



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO.16514 OF 2015

&

M.P.NO.1 OF 2015

[Video Conferencing]

Ms.Deepa Watsa

... Petitioner

Versus

The Labour Enforcement Officer (Central),
Government of India,
Ministry of Labour and Employment,
O/o. Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road,
Shastri Bhavan, Nungambakkam,
Chennai - 600 006.

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in CC.No.2844/2013 on the file of the learned XI Metropolitan Magistrate Court, Saidapet, Chennai, quash the same.

For Petitioner : Mr.V.Srikanth

For Respondent : Dr.D.Simson
Central Government
Standing Counsel

ORDER

- (1) This petition has been filed seeking interference with further continuation of CC.No.2844 of 2013 now pending on the file of the learned XI Metropolitan Magistrate at Saidapet, Chennai.



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- (2) CC.No.2844/2013 had been preferred as a complaint under Section 24 of the Contract Labour Regulation and Abolition Act, 1970, [hereinafter referred to as 'the Act, 1970'] for alleged breach of Rules 81[1][i], 81[3] and 73 of the Act, 1970.
- (3) The complainant is the Labour Enforcement Officer [Central] of Government of India, Ministry of Labour and Employment.
- (4) It is stated that the said official had inspected the works of the accused who had been named as Ms.Deepa Watsa employed as Chief Human Resources Officer, in Tata Sky Limited at Mumbai on 06.02.2013 at around 5.00 p.m., and found out that there were various violations of the Act. Breaches of Rules 81[1][i], 81[3] and 73 of the Act, 1970, were said to have been found.
- (5) A Show Cause Notice is said to have been issued on 06.02.2013. Thereafter, claiming that no further steps have been taken by the petitioner/accused, a complaint had been preferred, which had been taken cognizance by the learned XI Metropolitan Magistrate, Saidapet, Chennai at CC.No.2844/2013.
- (6) The petitioner/accused/Ms.Deepa Watsa working as Chief Human Resources Officer, in Tata Sky Limited has filed the present application taking recourse to Section 482 Cr.P.C., and urging that this Court should interfere with further progress of the said Calendar Case.
- (7) Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.D.Simson, learned Central Government Standing Counsel for the respondent.
- (8) A counter has also been filed by the respondent.
- (9) The matter came up on an earlier date and Mr.V.Srikanth, learned counsel for the petitioner stated that the Show Cause Notice which was dated 06.02.2013, had been received only on 24.04.2013 and a reply had been given on 25.05.2013.
- (10) It was stated that there has been compliance of all the defects which had been pointed out and it was specifically pointed out by Mr.V.Srikanth, learned counsel for the petitioner that though the reply had been sent, it had not been mentioned in the complaint.
- (11) Mr.D.Simon, learned Central Government Standing counsel, on the other hand, however stated that the defects existed as



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on the date of filing of the complaint and pointed out that the reply had been given well after the stipulated period and therefore, stated that there was no obligation on the part of the complainant/respondent herein to consider the reply even if it had been sent.

- (12) But I am perturbed with the yet another issue which had been raised by the learned counsel for the petitioner and had therefore adjourned the case to today giving liberty to both the learned counsels to examine that particular fact, namely, the fact that the Company which was the place inspected, had not been shown as an accused in the complaint.
- (13) It is highly improbable and I do not think that the respondent would also agree to the contention that the respondent visited the office of Ms. Deepa Watsa in her personal capacity. She is employed as the Chief Human Resources Officer in Tata Sky Limited. It is also common knowledge that like any other post, the person who holds the post of Chief Human Resources Officer would also come and would also go.
- (14) It is the company which would continue to be in existence. It has a separate legal entity. The Companies Act also provides that, for any issues giving rise to a cause, a Company can be sued and a Company can also sue even though it may relate to civil issues. Still, while launching prosecution, legislation has always been careful to include offences alleged to have been committed by Companies and that the Companies should be made as an accused.
- (15) The phraseology used practically in all legislations which deal with offences relating to Companies always include the words 'as well as the Company'. This is also included in the Companies Act, 2013, and also as pointed out by the learned counsel for the petitioner, in the Negotiable Instruments Act also. It is specifically stated that under Section 25 of the Act, 1970, when any violation or infraction is determined on inspection with respect to any of the Rules under the said Act, the Company should be made as a party.
- (16) Quite apart from the Company, the person who is incharge of the day-to-day affairs, may also be included as an accused. Still, interpretation has been given as to the person in-charge of the Company and Courts have always looked at the actual person who was incharge and was in control of the day-to-day activities. All and sundry cannot be made as an accused. This would be in addition to the Company which



has to be necessarily shown as an accused.

(17) This aspect has been laid with much emphasis in the judgment reported in 2012 [5] SCC 661 [Aneeta Hada and Others Vs. Godfather Travels and Tours Private Limited and Others], wherein the specific issue before the Hon'ble Supreme Court was whether in an offence alleged under Section 138 of the Negotiable Instruments Act, particularly in the teeth of Section 141 of the Negotiable Instruments Act, the Directors can be proceeded with in the absence of the Company being made as an accused. The Hon'ble Supreme Court laid down the law very clearly stating that the Company should be made as an accused and placed reliance on the phraseology used in the provision of the NI Act, which is also as found in Section 25 of the Act, 1970, now complained of, namely ''as well as the Company''.

(18) Paragraphs 58 and 59 of the said judgment would be quite instructive and they are extracted below:-

'58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. 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. We say so on the basis of the ratio laid down in State of Madras Vs. C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench



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decision. Thus, the view expressed in Sheoratan Agarwal Vs. State of M.P. [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada V. Indian Acrylic Limited [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in U.P. Pollution Control Board V. Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.''

- (19) Mr.D.Simon, learned Central Government Standing counsel however took umbrage in placing reliance on this particular judgment stating that it related to an offence under Section 138 of the Negotiable Instruments Act, whereas the present case revolves around violation of the Rules appended with the Act, 1970. Learned counsel therefore stated that the said judgment may not be applicable to the facts of this particular case and to the legislation to which the complaint relates to.
- (20) But for this contention, the learned counsel for the petitioner has an answer and he produced the ruling of a learned Single Judge of this Court in Crl.OP.[MD] No.17573/2017 [HCL Technologies Ltd., ELCTO, Ilanthaikulam, Madurai, through its Associate Vice President B.Subramani v. State of Tamil Nadu rep.by the Deputy Inspector of Labour, III Circle, Madurai], vide order dated 12.10.2018.
- (21) The learned Single Judge was also confronted with the prosecution under the Act, 1970 and relied on Section 25 of the said Act and also relied on Godfather Travels and Tours Private Limited case [referred supra] and observed that the provision under Section 25 of the Act, 1970, is in pari materia with Section 141 of the Negotiable Instruments Act and therefore, was of the opinion that the dictum laid down in the Godfather Travels and Tours Private Limited case [referred supra], will squarely apply to any complaint filed under the Act, 1970 and stated that if a Company is not made as an accused, then the prosecution will necessarily have to fail.
- (22) I would very gladly follow the reasoning given in the above judgment and adhere to them and would also come to the very same conclusion, namely, that in this particular case, since the Company has not been made as an accused, the prosecution will have to fail.



(23) The prosecution cannot not survive and accordingly, further progress in CC.No.2844/2013 would only be redundant and necessarily has to be quashed.

(24) In the result, the Criminal Original Petition stands allowed and the further progress in CC.No.2844/2013 now pending on the file of the Court of XI Metropolitan Magistrate at Saidapet, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The XI Metropolitan Magistrate Court,
Saidapet, Chennai,
2. The Labour Enforcement Officer (Central),
Government of India,
Ministry of Labour and Employment,
O/o.Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road,
Shastri Bhavan, Nungambakkam,
Chennai - 600 006.
3. The Public Prosecutor,
High Court, Chennai.

+1cc to Dr.D.Simson, CGSC, S.R.No.55976

CRL.OP.NO.16514 OF 2015

PA(CO)
PBS/01/12/2021