

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 07/09/2021

Order Passed on : 17/11/2021

Cr.M.P. No. 273 of 2021

1. Simplex Infrastructures Limited Simplex House, 27, Shakespeare Sarani, Kolkatta- 700017
2. B.D. Mundhra S/o Late Madho Das Mundhra, Aged About 73 Years, Managing Director, Simplex Infrastructures Limited
3. A.D. Mundhra S/o B.D. Mundhra, Aged About 49 Years, Director, Simplex Infrastructures Limited
4. A. Mukherjee S/o Late P.C. Mukharjee, Aged About 77 Years, Director, Simplex Infrastructures Limited
5. B. Sengupta S/o Dr. G.N. Sengupta, Aged About 80 Years, Director, Simplex Infrastructures Limited
6. R. Natrajan S/o Late V. Rajagopalan, Aged About 86 Years, Director, Simplex Infrastructures Limited
7. S. Dutta S/o Late Subhdho Kumar Dutta, Aged About 76 Years, Director, Simplex Infrastructures Limited
8. Rajeev Mundhra S/o B.D. Mundhra, Aged About 39 Years, Director, Simplex Infrastructures Limited
9. N. N. Bhattacharya S/o Late B.N. Bhattacharya, Aged About 76 Years, Director, Simplex Infrastructures Limited
10. Shiva Kishan Damani S/o Late G.D. Damani, Aged About 76 Years, Director, Simplex Infrastructures Limited
11. Kunal Saraf S/o K.M. Saraf, Aged About 41 Years, Director, Simplex Infrastructures Limited

(all are R/o Simplex Infrastructures Limited, Simplex House, 27, Shakespeare Sarani, Kolkatta- 700017)

---- Petitioners

Versus

- State Of Chhattisgarh Through Inspector Under BOCW Act 1996, office at Assistant Labour Commissioner, Dr. Mahurkar Gali, Ghadi Chowk,

Raipur, Tahsil And District Raipur (Chhattisgarh)

---- **Respondent**

And

Cr.M.P. No. 409 of 2021

1. Simplex Infrastructures Limited Simplex House, 27, Shakespeare Sarani, Kolkatta- 700017
2. B.D. Mundhra, S/o Late Madho Das Mundhra, Aged About 73 Years Managing Director, Simplex Infrastructures Limited
3. A.D. Mundhra, S/o B D Mundhra, Aged About 49 Years Director, Simplex Infrastructures Limited
4. A. Mukhrjee S/o Late P C Mukharjee, Aged About 77 Years Director, Simplex Infrastructures Limited
5. B. Sengupta, S/o Dr G N Sengupta, Aged About 80 Years Director, Simplex Infrastructures Limited
6. R. Natrajan, S/o Late V Rajagopalan, Aged About 86 Years Director, Simplex Infrastructures Limited
7. S. Dutta, S/o Late Subhdho Kumar Dutta, Aged About 76 Years Director, Simplex Infrastructures Limited
8. Rajeev Mundhra, S/o B D Mundhra Aged About 39 Years Director, Simplex Infrastructures Limited
9. N. N. Bhattacharya, S/o Late B N Bhattacharya, Aged About 76 Years Director, Simplex Infrastructures Limited
10. Shiva Kishan Damani, S/o Late G D Damani, Aged About 76 Years Director, Simplex Infrastructures Limited
11. Kunal Saraf, S/o K M Saraf, Aged About 41 Years Director, Simplex Infrastructures Limited

(all are r/o Simplex Infrastructures Limited, Simplex House, 27, Shakespeare Sarani, Kolkatta- 700017)

---- **Petitioners**

Versus

- State Of Chhattisgarh through Inspector Under BOCW Act 1996, office at Assistant Labour Commissioner, Dr Mahukar Gali, Ghadi Chowk, Raipur, Tahsil And District Raipur Chhattisgarh

---- **Respondent**

And

Cr.M.P. No. 435 of 2021

1. Simplex Infrastructures Limiteds Simplex House, 27 Shakespeare Sarani, Kolkatta -700017
2. B.D. Mundhra S/o Late Madho Das Mundhra Aged About 73 Years, Managing Director, Simplex Infrastructures Limited
3. A. D. Mundhra S/o B. D. Mundhra Aged About 49 Years, Director, Simplex Infrastructures Limited
4. A. Mukhrjee S/o Late P. C. Mukharjee Aged About 77 Years Director, Simplex Infrastructures Limited
5. B. Sengupta S/o Dr G.N. Sengupta Aged About 80 Years Director, Simplex Infrastructures Limited
6. R. Natrajan S/o Late V. Rajagopalan Aged About 86 Years Director, Simplex Infrastructures Limited
7. S. Dutta S/o Late Subhdho Kumar Dutta Aged About 76 Years Director, Simplex Infrastructures Limited
8. Rajeev Mundhra S/o B. D. Mundhra Aged About 39 Years Director, Simplex Infrastructures Limited
9. N.N. Bhattacharya S/o Late B.N. Bhattacharya Aged About 76 Years Director, Simplex Infrastructures Limited
10. Shiva Kishan Damani S/o Late G.D. Damani Aged About 76 Years Director, Simplex Infrastructures Limited
11. Kunal Saraf S/o K.M. Saraf Aged About 41 Years, Director, Simplex Infrastructures Limited

(All are r/o Simplex Infrastructures Limited, Simplex House, 27 Shakespeare Sarani, Kolkatta -700017)

---- Petitioners

Versus

- State Of Chhattisgarh Through Inspector Under BOCW Act 1996, office at Assistant Labour Commissioner, Dr Mahukar Gali, Ghadi Chowk, Raipur Tahsil And District Raipur, Chhattisgarh

---- Respondent

For Petitioners : Mr. Rohit Sharma with Mr. Amit Soni,
Advocates.

For State : Mr. Alok Nigam, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

17/11/2021

1. Three separate petitions have been filed under Section 482 of Cr.P.C. praying to quash the impugned orders, which are being decided by this common order.
2. The Cr.M.P. No.273 of 2021 has been brought praying to quash the criminal proceeding in Criminal Case No.1462/2012/B.O.C.W. Act and the orders in 16.01.2020 and 07.01.2021, passed by the learned Labour Court, Raipur.
3. The Cr.M.P. No.409/2021 has been brought praying for quashment of criminal proceeding in Criminal Case No.1444/2012/B.O.C.W. Act and the order dated 16.01.2020 and 07.01.2021, passed by the learned Labour Court, Raipur.
4. The Cr.M.P. No.435 of 2021 has been brought praying to quash the criminal proceeding in the Case No.1463/2012/B.O.C.W. Act and the order dated 16.01.2020 and 07.01.2021, passed by the learned Labour Court, Raipur.
5. The facts in brief are these that the petitioner No.1 was awarded three separate contracts by G.M.R. energy, which is a power generation plant for civil and architectural work at Raikekha, Tilda, District Raipur in Chhattisgarh. After completing the formalities, the respondent No.1 started the construction work. One Inspector of the respondent visited

the project site on 14.07.2012. The Inspector reported violation of provisions of Payment of Wages Act, 1962 and rules made under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (in short "B.O.C.W. Act, 1996"). On the basis of which, Assistant Labour Commissioner Raipur vide order dated 27.07.2012 granted sanctions for prosecution of the petitioners in all three cases under Section 54(1) of B.O.C.W. Act, 1996. Three separate complaints were filed against the petitioners in the Court of Labour Act/Judicial Magistrate First Class, which have been registered. An order was passed for issuance of process. No summons however was served upon the petitioners despite that the order has been passed on 16.01.2020 for issuance of bailable warrants against the present petitioners and that order has been repeated on 07.01.2021 directing the issuance of bailable warrants against the petitioners.

6. It is submitted by learned counsel for the petitioners in all three cases that the petitioner No.1 is seated in Kolkata and the petitioners No.2 to 11 who are the officers of petitioner No.1 are also the resident of Kolkata. Section 202 of Cr.P.C. very clearly provides that in case where the accused is residing at a place beyond the area of jurisdiction of the Court the issuance of process shall be postponed against such accused and then the trial Court is empowered either to inquire the case itself or direct the investigation to be made by a police officer. The learned Court below has clearly not followed this procedure and taking cognizance in the case. It is also submitted that there is no specific charge against the petitioners even when the process is being issued against them. The provisions in the Act, 1996 and the rules have not been followed. Petitioner No.2 to 11 are the Managing Directors and Directors of the company and they have not played any role in accordance with the allegations made in the complaint.

7. Reliance has been placed on the judgment of Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & Anr. reported in (2017) 3 SCC 528, Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. reported in (2007) 12 SCC 1, Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. reported in (1998) 5 SCC 749, Punjab National Bank & Ors. Vs. Surendra Prasad Sinha reported in 1993 Supp (1) SCC 499, Managing Director, Sonalika International Tractor Ltd. Vs. Dinesh Sharma & Ors. reported in (2009) 11 SCC 435 and Azim H. Premji Vs. State of Chhattisgarh reported in 2010 SCC OnLine Chh 22.
8. It is submitted that the sanction order granted by the Assistant Labour Commissioner Raipur is also erroneous and illegal which mentions that sanction has been granted in accordance with Section 54(1) of B.O.C.W. Act read with Section 469 (3) of B.O.C.W. Act. There is no such provision of Section 469(3) of B.O.C.W. Act or the rules. The orders in earlier prosecution against the petitioner has been set aside by the State Industrial Court, C.G. Raipur, which were never challenged.
9. It is submitted that clearly the order of the learned Court below is illegal for non-compliance of Section 202 of Cr.P.C. The law as declared by the Supreme Court is binding under Article 141 of Constitution of India. Hence, the proceedings in all three cases against the petitioners may be quashed.
10. Learned counsel for the respondents opposes the submissions and submits that the provisions under B.O.C.W. Act, 1996 have been followed by the learned Labour Court. There are a number of criminal proceedings pending against the petitioners. The petitioners are deliberately avoiding the service of summons upon them since about 8 to 10 years. Section 87 of Cr.P.C. empowers the Criminal Court to issue warrant of arrest in lieu of summons. Therefore, the learned Court below

has not committed any error in directing issuance of bailable warrants against the petitioners. The petitioners have liberty to move application for cancellation of warrant.

11. It is further submitted that the petition under Section 482 of Cr.P.C. is not maintainable as there is statutory remedy present to challenge the order taking cognisance of the Court below and the State Industrial Court, which has not been challenged. Therefore, the Criminal proceedings against the petitioners are not maintainable under Section 482 of Cr.P.C. which may be dismissed.

12. Learned counsel for the respondent has placed reliance on the judgment of State of Maharashtra Vs. Ishwar Piraji Kalpatri and ors. With State of Maharashtra Vs. Ishwar Piraji Kalparti reported in (1996) 1 SCC 542, in which it is held that where on the basis of allegations and in complaint prima facie case is made out, then, the High Court has no jurisdiction to quash the proceeding.

13. Reliance has also been placed on the judgment of Supreme Court in the case of State of Haryana & Ors. Vs. Bhajan Lal and Ors. reported in 1992 Supp (1) SCC 335, in which the Supreme Court has laid down the guidelines according to which only under the specific circumstances as mentioned in the judgment, a criminal proceeding can be quashed and there are no such grounds present in favour of the petitioners.

14. Relying on the judgment of Supreme Court in the case of Hamida Vs. Rashid Alias Rasheed & Ors. reported in (2008) 1 SCC 474, it is submitted that wherever there is statutory remedy available, Section 482 of Cr.P.C. cannot be resorted to.

15. In reply, it is submitted by learned counsel for petitioners that the petitioners have never avoided the service of summons upon them, it is a fact that nobody had approached them for service of summons upon

them. It is again reiterated that the compliance of Section 202 of Cr.P.C. is essential. Hence, all three petitions may be allowed.

16. I have heard the learned counsel for the parties and perused the documents placed on record.

17. The challenge of the petitioners to the allegations against them in the complaint case is not subject to consideration in this petition under Section 482 of Cr.P.C. The same can be challenged by the petitioners, before the trial Court itself at the appropriate stage. Similarly, the challenge to the sanction order also can not be considered in this petition under Section 482 of Cr.P.C. because it was on the basis of the sanction order, the learned trial Court has taken cognizance in the complaint against the petitioners and that order taking cognizance can be challenged in the revision, before the revisional Court. Therefore, in such a case, the inherent jurisdiction under Section 482 of Cr.P.C. can not be exercised by this Court.

18. The grounds remaining in this petition regarding erroneous issuance of bailable warrant against the petitioners needs consideration. Clearly all the petitioners are not the local residents of State of Chhattisgarh and the address given in the petition itself shows that all of them are resident of Kolkata, West Bengal.

19. Section 202 Sub-section (1) of Cr.P.C. is relevant, which reads as under :-

“202. Postponement of issue of process. -- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is

sufficient ground for proceeding:

Provided that no such direction for investigation shall be made--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200."

20. The wording in Section 202 (1) of Cr.P.C. are very clear that in case, where the accused is residing at a place beyond the area, in which, the Magistrate is exercising jurisdiction, the issuance of process shall be postponed and the Magistrate shall either inquire into the case himself or direct an investigation to be made by a police officer as may be the requirement of the case. This part of the provision, that Magistrate shall postpone the issuance of process is with respect to a complaint against an accused, who is residing beyond the area of his jurisdiction, has been incorporated by an amendment Act, 2005. The words in this provision with respect to the procedure to be adopted for an accused residing outside the jurisdiction in a complaint case are mandatory in nature. Therefore, it is found that the learned Magistrate has by not following the procedure as laid down under Section 202 (1) of Cr.P.C. committed illegality, hence, for this reason, the impugned order directing issuance of process against the petitioners is held to be illegal. On the basis of these findings, the prayer in all the petitions are allowed in part. The impugned orders dated 16.01.2020 and 07.01.2021 passed by the learned Labour Court, Raipur are set-aside. The learned trial Court is directed to make compliance with the provisions under Section 202 (1) of Cr.P.C. and proceed with the complaint cases in accordance with law.

21. Accordingly, these petitions are disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge