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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.5169 of 2017
and CrI.M.P.Nos.3831 &3832 of 2017

Thiru.Pradeep Banerjee,
Whole Time Director-Supply Chain and Occupier,
M/s.Hindustan Unilever Limited,
(Detergent Factory)
Puducherry.

... Petitioner / Accused

Versus

1.The Labour Officer(Conciliation)
Labour Department
Puducherry.

2.Hindustan Unilever Workers Union,
Regn.No.1538/RTU/2008,
Ayyanar Koil street,
Yembalam & Post,
Puducherry-605 106.
Rep by its General Secretary

3.Hindustan Unilever Wel's Union,
Reg.No.1457/RTU/2006,
No.7, Murugan Koil Street,
Keezhsathamangalam,
Korkadu Post, Puducherry.
Rep by its General Secretary.

4.Hindustan Unilever Employees Union,
Reg.No.1534/RTU/2008,
No.306,V.O.C.Street,
Sudhana Nagar, 2 Nainarmandapam
Puducherry.
Rep by its General Secretary.
(R2 to R4 are impleaded as per the order
of this Hon'ble Court dated 11.10.2017 made
in CrI.M.P.No.10805/2017 in CrI.O.P.No.5169 of 2017)

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of
Criminal Procedure Code, praying to call for the records



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connected with S.T.C.No.1570 of 2016 and quash the complaint and all consequential proceedings on the file of Judicial Magistrate Court-I, Puducherry in S.T.C.No.1570 of 2016.

For Petitioner : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam & Associates

For Respondents : Mr.V.Balamurugane for R1
Addl. Public Prosecutor(Puducherry)
Mr.Balan Haridos for R2

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings in S.T.C.No.1570 of 2016 on the file of Judicial Magistrate Court-I, Puducherry for the offence under Section 190(1)(a) of the Cr.P.C. r/w Section 25U of the Industrial Disputes Act, 1947.

2. The crux of the allegations is that the private complaint came to be filed by the Labour Officer pursuant to the complaint dated 09.12.2010 given by a Union called Hindustan Unilever Workers Union over unfair trade practices before the Commissioner of Labour against the management of M/s. Hindustan Unilever Limited, Detergent Factory, Vadmangalam, Puducherry. The complainant Union stated that they are a registered trade union bearing Regn.No.1538/RTU/2008 with 210 members out of 515 total employees. The Complainant Union alleged that the management had entered into settlement over wage revision for the year 2007 with other union viz., Hindustan Lever Wel's Union which acts in favour of the management. The complainant union workers are refused with various benefits they are entitled to as per law and as such, the act of the management falls under unfair labour practice.

3. It is the contention of the complainant Union that there is a wage disparity between the employees of the same grade, same experience and skill which is contrary to the principles of "Equal pay for equal work". Further, the complainant union have lodged the complaint against the management over unfair trade practices in the year 2010. In pursuant to the above complaint, it appears that the Government has granted a sanction to initiate prosecution against the company and sanction was accorded vide order dated 31.01.2013. In pursuant to the same, the Labour Officer has filed a private complaint which was taken on file by the learned Magistrate-I, Puducherry in STC.No.1570 of 2016 for the offence under 190(1) of Cr.P.C and Section 25U of the Industrial Disputes Act which was sought to be quashed in this petition.



4. The learned counsel for the petitioner submitted that subsequent to the complaint, three awards were passed by the Industrial Tribunal, Puducherry, wherein, the complainant union was a party and all the disputes between the management and complainant union have been settled. As the settlement has already been reached between the parties merely on the basis of general allegations, the prosecution has been launched. Further, it is his contention that there is no unfair labour practice established by the management. He further submitted that the complaint has been lodged without proper enquiry. Further, it is his contention that the matter has been taken cognizance in the year 2016 after a period of 6 years which is not permissible as per law. Further, in this case the company has not been made an accused. Hence, he prays to quash the proceedings.

5. The learned counsel appearing for the second respondent Union submitted that the unfair trade practice has been clearly described in the complaint and the same has been enquired by the Government. Accordingly, the sanction has been accorded. Hence, it is his contention that there is no question of limitation arising in this matter for quashing the proceedings. Further, whether any unfair trade practice is established or not is a matter of evidence and the same cannot be gone at this stage. Hence, he opposed for quashing the proceedings against the petitioner.

6. The learned Government Advocate(Crl. Side) for the 1st respondent submitted that the private complaint has been lodged with the prior sanction from the Government. Therefore, the same cannot be quashed.

7. This Court has perused the entire materials available on record. At this stage, this Court while exercising its jurisdiction under Section 482 of Cr.P.C cannot conduct a roving enquiry or decide and probe into the evidence at this stage, which have to be gone into only during the trial. At the same time, when the complaint or FIR is prima facie barred by law, the Court can rightly exercise its jurisdiction under Section 482 of Cr.P.C to prevent the abuse of process of law. It is to be noted that the entire private complaint has been filed for the alleged unfair labour practices which is said to have been taken place in the year 2010. The Complainant union has raised the allegations in the complaint that they have been not properly treated by the management, infact, which resulted in enquiry by the Government and filing of the private complaint by the Labour Officer. The alleged unfair trade practice is said to have been taken place in the year 2010 and only for those specific instances, the complaint has been launched.

8. It is relevant to note that for any such unfair labour



practices, the maximum punishment provided under section 25U of the Industrial Dispute Act is imprisonment for a term which may extend to six months or with fine which may extend to one thousand (Rs.1000) or with both. It is relevant to note that though the complaint is lodged as early as in the year 2010, the Labour Officer and the State had lodged the private complaint only in the year 2016 which was taken cognizance in the year 2016 by the learned Judicial Magistrate-I, Puducherry, which itself indicates that the Trial Court ought not to have taken cognizance after the expiry of limitation period.

9. It is relevant to note that if the offence is punishable with imprisonment for a term not exceeding one year(1), the same should be taken cognizance by the learned Magistrate within a period of one(1) year from the date of alleged occurrence. But, in this case, cognizance is said to have been taken place in the year 2016, whereas, the alleged occurrence is said to have been taken place in the year 2010. Further, it is not the case of the State that they have filed a petition to condone the delay to invoke the discretion of the learned Magistrate to take cognizance by invoking the provisions under section 473 of Cr.P.C. Therefore, it is relevant to note that the very cognizance taken by the learned Magistrate is not as per law. In the above ground also, the complaint is liable to be quashed.

10. It is also to be noted that the entire allegations are targeted against the company. If any offence is alleged to have been committed by the company, the company ought to have been made as an accused and along with the company only, the person in charge of the management or affairs of the company will be made as an accused, whereas, the summons issued by learned Judicial Magistrate-I, Puducherry itself indicate that the company have not made as an accused. The private complaint also indicate that the company has not been arrayed as an accused and only the Managing Director in his individual capacity is made as accused.

11. It is relevant to note that Section 32 of the Industrial Disputes Act makes it very clear that where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

12. A reading of the above provision makes it clear that when the company being made as accused, the individual officers directly cannot be made as accused. On that ground also, the complaint has to be quashed. It is also brought to the notice of



the Court that subsequent to the filing of the complaint in the year 2010, R2 has entered the settlement with the Management and Union. Based on the settlement three awards were passed by the Industrial Tribunal vide orders dated 19.10.2016, 11.01.2013, wherein, the dispute raised by the union, particularly with regard to wages and other matters have been settled and there was an agreement entered between the union and management which has been approved by the Industrial Tribunal, Puducherry. Therefore, the contention of the second respondent that it is the continuing offence cannot be countenanced at this stage. The specific allegations in this complaint related to the alleged unfair labour practices said to have been practiced in the year 2010. Thereafter, it appears there were conciliation proceedings between the union and management which resulted in an agreement which got approved by the Labour Court, Puducherry. In such view of the matter, this Court is of the view that continuation of the prosecution is nothing but futile exercise and abuse of process of law. Accordingly, the prosecution against the petitioner is quashed.

13. In view of the above, this criminal original petition is allowed. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

msv/nr
To

1. The Judicial Magistrate Court-I,
Puducherry
2. The Labour Officer(Conciliation)
Labour Department
Puducherry.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Balan Haridos, Advocate, S.R.No.1235
+1cc to M/s.S.Ramasubramaniam, Advocate, S.R.No.347

Crl. O.P. No.5169 of 2017
and Crl.M.P.Nos.3831&3832 of 2017

NK(CO)
CT 24/01/2022