

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.5330 OF 2019

AND

CRL.M.P.NO.3063 OF 2019

K.Balaji

... Petitioner

/versus/

The State Rep. by  
The 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 is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.8153 of 2018 on the file of the Metropolitan Magistrate No.II, Egmore at Allikulam, Chennai, quash the same.

For Petitioner : Mr.K.S.Kumar

For Respondent : Mr.L.Infant Dinesh  
Additional Central Government  
Standing Counsel

O R D E R

The petitioner herein is the accused in the complaint filed by the Labour Enforcement Officer (Central), Chennai, under Section 24 of the Contract Labour (Regulation & Abolition) Act 1970 and Contract Labour Regulation Central Rules, 1971.

2. The sum and substance of the complaint is that the petitioner herein is the Additional General Manager, in charge of M/s.RITES Limited, which is the license holder under Section 12(1) of the Contract Labour (Regulation and Abolition) Act,

1970. The license is given for the work of inspection, testing and commissioning of Electrical multiple units & Air conditioned Coaches in the Establishment of Furnishing Division, M/s.Integral Coach Factory, at Chennai. The Inspector of Labour Department inspected the establishment of M/s.RITES Limited, Chennai on 13.08.2018, while executing the Contract work of inspection, testing and commissioning of Electrical multiple units & Air conditioned Coaches at the Establishment of Furnishing Division, M/s.Integral Coach Factory, at Chennai. During the inspection, certain irregularities were noted and therefore show cause notice was issued to the petitioner herein being the Additional General Manager of the said licensee M/s.RITES limited, requesting him to rectify the irregularities immediately and report compliance within a fortnight to the Deputy Chief Labour Commissioner (Central), 5th floor, Shastri Bhawan, Chennai.

3. The irregularities noticed in the inspection report dated 13/08/2018 are as under:

"Pertaining To Returns:

1. The employer failed to upload unified annual returns in web portal before 01st February for the year of 2017 in form XIV. [Breach of Rule 82(1)]

Pertaining to wages:

1. Contractor has not ensured the presence of the representative authorized by the Principal Employer at the time of the disbursement of wages. [Breach of Rule 72]"

4. The private complaint was filed on 12.11.2018 and taken on file in C.C.No.8153 of 2018 for prosecution under Penal Sections 24 read with Rule 25(2)(viii), Section 24 read with Rule 76(i) and Section 24 read with Rule 72 of the Contract Labour (Regulation & Abolition) Act 1970. In the complaint, it is specifically stated that the above violations were noted during the inspection and therefore show cause notice dated 13.08.2018 was issued to the accused and accused was requested to rectify the irregularities. However, the contractor/ accused has not submitted the compliance report, hence they are liable to be prosecuted under Section 24 of IPC. Penal Sections under which prosecution initiated are as follows:

"01.Penal Section 24 read with Rule 25(2) (Vii)

Non-submission of Notice of Commencement of contract work in Form-Vii

02.Penal Section 24 read with Rule 76(i)

Non-submission of Annual Returns through online before statutory time limit.

03.Penal Section 24 read with Rule 72

The Contractor has not ensured the presence of the representative authorized by the Principle Employer at the time of the disbursement of wages."

5. On receipt of the summons from the II Metropolitan Magistrate Court, Egmore, Chennai, the accused has filed this petition to quash the proceedings on the ground that the Contract Labour (Regulation and Abolition) Act applies only to establishment and not to the individual, whereas, the complaint is now lodged against the individual and not against the establishment or the licensee. While the establishment namely M/s.RITES Limited, has submitted the returns and also granted with license valid up to 05.07.2019, the allegations regarding violation of non submission of Notice of Commencement of Contract work in form -VII, punishable under Section 24 read with Rule 25(2)(viii) is prima facie not tenable and no offence is made out under this Section.

6. Regarding the non submission of Annual Returns through online before statutory time limit which is punishable under Section 24 read with Rule 76(i), the learned counsel for the petitioner contended that the Annual Returns could not be uploaded, since the website of the complainant was not properly functioning. However, the hard copies of the Annual Returns has been filed before the authorities and therefore no offence could be attributed to the petitioner as stated in the complaint.

7. Regarding the third charge of violation that the contractor has not ensured the presence of the representative authorized by the Principle Employer at the time of the disbursement of wages, it is contended that M/s.RITES Limited is a Government enterprise and as per the Government norms the salary for the employers are being credited directly to their bank accounts. Therefore, the presence of the representative authorized by the Principle Employer at the time of disbursement of wages does not arise.

8. The learned counsel appearing for the respondent/complainant would submit that the grounds taken in the quash petition and the explanation given in the quash petition were not submitted by way of explanation, when show cause notice was issued to them. Furthermore, the plea that the web site was not functioning properly and being the Government enterprise, they

were disbursing the salaries through bank accounts are not correct and no document was produced by the petitioner to that effect. Therefore, he submitted that having failed to produce documents and rectify the irregularities pointed out in the show cause notice, by way of quash petition, the petitioner is trying to make out a case of defence, what he failed to do, when the show cause notice was served on them.

9. This Court, on considering the submission of the learned counsel for the petitioner is of the view that the defect and the irregularities noted in the inspection report and the irregularities mentioned in the criminal complaint, are not different. Perusing of the inspection report of the complainant, this Court finds that except the first charge of violation of non submission of Notice of Commencement of contract work in Form-VII, the other two charges are found in the inspection report as irregularities. Therefore, the explanation now placed by the petitioner regarding the non-submission of the Annual return and failure to ensure the presence of the representative authorized by the Principle Employer at the time of the disbursement of wages are not new charges or different that noted during inspection. Further these are all factual issues, which are to be decided in the trial.

10. Therefore, this Criminal Original Petition petition to quash is partly allowed insofar as the alleged violation of section 24 read with Rule 25(2)(viii), alleging non submission of Notice of Commencement contract work in Form-VII. Insofar as the other charges under Section 24 read with Rule 76(i) and Section 24 read with Rule 72 are concerned, the prayer to quash is dismissed. The petitioner is at liberty to raise all the grounds raised in the quash petition before the Trial Court.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jai

To

1. The Metropolitan Magistrate No.II,  
Egmore, Allikukam,  
Chennai.

2. Labour Enforcement Officer (Central),  
Government of India,  
Ministry of Labour and Employment  
"Shastri Bhavan",  
No.26, Haddows Road,  
Chennai - 600 006.
3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.K.S.Kumar, Advocate, S.R.No.38184

CRL.O.P.NO.5330 OF 2019

KK(CO)  
PBS/12/07/2022