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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.19606 of 2017

and

Crl.M.P.Nos.11825 & 11830 of 2017

Rehan Khan
Former Managing Director,
Abbott India Ltd.
No.147, Greams Road, III Floor,
Chennai - 600 006.

... Petitioner/Accused

Vs.

State of Tamil Nadu
Represented by
Asst. Labour Commissioner
Chennai - 35.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.1939 of 2015 on the file of the II Metropolitan Magistrate, Egmore, and quash the same.

For Petitioner : Mr.M.Vijayan
for M/s.King and Partridge

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed to quash the complaint in C.C.No.1939 of 2015 pending on the file of the II Metropolitan Magistrate, Egmore, filed under the Payment of Wages Act, 1936, for violating certain procedures in displaying Form-5.

2.The case of the prosecution is that the Company has not displayed the Form-5 as mandated under the Payment of Wages Act, thereby, it is a punishable offence under Section 20(2) of the Payment of Wages Act.



3. The learned counsel for the petitioner would submit that, for statistical purposes, the complaint has been filed. The Managing Director who was staying in Mumbai has been arrayed as an accused for violation in respect of non-displaying of Board. It is his further contention that, as per Section 2(e) Sub-Clause (iv) of the Minimum Wages Act, a person responsible to the owner for the supervision and control of the employees or for the payment of wages, alone has to be prosecuted. Similarly, Section 3 of the Payment of Wages Act makes it clear that, in respect of industrial or other establishments, the responsibility for payment of wage lies on a person responsible to the employer for the supervision and control of the industrial or other establishments. Without verifying the above fact as to who is actually responsible for the supervision and control of the industrial or other establishments, the private complaint has been filed as against the Managing Director, who is no way connected to the supervision and control of the industrial or other establishments in respect of the branch office situated at Chennai. Hence, the learned counsel submitted that the prosecution is nothing but an abuse of process of law.

4. Heard Mr. S. Vinoth Kumar, learned Government Advocate (Crl. Side), appearing for the respondent. According to him, the industrial unit/company has not maintained the Form-5, which is punishable under Section 20(2) of the Payment of Wages Act and would attract a fine of Rs. 3,750/-, and submitted that the prosecution has been launched properly.

5. It is not disputed that the prosecution has been launched only against the Managing Director of the Company. The prosecution has been launched under the Payment of Wages Act. It is relevant to note that, as per the definition under Section 2 of the said Act, an "employer" includes the legal representative of a deceased employer.

Section 2(h) of the said Act reads as follows :

"2. ... (h) any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette."

Section 3 of the Act reads as follows :

"3. Responsibility for payment of wages.—

(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons



employed,—

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment;

(c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;

(d) in the case of contractor, a person designated by such contractor who is directly under his charge; and

(e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act; the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to, make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment."

6.A careful reading of the above provisions makes it clear that, as far as payment of wages in respect of industrial or other establishments is concerned, the person responsible to the employer for the supervision and control of the industrial and other establishments alone is liable to be proceeded against for non-compliance of the provisions of the Act. Admittedly, the industry situated in Chennai is a Branch office. The Managing Director is not even presently looking after the industrial or other establishments. Without verifying as to who is the person responsible to the employer for the supervision and control of the industrial or other establishments, launching prosecution against the Managing Director, who was never in-charge of the Branch office and residing away from the branch office, is nothing but abuse of process of law. Accordingly, this Court is of the view that, continuance of prosecution is a clear abuse of law.



7. Therefore, this Criminal Original Petition is allowed and the proceedings in C.C.No.1939 of 2015 as against the petitioner herein is quashed. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The II Metropolitan Magistrate,
Egmore, Chennai.
2. -Do thro The Judicial Magistrate,
Egmore Chennai.
3. The Assistant Labour Commissioner,
Chennai - 35.
4. The Public Prosecutor,
High Court, Madras.

+2cc to M/s.King and Partridge, Advocate, S.R.No.60519

CrI.O.P.No.19606 of 2017

BS(CO)
CT 08/12/2021