



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO.16168 OF 2017 &
CRL.M.P.NOS.9983 AND 9984 OF 2017

1. Shri. Vinod Kumar
Managing Director
M/s. Tata Communications Limited
VSB, No.4, Swami Sivananda Salai
Chennai - 600 002
2. Shri. Kesavaprasad
DGM-HR
M/s. Tata Communications Limited
VSB, No.4, Swami Sivananda Salai
Chennai - 600 002

... Petitioners/Accused

Versus

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

... Respondent/ Complainant

PRAYER :

Criminal Original Petition filed under Section 482 of Cr.P.C. to quash the proceedings initiated by the Respondent herein in C.C.No.2909 of 2016 on the file of XVI Metropolitan Magistrate Court, George Town, Chennai.

For Petitioners	...	Mr.B.Kumar Senior Counsel for Mr.C.Mohan of M/s.King & Partridge
For Respondent	...	Mr.Perumbur E.Palani



O R D E R

This Criminal Original Petition has been filed to quash the private complaint filed by the respondent alleging violation of certain mandatory provisions particularly not maintaining the Register of the Contractor. The prosecution was launched for the offences under Section 24 of the Contract, Labour (Regulations and Abolition) Act, 1970 and Rule 81 of the Contract Labour (Regulation and Abolition) Central Rules, 1971.

2. The main contention of the learned Senior counsel appearing for the petitioners is that the very complaint filed by the respondent is not maintainable as the Company has not been made as an accused. The allegations in the complaint proceed as if the Contractor committed violation, whereas now the Employer has been made as an accused. Further, it is his main submission that the Managing Director was residing elsewhere and hence, he cannot be construed as a Principal Employer. Similarly, under Form VI-B, the Company has already notified Principal Employer, which has not been taken note of and the prosecution has been launched against a wrong person without application of mind. Even in the counter statement, the respondent admitted about the defects in their complaint. It is his further submission that taking of cognizance by the learned Magistrate is not in accordance with law. The learned Senior Counsel placed reliance on two judgments, namely i) Uday Kotak and others V. State, represented by Labour Enforcement Officer (Central) reported in MANU/TN/0064/2005 and Aneeta Hada v. Godfather Travels & Tours (P) Ltd., reported in (2012) 5 SCC 661. It is submitted by learned senior counsel that prosecution as against the principal employer cannot be maintained in the eye of law as the allegation has been made only against the contractor in the very complaint itself.

3. Per contra, learned counsel appearing for the respondent submitted that the petitioners themselves have admitted in paragraph 4 of the petition that they are principal employer and therefore, the complaint is maintainable.

4. I perused the entire materials placed before this Court. In the very complaint, the contractor was shown as accused within the meaning of Section 2(c)g of the Act, whereas Managing Director and Deputy General Manager - HR were prosecuted for offences under Section 24 of the Act. The main allegation in the complaint is that Labour Enforcement Officer (Central - II), Chennai inspected the petitioners' establishment on 30.08.2016 and sent the inspection report to the petitioners/accused and the petitioners were requested to rectify the irregularities mentioned therein. Since the explanation submitted by the contractor was not found satisfactory, a private complaint has



been filed:

5. It is relevant to extract the definition of 'Contractor' found in Section 2(c) and 'Principal Employer' found in 2(g), which read as follows:

"Section 2(c) : "Contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other mere supply of goods or articles of manufacture to such establishment, through contract labour or to supplies contract labour for any work of the establishment and includes a sub-contractor;"

"2(g) "Principal Employer" means --

(i) in relation to any office or Department of the Government or a local authority, the head of that office or Department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,"

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the Manager of the Factory under the Factories Act, 1948 (63 of 1948), the person so named,

(iii) in a mine, the owner or agent of the mine and where a person has been named as the Manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment. "

6. The above definition makes it clear that the principal employer is the person who is responsible for the control of the establishment at the relevant point of time. The very complaint filed before the learned Magistrate indicates that the allegations have been predominantly made against the contractor for certain violation. Despite the fact that the contractor has given the explanation, the Labour Officer has chosen to file a complaint contending that the same was not found satisfactory. It is to be noted that what was the nature of the irregularities found which was sought to be rectified is absent in the very complaint itself. Therefore, in the absence of any decision rejecting the explanation, the prosecution cannot be launched mechanically even without indicating the nature of the violation said to be have been committed by the contractor. The entire complaint is bereft of details of any violation except contending that the accused has violated the Rules. The nature of the violations stated to have been committed by the Contractor is not even whispered in the entire complaint.



Further, having alleged that the entire violation is committed by the Contractor, now the prosecution has been launched as against the Managing Director as well as Deputy General Manager (HR). It is also to be noted that in every establishment, in the event of the Company, there shall be a notification under Form VI-B for naming somebody as Principal Employer. The Labour Officer has not even verified the Form VI-B to find out who is the person actually notified as Principal Employer. Without verifying the Register, prosecution cannot be launched. On a perusal of the entire complaint, this Court is of the view that this complaint has been made against the contractor, whereas principle employer who are noway connected have been prosecuted.

In such view of the matter, the present Criminal Original Petition is allowed and the case pending in C.C.No.2909 of 2016 on the file of XVI Metropolitan Magistrate Court, George Town, Chennai is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gba/gpa

To

1. XVI Metropolitan Magistrate Court
George Town, Chennai
2. The Chief Metropolitan Magistrate Court, (For information)
George Town, Chennai
3. Labour Enforcement Officer (Central)
Government of India
Ministry of Labour and Employment
"Shastri Bhavan", No.26, Haddows Road
Chennai - 600 006
4. The Public Prosecutor
Madras High Court
Chennai.

+2ccs to M/s.King & Partridge, Advocate, S.R.No.60345[10/06/2022]

Crl. O.P. No.16168 of 2017 &
Crl.M.P.Nos.9983 and 9984 of 2017

SPD(CO)
PM/14/12/2021