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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.9266 of 2018
and Crl.M.P.No.4764 &4765 of 2018

General Manager
M/s.Tamil Nadu Ex-Servicemen Corporation (TEXCO)
Major Parameswaran Memorial Building,
No.2, West Mada Street, Srinagar colony,
Saidapet, Chennai 600 015. ...Petitioner

Versus

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

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings in C.C.No.799 of 2018, pending on the file of the Metropolitan Magistrate Court No.II, Egmore at Allikulam.

For Petitioner : M/S.S.Siva Shanmugam

For Respondent : Mrs.D.Geetha
Central Government Standing Counsel

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings in C.C.No.799 of 2018, pending on the file of the Metropolitan Magistrate Court No.II, Egmore at Allikulam.

2. The private complaint has been filed under Section 22A of the Minimum Wages Act, 1948. The crux of the prosecution is that on 20.11.2015, during inspection, the Labour Enforcement Officer found that Tamil Nadu Exservicemen Corporation Limited has not displayed notices containing the Minimum Rates of Wages fixed, Non-Maintenance of Muster Roll at the workspot, Non-Maintenance of Register of Wages at the workspot, Non-Maintenance of Register of Overtime at the workspot, Non-maintenance of Register of Fines and Register of Deductions for



damage or loss at the workspot, Non-issue of wage slips at the workers. Therefore, the private complaint has been filed for the above violations under Section 22A of the Minimum Wages Act, 1948 and the Minimum Wages (CENTRAL) Rules 1950.

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3. The main contention of the learned counsel for the petitioner is that the General Manager in his individual capacity has been arrayed as an accused, infact, the petitioner was working in Tamil Nadu Ex-Servicemen Corporation Limited. He further submitted that without making the company as an accused, the petitioner in his individual capacity cannot be prosecuted. Further, the prosecution itself has been lodged beyond the period of limitation, the same is invalid in the eye of law.

4. Mrs.D.Geetha, learned Senior Central Government Standing Counsel for the respondent submitted that the prosecution has been rightly initiated as per law. Hence, she opposed to quash the proceedings.

5. This Court has perused the entire materials available on record. The term employer has been defined under the Minimum Wages Act, 1948 in Section 2(e), which reads as follows:

“employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

6. The only allegation against the petitioner is that there was a violation in maintaining Registers and to display the notices, which is punishable under Section 22-A, 22-C of the Act.

7. It is relevant to note that the alleged violation was found only against the present petitioner's Corporation under Section 22-C of the Act, which makes it very clear that if the person committing any offence under this Act is 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 and shall be liable to be proceeded against and punished accordingly. Whereas, in this case, the company has not been arrayed as accused and only the petitioner in his individual capacity has been proceeded, which is not permissible under law. Similarly, the punishment provided under section 22A of the Act for the above violation is to the tune of Rs.500.

8. It is to be noted that the alleged occurrence is said to have taken place on 20.11.2015, whereas the complaint ought to



have been filed within a period of 6 months that is on 20.05.2016, whereas, the complaint has been filed only on 23.06.2016 which is beyond the period of limitation.

9. In such view of the matter, the complaint is barred under law. Therefore, continuing the proceedings against the petitioner herein is nothing but a futile exercise. Accordingly, the same is quashed.

10. In view of the above, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1.The Metropolitan Magistrate Court No.II,
Egmore at Allikulam.

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

+1cc to Mr.S.Siva Shanmugam, Advocate SR. No.1831

+1c to M/s.D.Geetha (SCGSC) SR. No.1823

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PL (CO)

PR (07/02/2022)