



*Crl.O.P.No.23770 of 2021
and Crl.MP.No.13089 of 2021*

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2022

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.23770 of 2021

and

Crl.MP.No.13089 of 2021

Sumanth Subramaniyan

...Petitioner

-Vs-

State

Rep. by Deputy Director (BOCW),
Industrial Safety and Health,
47/1, Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai-600 032.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records and quash the proceedings in C.C.No.4943 of 2021 on the file of the learned Chief Metropolitan Magistrate, Egmore as against the petitioner.

For Petitioner : Mr.P.H.Manoj Pandian
for M/s.AAV Partners

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been preferred seeking to call for the records in C.C.No.4943 of 2021 pending on the file of the learned Chief Judicial Magistrate, Egmore, Chennai under Section 7(1)(2) r/w Rule 23(1)(2) and Rule 27, Section 46(1) Rule 26(3) and Rule 239(1) and Section 30(1) Rule 241(1)(a)(9), Section 50(1) and 48 of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Tamil Nadu Building and Other Construction Workers (Regulation of Employment And Conditions of Service) Rules, 2006 and quash the same.

2. It is the case of the prosecution that on 11.03.2021 when the construction site of the petitioner was inspected, it was found that (i) the application for registration of the establishment under Tamil Nadu Buildings and other Construction Workers [Regulation of Employment and Conditions of Service) Act 1996 along with prescribed fees was not submitted to the Joint Director of the Industrial Safety and Health, Chennai (ii) a written notice in Form IV under Schedule XII, intimating the actual date of commencement and the probable date of completion of the work was not



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submitted by him to the Deputy Director (BOCW), Industrial Safety and Health, Chennai at least thirty days before the commencement of the above said construction work and (iii) The muster roll in Form XVI and Register of Wages in Form XVII under Schedule XIII, for the workers employed in the construction work was not maintained and produced on demand during the inspection. After having sent a show cause notice to the petitioner, the case has been filed for the above violations.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent. Perused the entire materials available on record.

4. The learned counsel for the petitioner submitted that the Company is not impleaded as a party in the impugned proceedings; section 2(1)(i) of the Act defines employer and the petitioner does not fall under the said definition; because the construction work in the site was given to one Mr.A.Leo Francis through a work order dated 01.10.2020, the said contractor alone can be construed as an employer; further, as per Section 53(1) of the Act if an offence is committed by the Company, the Company ought to have been impleaded as a party; but the present complaint has been given against



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the petitioner in his individual capacity and hence, the proceedings are liable to be quashed; this Court has confirmed the above position of law in its earlier order dated 07.09.2018 made in Crl.OP.(MD) No.2938 of 2017, order dated 12.11.2021 made in Crl.OP.Nos.20373 & 20374 of 2017 and order dated 02.08.2022 made in Crl.OP.No.16346 of 2022.

5. The learned Additional Public Prosecutor appearing for the respondent has filed a counter affidavit stating that as per Section 53(2) of the Act, if it is proved that the offence has been committed with the consent or connivance for the neglect on the part of any director, the manager, secretary or other officer of the Company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence; the entire construction work order was being carried out by the petitioner and not through any contractor; after receiving the show cause notice, the petitioner did not send any reply by stating the facts, which are now raised in the petition; hence, this Criminal Original Petition is liable to be dismissed.

6. The records would show that there is some work order agreement made between M/s.Sumanth & Co., and the Contractor by name Mr.A.Leo



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Francis for doing civil masonry work in respect of the residential apartments of the Company. Before looking into a *prima facie* materials available for the alleged violation, it has to be seen whether the petitioner is an appropriate party to the proceedings initiated against him under Section 53 of the Act. Section 2(1)(i) of the Act defines employer as under:-

"2. Definitions. -

(i) "employer", in relation to an establishment, means the owner thereof, and includes, -

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor."

7. The petitioner claims that for the construction workers who do construction work in the site, their employer would be the contractor through whom the construction work is being carried out.



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8. On perusal of the work order dated 01.10.2021, it is seen that the work contract was given by M/s.Sumanth & Co. to Mr.A.Leo Francis. Therefore, Mr.A.Leo Francis can be construed as an employer within the provision of Section 2(1)(iii) of the Act. But this complaint has been given against the petitioner in his individual capacity. Neither the Company has been impleaded as a party to the proceedings. Section 53 of the Act reads as under:-

"53.Offences by companies.-(1) 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 and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the



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part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

9. The petitioner has stated that his establishment is a Partnership Firm. The petitioner has been impleaded in his personal capacity and not as a representative for the Company. As per Section 53(1) of the Act, when the offences are alleged to have been committed by a Company, every person who, at the time the offence was committed, was in charge of the Company for the conduct of the business of the company as well as the company, shall be deemed to be guilty for the offence. The above legal position has been dealt with by the Hon'ble Supreme Court in ***Aneeta Hadra Vs. Godfather Travels and Tours Private Limited [(2012) 5 SCC 661]***, where the case involved is an offence under Section 138 of The Negotiable Instruments Act.



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10. Unless a case is filed against the Company, the proceedings can not be maintainable. As per Section 53(2) of the Act, if it is proved that the offence committed by the Company with the consent or connivance of the Managing Director, Secretary and other officers of the Company, they shall also be deemed to be guilty. Without verifying who is the employer against whom the proceedings should be initiated and without impleading the Company, the respondent has given the complaint against the petitioner in his individual capacity. Hence, the position of law as held in *Aneeta Hadra*'s case is squarely applicable to the case on hand.

11. In view of the above lapse on the part of the respondent, the proceedings in C.C.No.4943 of 2021 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

20.09.2022

Index : Yes/No

Speaking/Non Speaking order
kmi



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To

1. The Deputy Director (BOCW),
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2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J,

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