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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.17054 and 17055 of 2017
and
Crl. M.P. Nos.10474 to 10477 of 2017

Radha

. . . Petitioner
(In both Crl.O.Ps)

Versus

Labour Enforcement Officer (Central)-I,
Government of India,
Ministry of Labour and Employment,
'Shastri Bhavan', No.26, Haddows Road,
Chennai 600006.

. . . Respondent
(In both Crl.O.Ps)

COMMON PRAYER : Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in STC. Nos.216 and 212 of 2016 respectively, pending on the file of the Judicial Magistrate Ranipet.

For Petitioner : Mr.S.Siva Shanmugam
(In both Crl.O.Ps)

For Respondent : Mr.D.Simson
Central Govt. Standing Counsel
(In both Crl.O.Ps)

C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the Private Complaints filed under Section 24 of the Contract Labour (Regulation & Abolition) Act, 1970 and taken on file as S.T.C. Nos.216 and 212 of 2016 on the file of the learned Judicial Magistrate, Ranipet.

2. The crux of the prosecution case is that the complainant/Labour Enforcement Officer (Central)-I, was appointed as Inspector for the purpose of Contract Labour



(Regulation & Abolition) Act, 1970. On inspection, it was found that M/s.Tamil Nadu Ex-Servicemen Corporation (TEXCO) was supplying contract labours to M/s.BHEL, BAP Plant, Ranipet, Vellore, and they failed to issue Wage Slips to the workers and also failed to submit half-yearly returns for the half year ending 31st December, 2011 to the Assistant Labour Commissioner (Central), Chennai, and thereby committed an offence under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970.

3.The learned counsel appearing for the petitioner in both the petitions submitted that no sanction was obtained against the petitioner for prosecution. It is the further submission of the learned counsel that sanction under Section 197 Cr.P.C. is also not obtained to prosecute the General Manager of M/s.Tamil Nadu Ex-Servicemen Corporation (TEXCO) and hence the prosecution is not maintainable. It is his further contention that the appropriate authority is only the State Government whereas the Inspector has inspected, which itself is not correct and hence seeks quashment of the entire proceedings.

4. The learned Central Government Standing Counsel appearing for the respondent submitted that the contract labourers are supplied to the Central Government establishment. The defects were noted only in the Central Government establishment. Therefore, the Labour Inspector appointed for that purpose is entitled to file a complaint and his further contention is that sanction under Section 197 Cr.P.C. is not required. Therefore, he opposed for the quashment of the proceedings.

5. Heard both sides and perused the entire materials available on record.

6. The main allegation in the complaint is that the Corporation, namely M/s.Tamil Nadu Ex-Servicemen Corporation (TEXCO), engaged in supplying the contract labours to M/s.BHEL, BAP Plant, Ranipet, Vellore. During inspection on 28.04.2016, it was noticed that they failed to issue wage slips to the workers. Besides they failed to submit half yearly returns ending 31st December 2011. According to the prosecution, this violation attracts punishment under Section 24 of the Contract Labour (Regulation & Abolition) Act, 1970. Section 24 deals with 'other offences'. If any person contravenes any of the provisions of the Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

7. The only violation as against the petitioner Corporation



is that they failed to issue wage slips as mandated in the rules and failed to submit half yearly returns. It is also relevant to note that Section 26 of the Act deals with the cognizance of offences. The same makes it very clear that, no Court shall take cognizance on any offence under this Act except on a complaint made by, or with the previous sanction in writing of the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act.

8. From the above section, it is very clear that to take cognizance of any offence, there must be a complaint accompanied with a previous sanction in writing with the inspector. The entire allegations made in the complaint are targetted against the Tamil Nadu Ex-Servicemen Corporation (TEXCO), whereas, the prosecution has been launched in individual capacity of the General Manager Mrs.Radha. The so called sanction is said to have been accorded in this regard dated 11.06.2016 indicates that the sanction has been accorded only to prosecute the Tamil Nadu Ex-Servicemen Corporation (TEXCO) and no sanction whatsoever was obtained to prosecute any of the Officer, who is in charge of the helm of the affairs of the Corporation. Therefore, at the outset, without any sanction being obtained for prosecuting against the person in individual capacity, such prosecution is not maintainable in the eye of law.

9. It is also relevant to note that Section 25 of the Contract Labour (Regulation & Abolition) Act, 1970, deals with the offences by companies and the same reads thus:

" 25. Offences by companies.-(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the



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commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section— (a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

10. The company includes corporates and includes a firm or other association of individuals. Therefore, without making the company, a person in individual capacity cannot be prosecuted. The company as well as the person in charge of the company are responsible for the conduct of the business to be arraigned as an accused, which has not been done so. No details whatsoever found in the complaint as to the role of the present petitioner in the affairs of the company. Therefore, without any details, a person cannot be prosecuted in individual capacity. On the above ground also, the prosecution is not maintainable.

11. It is also relevant to note that the alleged violation, namely the offence said to have been committed prior to 28.04.2016, during the inspection even the above date is taken as the date of offence, the penal provision under Section 24 indicates that the maximum punishment is three months imprisonment or fine up to Rs.1,000/- or both. In such an event, the complaint ought to have been filed within a period of one year i.e., on or before 27.04.2016, whereas, in the case on hand, the very sanction was obtained on 11.06.2016 beyond the period of limitation and the complaint was filed on 25.07.2016 before the Court of Law and there are no other reasons whatsoever assigned in the complaint to exercise the jurisdiction of this Court to take the complaint on file even beyond the period of limitation under Section 473 of the Cr.P.C. Therefore, on that ground also, the complaint is barred by limitation. However, considering the above facts, this Court is of the view that the very sanction itself is not accorded against the petitioner and the sanction is also absent about the accused. The sanction also lagging details and the same cannot be valid in the eye of law.

12. For all the reasons stated above, this Court is of the view that the proceedings initiated against the petitioner in STC.No.216 and 212 of 2016 respectively, on the file of the



Judicial Magistrate Ranipet, are liable to be quashed.

13. Accordingly, these Criminal Original Petitions are allowed. The proceedings initiated against the petitioner in STC.No.216 and 212 of 2016 respectively, on the file of the learned Judicial Magistrate, Ranipet is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

psa/asr

To

1. The Judicial Magistrate,
Ranipet.
2. Do-Through,
The Chief Judicial Magistrate,
Vellore.
3. The Labour Enforcement Officer (Central)-I,
Government of India,
Ministry of Labour and Employment,
'Shastri Bhavan', No.26, Haddows Road,
Chennai 600006.

+1cc to Mr.S.Siva Shanmugam, Advocate, S.R.No.66025

+2ccs to Dr.D.Simon, Advocate, S.R.No.66028, 66029

Cr1. O.P. Nos.17054 and 17055 of 2017

SV(CO)
SU(23/12/2021)