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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.12.2021

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THE HONOURABLE MR.JUSTICE N.SATISH KUMAR

Crl.O.P.No.16714 of 2017

&

Crl.M.P.Nos.10262 and 10263 of 2017

Kartheban Subramaniyan
Branch Manager
M/s.HDFC Bank Chegalpet Branch
New No.20-1, Old No.9A Ground Floor
Alagesan Road, Vedachalam Nagar
Chengalpet - 603 001

... Petitioner/Accused

Vs.

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

... Respondent/Complainant

Prayer: Original Petition filed under Section 482 Cr.P.C to call for records in S.T.C.No.102 of 2015 on the file of the District Munsif-cum-Judicial Magistrate, Thirukalukundram and quash the same.

For Petitioner : Mr.A.Swaminathan

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

ORDER

This petition has been filed to quash the private complaint filed against the present petitioner dated 27.02.2015, which has been taken on file by the District Munsif-cum-Judicial Magistrate, Thirukalukundram in S.T.C.No.102 of 2015.

2.The complainant's case is that the petitioner has not maintained Register Form D as required under the Equal Remuneration Act, 1976, which is punishable under Section 10(1) (a) read with Section 8 of the Act and Rule 6 the Equal



Remuneration Rules, 1976. It is alleged in the complaint that when the Labour Enforcement Officer inspected the petitioner on 12.02.2014, it was found that the Bank is not maintaining Register in Form D as per Equal Remuneration Act, 1976 and the Rules framed thereunder and hence, a show-cause notice dated 12.02.2014 was issued and the prosecution has been initiated on 27.02.2015.

3. Heard the learned counsel for petitioner and the learned Central Government Standing Counsel appearing on behalf of the respondent.

4. The learned counsel for the petitioner submitted that the present petitioner is a Branch Manager and he is not the employer and Bank is the employer, but the Bank has not been made as a party. It is his further contention that the show-cause notice was replied properly, which has been received on 22.03.2014 itself by the de facto complainant wherein the copy of the Register maintained by the Bank has also been sent to the de facto complainant, which has not been taken note of by the respondent and the prosecution has been launched mechanically and hence, the learned counsel prayed for quashing of the private complaint.

5. On the contrary, the learned Central Government Standing Counsel appearing for the respondent submitted that the prosecution has been launched properly and during the inspection by the Labour Enforcement Officer, it was found that Register in Form D has not been maintained, which is a punishable offence and opposed for quashing of the complaint.

6. This Court perused the entire materials placed before this Court. The main grievance of the Labour Enforcement Officer is that Register in Form-D has not been maintained properly and therefore, they issued a show-cause notice, for which no reply was received rectifying the defect and hence, the prosecution was laid. However, the materials available on record clearly show that show-cause notice was replied and a copy of the nomination in Form F has also been sent to the Labour Officer, which was acknowledged by the Labour Officer on 22.03.2014.

7. Be that as it may, it is relevant to note that the petitioner is only a Branch Manager and whether he would come under the category of "Employer" or not has to be seen. The term "Employer" is defined in Section 2(f) of the Payment of Gratuity Act, 1972, which reads as follows:



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'2 (f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—

(i) belonging to, or under the control of, the Central Government or a State Government a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;'

8. The definition for the term "employer" as found in Payment of Gratuity Act will also apply to the definition for "employer" in Equal Remuneration Act, 1976. The High Court of Kerala in Lord Krishna bank Ltd., Vs. Labour Enforcement Officer reported in CDJ 1998 Ker HC 181 has held that as the Registers are to be maintained at the Head Office of the Bank, insistence on the part of the first respondent therein to maintain the Registers in all the branches is not sustainable. Relevant paragraph is paragraph 10 and the same reads as follows:

'10. It is seen from the statements of objections and reasons that the Act is enacted to provide for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for prevention of discrimination in payment on the ground of sex. The object will not in any way be defeated if Form'D' prescribed as per R.6 of the Rules is maintained in the Head Office of the Bank. Only due to the reason that it is stated in R.6 of the Rules that every employer shall maintain up to date a register in



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relation to the workers employed by him in Form 'D' at the place where the workers are employed, it cannot be said that registers are to be maintained in each branch of the Bank. The words "the place where the workers are employed" cannot be independently read divorced from the words "employer" and the "workers employed by him." As already stated, employer is the Bank and not the branch Manager. Workers are not employed by the branch Manager, but by the Bank. At the branch level, there is no employer. So, if a harmonious construction is given to the words contained in R.6 of the Rules bearing in mind the provisions in the Act and also the aims and reasons for enacting such provisions, the only conclusion that can be arrived at is that the registers are to be maintained at the Head Office of the Bank. In the circumstances, the insistence on the part of the first respondent that such registers are to be maintained at the branch level cannot be upheld. Such insistence on the part of the first respondent is uncalled for and opposed to the provisions contained in the Act and the Rules. Complaint is filed with the sole allegation that registers are not maintained at the branch. Taking consequence of the complaint on the basis of such allegation and prosecuting the petitioners will amount to abuse of the process of the Court.'

9. The above judgment is squarely applicable to the facts of the present case. In the case on hand, the Branch Manager is not the employer and is not an appointing person. Only the Bank is appointing the person. In spite of reply sent for the show-cause notice, prosecution has been initiated mechanically. Further, it is relevant to note that the alleged occurrence took place on 12.02.2014 which attracts maximum punishment of one month simple imprisonment and fine. In that case, the prosecution ought not to have been initiated within the period of one year from the date of alleged occurrence, whereas the private complaint has been filed on 27.02.2015 beyond the period of one year and the reason for such delay has not been explained in the complaint. Therefore, the Court itself should not have taken cognizance unless the proper reason is given to take cognizance beyond the period of limitation and therefore, the private complaint is liable to be quashed.

In such view of the matter, this Criminal Original Petition is allowed and the private complaint in S.T.C.No.102 of 2015 on



the file of District Munsif-cum-Judicial Magistrate, Thirukalukundram is quashed. Consequently, the connected miscellaneous petitions are closed.

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SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

gpa/gba

To

1. The District Munsif-cum-Judicial Magistrate
Thirukalukundram.
2. -Do- Thro' The Chief Judicial Magistrate,
Chengalpattu.
3. Labour Enforcement Officer (Central)
Government of India, Ministry (Central)
"Shastri Bhavan" No.26, Haddows Road
Chennai - 600 006.

+lcc to Mr.A.Swaminathan, Advocate Sr.64432
+lcc to Dr.D.Simon, Advocate Sr.64782

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