of the Industrial Disputes Act, 1947 (for short the 'Act') (Annexure P-2) filed by Labour Inspector, Circle-7, Gurgaon.

Briefly, respondent No.2 was working with the management of the petitioner. He did not perform his duties satisfactorily and behaved in an unethical and unacceptable manner. After serving him a letter of warning and show-cause notice, when explanation of respondent No.2 was not found satisfactory, his services were terminated.

Being dissatisfied, respondent No.2 raised industrial dispute, which was finally referred to the Industrial Tribunal-cum-Labour Court,

Gurgaon. After completion of proceedings, the Industrial Tribunal-cum-

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Labour Court, Gurgaon, passed award dated 09.09.2015 (Annexure P-14), directing the management of the petitioner to reinstate respondent No.2 in service with 40% backwages with effect from 10.09.2012 onwards.

Thereafter, Labour Inspector, Gurgaon, filed complaint under Sections 29/31 and Section 32 of the Act in the Court of Chief Judicial Magistrate, Gurgaon for satisfying the aforesaid award in which the petitioner was summoned vide order dated 25.02.2016 (Annexure P-1) impugned herein.

Being aggrieved, petitioner approached this Court by way of CWP No.2207 of 2016, which was dismissed vide order dated 15.05.2017. Being aggrieved, petitioner filed LPA No.1472 of 2017, which is still pending adjudication.

Learned counsel for the petitioner contends that none of the conditions before filing complaint under Sections 29/31 read with Section 32 of the Act was fulfilled either by respondent No.2 or by respondent No.1. Therefore, impugned complaint (Annexure P-2) could not have been entertained by the learned Chief Judicial Magistrate, Gurgaon.

On the other hand, learned State counsel, refuting the above submission, pleaded the legality and validity of the impugned order.

Having given anxious consideration to the rival submissions, this Court finds that the instant petition merits acceptance for the reasons to follow.

For implementation of an award, there are two pre-requisite conditions; (i) the award sought to be executed/implemented had to be published in the official gazette within 30 days of passing of the award

and (ii) award thereafter can be enforced after expiry of 30 days of

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publication of the award.

None of the aforesaid conditions envisaged under Section 17 and 17-A of the Act has either been fulfilled or mentioned in the complaint. Therefore, the impugned complaint (Annexure P-2) was bad in law.

Respondent No.2 is the affected person to whom for effective adjudication notice was issued by this Court for his appearance for 23.02.2017. However, despite service, he did not appear nor has been represented till date by anyone. Since, the aggrieved person is not interested in pursuing the litigation or is not vigilant about his legal rights, in that eventuality the impugned complaint filed by Labour Inspector can safely be termed as a futile exercise or a *mala fide* device of a Government official to unnecessary harass the petitioner.

It is needless to mention here that an entrepreneur contributes towards the development of this country by paying taxes in various shapes like income tax, excise tax, sales tax, customs tax, service tax, GST etc. and giving employment which reduces the social obligation of the State. Therefore, his action is not liable be disbelieved or condemned in each and every case.

In view of the discussion made above, petition is allowed. Summoning order dated 25.02.2016 (Annexure P-1) and complaint (Annexure P-2) are quashed.

January 14, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No