

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.5725 of 2018
in Crl.M.P.Nos.2888 and 2889 of 2018

Shri.P.R.Hari Kumar .. Petitioner

Vs.

State rep.by the
Labour Enforcement Officer (Central)
Government of India,
Ministry of Labour and Employment
"Shastri Bhavan", NO.26, Haddows Road,
Chennai 600 006. .. Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.804 of 2018 on the file of the Metropolitan Magistrate No.II, Egmore, at Allikulam, Chennai and quash the complaint as against the petitioner.

For Petitioner : Mr.K.S.Kumar

For Respondent : Mr.S.N.Parthasarathy
Central Government Standing Counsel

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.804 of 2018, on the file of the Metropolitan Magistrate No.II, Egmore, at Allikulam, Chennai and quash the complaint as against the petitioner.

2. The case of the petitioner is that the Company "RITES Ltd" is a Company registered under the Companies Act and it is a 100% Government of India Undertaking owned fully by the Government of India and the said establishment is engaged in checking the quality of goods supplied by their parties (Vendors) to Indian Railway and other Government Departments. The respondent / complainant who is said to be an Inspector under Section 20(1) of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, (hereinafter 'ISMW Act'), has conducted an inspection of the petitioner's establishment on 23.08.2016, while doing the work of the contract work of inspection, testing and commissioning of electrical multiple units and air conditional coaches for M/s.Integral Coach Factory at ICF, Perambur, Chennai, and noticed certain irregularities, thereby the Inspection Report dated 23.08.2016 was sent to the petitioner

calling upon him to rectify the irregularities within a fortnight. The petitioner gave a replies on 06.10.2016 and on 02.11.2016, by answering the queries posed by the respondent complainant. While being so, all of a sudden, without receiving any response to the said replies given by the petitioner, on 06.02.2018, the petitioner has received a summons from the Metropolitan Magistrate Court No.II, Egmore, at Allikulam, Chennai, intimating the filing of a criminal case against him in C.C.No.804 of 2018 and thereby only, the petitioner has come to the knowledge about the filing of criminal complaint by the respondent complainant against the petitioner. Aggrieved by the same, the petitioner is before this Court to quash the said complaint.

3. It is the further case of the petitioner that as per the ISMW Act, if there is any irregularities, the concerned authority should make complaint against the erring persons, within a period of three months from such offence. However, the complaint was belatedly filed after a lapse of one year and odd. Even the ISMW Act does not provide for any provision for condonation of delay, in case, the complaint is filed beyond three months.

Further, it is averred by the petitioner that the complaint could have been lodged only as against the Company, however, in the present case, the complainant has lodged a complaint against an individual in his designated capacity in the Company.

4. The learned counsel appearing for the petitioner submitted that though various grounds have been raised in the present petition, including non implicating necessary parties in the impugned complaint, mainly, as per Section 29 of the said Act, a condition has been imposed to file complaint within a period of three months from the date on which the alleged commission of the offence came to the knowledge of the Inspector or authorised person concerned; provided that where the offence consists of disobeying a written order made by an Inspector, the complaint may be made within six months of the date on which the offence is alleged to have been committed. In the present case on hand, the inspection was conducted on 23.08.2016 and thereby, the period of limitation for giving the complaint, is expired on February 2017. However, the complaint was filed only on January 2018, in order to harass the petitioner and accordingly prays for

allowing of the petition.

5. The learned counsel appearing for the respondent has filed the counter affidavit and submitted that during the time of inspection, it was found that the petitioner had failed to comply with the provisions of the ISMW Act and had not obtained the required license under the above said Act and a Show cause notice was issued by the respondent to the petitioner on 23.08.2016 to rectify the irregularities and to report compliance within a fortnight. Since the petitioner had failed to report compliance within the stipulated time as mentioned in the showcause notice, the criminal prosecution was launched against the petitioner. Further it is the submission of the learned counsel for the respondent that all the grounds raised in the present round of litigation requires adjudication before the Trial Court and this Court in exercise of it's power under Section 482 Cr.P.C., has no jurisdiction to adjudicate on the disputed question of facts and hence prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and

also perused the materials available on record.

7. For better appreciation, it is relevant to extract Section 29 of the ISMW Act:

"29. Limitation of Prosecutions- No Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date of which the alleged commission of offence came to the knowledge of the inspector or authorised person concerned;

provided that where the offence consists of disobeying a written order made by an Inspector, the complaint may be made within six months of the date on which the offence is alleged to have been committed."

8. A perusal of the above provision makes it clear that the complaint has to be filed within a period of three months from the date of commission of offences, which may be extended in case of violation of any written order of the authorities concerned. In the present case, this Court has perused the complaint filed by the respondent complainant, wherein though the respondent complainant signed the complaint on 25.01.2017, the same

has been presented before the Trial Court only on 25.01.2018, belatedly after of lapse of one year and no proof was annexed on the said complaint as to the belated filing of the same before the Trial Court. Even in the counter affidavit filed by the respondent, there is no reason has been assigned for belated filing of the complaint. Further in the absence of any provision to condone the delay in filing the complaint, the Trial Court cannot condone the delay and take cognizance of the matter.

8. In view of the reasons assigned above, this Court is inclined to quash the complaint against the petitioner on the sole ground of limitation of period in filing the complaint. Accordingly, this Criminal Original Petition is allowed and C.C.No.804 of 2018 on the file of the Metropolitan Magistrate No.II, Egmore, Allikulam, Chennai, is quashed. Consequently connected miscellaneous petition is closed.

16.08.2021

Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

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M.DHANDAPANI,J.

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To

1.Labour Enforcement Officer (Central)
Government of India,
Ministry of Labour and Employment
"Shastri Bhavan", NO.26, Haddows Road,
Chennai 600 006.

2. The Public Prosecutor,
High Court, Madras.

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