



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2021

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.1969 to 1971 of 2017 and
Crl.M.P.Nos.1407 to 1409 of 2017

Nandakumar Narayanaswamy

...Petitioner
[in all Crl.O.Ps]

Vs

The State of Tamil Nadu,
Represented by its Deputy Director,
Industrial Safety and Health - BOCW,
A-28, T.V.K.Industrial Estate,
Guindy, Chennai - 32.

...Respondent
[in all Crl.O.Ps]

PRAYER: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings in S.T.C.Nos.4237, 4236 and 4235 of 2016, on the file of the Judicial Magistrate, Ambattur, Tiruvallur District and to quash the same.

For Petitioner : Mr.S.Subbiah, Senior Counsel
[in all Crl.O.Ps] for Mr.A.H.Srikanth

For Respondent : Mr.R.Kishore Kumar,
[in all Crl.O.Ps] Government Advocate (Criminal Side)

C O M M O N O R D E R

The above petitions have been filed to quash the charge sheet in S.T.C.Nos.4237, 4236 and 4235 of 2016 on the file of the Judicial Magistrate, Ambattur, Tiruvallur District filed against the petitioner the offences under Sections 62(1)(2)(zf) Section 46(1) Rule 239(1) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act).

2. The crux of the charge is that on 10.06.2016, the Director inspected the construction site of M/s. Devinarayan Housing and Property Development Private Limited. It is found that the construction was carried out without submitting written notice in Form IV under Schedule XIII of the Tamil Nadu Rules, 2006 thereby they are punishable under law.



3. The learned Counsel appearing for the petitioner mainly contended that when the violation is found against the company, without making the company as a party to the proceedings and prosecuting the individual merely because he is a Director of the company is not permissible. Hence, it is his contention that proceedings have to be quashed.

4. Heard the Public Prosecutor. In the counter it is the contention of the respondent that the construction in the company was commenced without a proper notice as required under Section 46(1) of the Building and other construction workers (Regulation of Employment and conditions of service) Act, 1996 and Rule 239 (1) of the Tamil Nadu Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules 2006 and submitted that there is no provision in the Act to make a company. Therefore, company could not be made as a party.

5. At the outset, I am unable to countenance the submissions of the learned Counsel for the respondents. Section 53 of the BOCW Act makes it very clear that where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence shall be liable to be proceeded against and punished accordingly. Therefore, Section 53 makes it very clear that the company also to be prosecuted along with the persons who were in charge of the company. Whereas in this case, the company has not arrayed as a party and the petitioners in their individual capacity were made as accused, which is contrary to the very provision of the Act. In such a view of the matter, I am of the view that the continuation of the prosecution is a futile exercise and it is nothing but mere abuse of process of law.

6. Accordingly, the proceedings in S.T.C.Nos.4237, 4236 and 4235 of 2016 on the file of the Judicial Magistrate, Ambattur, Tiruvallur District are quashed and the Criminal Original Petitions are ordered. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



kbs/ggs

To

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1. The Judicial Magistrate,
Ambattur, Tiruvallur District.

2. The Deputy Director,
Industrial Safety and Health - BOCW,
A-28, T.V.K.Industrial Estate,
Guindy, Chennai - 32.

3. The Public Prosecutor,
High Court, Madras.

+3cc's to Mr.A.H.Srikanth, Advocate, S.R.No.64106,64105,64104

CrI.O.P.Nos.1969 to 1971 of 2017 and
CrI.M.P.Nos.1407 to 1409 of 2017

RSV(CO)
KM(09/12/2021)