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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

CRL.O.P.No.19981 of 2016
and
Crl.M.P.No.9347 of 2016

1. Tmt. Archana Kalpathi
Executive Director
AGS Cinemas Pvt. Ltd.,
No.24, Judge Jambulingam Road,
Mylapore, Chennai 600 004.
2. Mrs. Vidya
(Human resource)
AGS Cinemas Pvt. ltd.,
No.24, Judge Jambulingam road,
Mylapore, Chennai 600 004.

... Petitioners

Versus

The Assistant Inspector of Labour
15th Division,
Chennai.

... Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records relating to the impugned complained of the respondent in C.C.No.2627 of 2016 on the file of XI Metropolitan Magistrate, Saidapet, Chennai 600 015 and quash the same.

For Petitioners : Mr. S. Ashok Kumar,
Senior counsel,
for Mr. A.Sasidharan

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to quash the C.C.No.2627 of 2016 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai.

2. The respondent/Assistant Inspector of Labour, filed a



complaint against the petitioners on the ground that, petitioners did not maintain a Muster roll in Form-A, failed to enter the particulars of all women workers employed therein and the entries in the muster roll is not made available for inspection by the Inspector, thereby violating Rules 3(1) and 3(2) of the Tamil Nadu Maternity Benefit Rules 1967 framed under the Maternity Benefit Act 1961(herein after called as Act). That apart, they have not exhibited the abstract of the provisions of the Act and Rules as required under Section 19 of the Act, which is in violation of Rule 15. The learned Judicial Magistrate taken cognizance of the offence and issued summons. Challenging the same, the present quash petition has been filed.

3. The learned Senior Counsel appearing for the petitioners would submit that, for alleged violation of any of the provisions of Act, after the inspection of the premises, if the Inspector, who has conducted inspection, observed any irregularity and the contravention of provisions of the Acts and Rules, by an order in writing require the employer to rectify the same within a period of 30 days and report the compliance. If the Establishment failed to rectify the mistake pointed out by the Inspector within 30 days, then only the penal consequences follows. But, in the instant case, show cause notice was issued on 31.12.2015, pointing out certain violations, which was received by the petitioners on 09.02.2016. Immediately, the petitioners rectified the mistake and on 15.02.2016 itself, sent a reply informing about the rectification. After receipt of the said reply, without conducting any further inspection, the present complaint has been filed in total non application of mind. As the petitioners had rectified the defects within 30 days, they have not committed any offence and they cannot be prosecuted for violation of the Act and Rules. Hence, the complaint is not maintainable and the same is liable to be quashed.

4. The learned Government Advocate (crl. side) appearing for the respondent would submit that the petitioners' establishment was inspected and found certain defects. Immediately, a show cause notice was issued, for which, the petitioners had given a reply, not being satisfied with the reply, the present complaint has been filed on 13.06.2016. As the petitioners had violated the Act and Rules, they are liable for penal consequences under Section 21(2) of the Act. The learned Judicial Magistrate, rightly taken cognizance of the offence and issued summons and there is no illegality in it.

5. This Court considered the rival submissions made on either side and perused the materials available on records carefully.



6. The allegation against the petitioners is that they have violated Rules 3(1) & (2) of the said Rules and Section 19 of the said Act r/w. Rule 15 of the said Rules. For violation or contravention of provision of the Act and Rules, the employer is liable for prosecution under Section 21(2) of the Act. Further Rule 7 prescribed that, the Inspector, who made an inspection of the Establishment, should verify whether the employer has been strictly following the Act and Rules, under Rule 7(2) of the Rule, on such inspection, the Inspector observes any irregularity or contravention of the Acts and Rules, he should require the employer to rectify the irregularities within 30 days and report the compliance of the same.

7. From the above said provisions, it is clear that before taking any penal action, the Inspector is required to give 30 days time to the employer to rectify the defects and if the employer fails to rectify the defect within 30 days, then only the other penal consequences will follow. But, in the instant case, admittedly, show cause notice was issued on 31.12.2015, which was received by the petitioners on 09.02.2016. Immediately, the petitioners said to have rectified the defects and report the same to the Inspector on 15.02.2016, i.e., within 30 days. However, the Inspector has filed the complaint on 13.06.2016. There is no material available on record to show that after the receipts of compliance report, a further inspection was conducted, to verify the defects were rectified or not.

8. Considering the above circumstances, this Court is of the considered view that, the respondent has filed the complaint in violation of Rule 7(2) of the Rules. As rightly submitted by the learned Senior Counsel, since the petitioners said to have rectified the irregularities within 30 days prescribed under Rule 7(2) of the Rules, no penal consequences will follow and the petitioner cannot be prosecuted. The complaint has been filed in abuse of process of law and the same is liable to be quashed.

9. Accordingly, this Criminal Original Petition is allowed and the complaint in C.C.No.2627 of 2016 on the of the XI Metropolitan Magistrate, Saidapet, Chennai is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



mrp

To

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1. The XI Metropolitan Magistrate,
Saidapet, Chennai - 15
2. The Assistant Inspector of Labour,
15th Division, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. A.Sasidharan, Advocate, S.R.No.64535

CRL.O.P.No.19981 of 2016

JPL(CO)
CT 31/01/2022