



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.NO.4365 TO 4370 OF 2015

Mr.V.Jaganathan

... Petitioner in
all Crl.O.P's

.Vs.

The Deputy Director, (BOCW),
Kancheepuram,
The Building and Other Construction Workers
(Regulation of Employment and
Condition of Service), 1996,
A 28, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 600 032.

... Respondent in all
Crl.O.P's

COMMON PRAYER:-

Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No. 434 to 439 of 2014 pending on the file of the Learned Chief Judicial Magistrate, Chengalpattu and quash the same as against the petitioner.

For Petitioner : Mr.S.Sundaresan
In all CRL.O.P's

Respondents : Mr.C.E.Pratap
Government Advocate
In all CRL.O.P's

C O M M O N O R D E R

Since the issues involved in all the criminal original petitions are one and the same and between the same parties, all the Criminal Original Petitions are heard together and disposed of by means of this common order.



2. The respondent, Deputy Director, Building and Other Construction Workers (BOCW), Kancheepuram has filed as many as six complaints against the petitioner/accused for violation of the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as the Act) and also Tamil Nadu Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006 (hereinafter referred to as the Rules) and to quash the above complaints, these criminal original petitions have been filed.

3. The case of the respondent/complainant is that, the petitioner is the Director of a construction company, by name M/s.Appudhi Real Estate Private Limited, engaged in the business of construction of residential flats. The company carried on construction at Ramaniyam Pushkar-II, at S.No.278/1A, 1B, 1A, 1C, 280/1B1, 1B2 etc., at Sholinganallur Taluk and Village, Chennai. The above construction site was inspected by the Deputy Director, Building and Other Construction Workers (BOCW), Kancheepuram on 19.07.2014, and found number of violations of the provisions of the Act and Rules, such as construction site was not registered under the Act, and other violations which could adversely affect the safety, health and welfare of the building workers. A show cause notice was issued to the petitioner, the Director of the above company, as per the Memorandum of Association of the company, on 30.07.2014. The same was received by the company on 08.08.2014, but no reply has been sent by them objecting to the show cause notice.

4. In the above circumstances, after obtaining necessary sanction from the Director of Industrial Safety and Health, Chennai, the respondent filed complaints before the learned Chief Judicial Magistrate, Chengalpattu and the learned Chief Judicial Magistrate, also took cognizance of the offence and registered a case in C.C.Nos.434 to 439 of 2014 and issued summons. Now, challenging the same the present quash petitions have been filed.

5. Mr.Sundaresan, learned counsel appearing for the petitioner would submit that originally the petitioner was a director of the company, and he has resigned from the post w.e.f 25.11.2013, and the same was duly informed to the Registrar of Companies, and to that effect, the Registrar of Companies has also issued a Certificate in Form 32, of the Companies Act. Admittedly, the inspection was conducted by the respondent only on 19.07.2014, on that date, the petitioner was not functioning as the Director of the Company and he was not in-charge and responsible for the affairs of the company and therefore, he cannot be prosecuted for the offence committed by the company.



6. The learned counsel further submitted that pursuant to the show cause notice issued by the respondent, one Mr.A.Arasu, who was one of the Directors of the company has issued a reply on 08.10.2014, giving the details of the directors of the company, wherein, the petitioner name was not found place. Without considering the same, a complaint has been filed against the petitioner, which is not at all maintainable in law. In such circumstances, all the complaints filed against the petitioner are liable to be quashed.

7. The respondent filed a detailed counter affidavit and submitted that the petitioner was one of the directors of the company at the time the offence was committed and he was also in-charge and responsible for the conduct of the business of the company and hence under Section 53 of the Act, he is also liable for prosecution. It is further stated that for the show cause notice issued by the respondent, no reply was submitted by the petitioner raising any such objections and in such circumstances, it is not open to the petitioner to raise such a plea before this Court.

8. Mr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent submits that, the petitioner was a director or not is an issue to be decided in the trial and it cannot be decided in a petition filed under Section 482 of Cr.P.C. That apart, perusal of Form 32, issued by the Registrar of Companies, it is an on-line application which has been uploaded on 21.01.2015, to relieve the petitioner from the post of Director w.e.f. 25.11.2013, as such, on the date of offence being committed, he was the director of the company. Now, it is not open to him to say that he was not in charge of the affairs of the company. The learned counsel further submitted that the violation of the provisions of the Act and Rules, will seriously affect the safety and health of the workers working in the construction site. In such circumstance only the complaints have been filed. The allegations made in the complaints prima facie made out an offence against the petitioner and others and there is no reason to quash the criminal proceedings.

9. I have considered the rival submissions and perused the records.

10. The complaints have been filed against the petitioner in the capacity of Director/Employer of M/s.Appudhi Real Estates Private Limited for violation of various provisions of the Act and the Rules. Admittedly, under Section 53 of the Act, for any violation committed by the company, every person at the time the offence was committed, who was in charge and responsible for the affairs of the company, shall be deemed to be guilty of the offence and is liable to be proceeded against and punished.



11. It is the contention of the petitioner that on the date of the offence, the petitioner was not a director of the company and he ceased to be a director of the company, and he was not in charge and responsible for the affairs of the company and therefore he cannot be prosecuted for the offence which has been committed by the company. To support his contention, the learned counsel appearing for the petitioner produced the certificate issued by the Registrar of Companies in Form 32 of the Companies Act. A perusal of the same would clearly reveal that the petitioner was relieved from the post of Director w.e.f. 25.11.2013. Admittedly, the inspection was conducted on 09.07.2014, by the respondent and found out various violations in the construction site, only subsequent to the petitioner being relieved from the post of Director of the company. Form 32 is a statutory form, which has been issued by a statutory authority under the Companies Act, and genuineness of the same cannot be disputed. Considering the same, as rightly contended by the learned counsel appearing for the petitioner on the date of the offence being committed by the company, the petitioner was not in-charge and responsible for the conduct of the business of the company, hence the petitioner cannot be prosecuted for the alleged offence.

12. So far as the contention raised by the learned Government Advocate (Crl.Side) appearing for the respondent that application was uploaded only on 21.01.2015, after the inspection, the said contention cannot be accepted for the simple reason that, a perusal of record, it is seen that the date mentioned therein is the date on which the application has been made for issuance of a certified copy of Form 32, and it is not the date on which the application was made to the Registrar of Companies for reliving him from the post of director.

13. Considering the above circumstance, the criminal proceedings cannot be maintained against the petitioner in the capacity of director of the company and the proceedings against him in C.C.No.435 to 439 of 2014, pending on the file of the learned Chief Judicial Magistrate, Chengalpattu are liable to be quashed and accordingly quashed and these Criminal Original Petitions are allowed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ska/kk



To

1. The Chief Judicial Magistrate,
Chengalpattu.

2. The Public Prosecutor,
High Court, Madras - 104.

+4ccs to Mr.S.Sundaresan, Advocate, S.R.No.61130

CRL.O.P.NO.4365 TO 4370 OF 2015

KG (CO)
PBS/27/12/2021