IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2022
PRONOUNCED ON : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.24063 of 2018 and
Crl.M.P.No.13583 of 2018

1.M.A.M.R.Muthiah
2.R.M.Palaniappan
3.The Management,
M/s.South India Corporation Private Limited,
Having its office at,
Rani Seethai Hall, 5th Floor,
No.603, Anna Salai,
Chennai - 600 006. ... Petitioners/
Accused 1 to 3

Vs.

1. M.Suresh
2. The State rep by,
Inspector of Police,
Crimes, F-4 Thousand Lights P.S,
Chennai. ...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to pass suitable orders calling for records in C.C.No.6343 of 2018 pending on the file of the Learned XIV Metropolitan Magistrate, Egmore, at Allikulam, Chennai and to examine the same and to quash the entire proceedings pending in C.C.No.6343 of 2018.

For Petitioners : Mr.G.Prabhakaran

For R1 : Mr.A.Ashwin Kumar,
Legal Aid Counsel

For R2 : Mr.R.Kishore Kumar,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.6343 of 2018, on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai/trial Court.

2.The gist of the case is that the 1st respondent/defacto complainant was working as Deputy Manager in M/s.South India Corporation Private Limited, Anna Salai, Chennai/3rd petitioner company (Hereinafter referred to as 'Company'). He joined service on 08.02.1983 as Clerk. Due to his long years of dedicated service, he was assigned the designation Deputy Manager. The 1st respondent was attending on all the accounts work of the logistic services and clearing and forwarding services of the company. The attendance of the 1st respondent and other employees employed in the company is done by the bio-metric system as well as by signing in the attendance register manually. The 1st respondent found that though he attended the office from 10.06.2015 to 15.06.2015 and registered his attendance under the bio-metric system, he was shown as absentee. Further, the 1st respondent did not sign in the attendance register from 10.06.2015 onwards as the attendance register was not made available in the usual place. When the 1st respondent enquired the same, he was informed that the attendance register took away by the Income Tax department. The Income Tax survey was conducted in the company premises by the Income Tax authorities during the above said period. On 16.06.2015, he attended the office, but he was not allowed to register the attendance in the bio-metric system by the security and also not allowed to sign in the attendance register. Further, the 1st respondent found the attendance marked by him for those days from 10.06.2015 stood erased.

3.According to the 1st respondent, this deliberate absence has been shown against him to remove him from the service, since there was conflict between the 1st respondent and his adoptive father M.A.M.Ramasamy. The 1st respondent construed as a loyalist of M.A.M.Ramasamy, the founder of the company. Hence, the 1st respondent was targeted by making it appear as if he did not attend his duty when he actually worked and further, he was denied work and made it appear as if he is absent from work, his bio-metric attendance altered and access to attendance register denied. Annoyed over the same, the 1st respondent sent a legal notice to the petitioners on 18.06.2015, for which, a reply was given by the petitioners on 23.06.2015 stating no deletion made and the 1st respondent's presence is marked. Thereafter, the 1st respondent sent a rejoinder on 01.07.2015 to the petitioners, since the 1st respondent was prevented from entering the office from 16.06.2015. In the meanwhile, a show cause notice was issued to the 1st respondent seeking explanation for unauthorized absence from 15.06.2015 onwards. Finding the conspiracy of the petitioners in deleting the attendance of the 1st respondent in bio-metric system, he filed a complaint before the trial Court. Thereater, the complaint was forwarded to the 2nd respondent Police under Section 202 Cr.P.C.

4.The 2^{nd} respondent Police after enquiry, closed the complaint as 'Mistake of Fact' on 28.10.2016 and filed closure report before the trial Court. The trial Court not satisfying with the closure report of the Police, passed an order in Crl.M.P.No.882 of 2015 taking the complaint of the 1^{st} respondent on file in C.C.No.6343 of 2018 and issued summons to the petitioners.

5.The learned counsel for the petitioners submitted that the 1^{st} and 2^{nd} petitioners are President and General Manager of 3^{rd} petitioner company. There was Income Tax raid in the company from 10.06.2015 to 15.06.2015 and the entire office was brought under the control of the Income Tax authorities, the regular functions of all servers and computer systems were also stalled. Only after 19.06.2015, the computer system network became accessible by the company. The bio-metric device records the finger print data and forwards the same to the main window server, from there, the data would reach linux server and there from it would flow to the display of HRIS server, which is an application programme interface. The data from bio-metric device to server was not able to be accessed due to the Income Tax raid from 10.06.2015 to 15.06.2015. After the Income Tax raid, the server was restarted. The presence of Income Tax officials from 10.06.2015 to 15.06.2015 in the company is not in dispute. The learned counsel further submitted that the 1^{st} respondent admitted the Income Tax survey and the presence of the Income Tax officials even in his notice, dated 18.06.2015. The complaint of the 1^{st} respondent is that he was a loyal employee to M.A.M.Ramasamy, who is the adoptive father of the 1^{st} petitioner and founder of the company and he has left with four more years of service. Since there was conflict between the 1^{st} petitioner and his father M.A.M.Ramasamy, it was presumed that the 1^{st} respondent is a loyalist of M.A.M.Ramasamy, who is the founder of the 3^{rd} petitioner company. Hence, he was targeted, his bio-metric attendance registered were not forwarded to HRIS server. Further, the manual attendance register not available in its usual place from 10.06.2015 to 15.06.2015. This has been done only to project the 1^{st} respondent as a regular absentee and to remove him from the service, is far-fetched.

6.The learned counsel for the petitioners further submitted that in the reply notice, dated 23.06.2015, the petitioners gave reason and details why the bio-metric system not operated. For the reply notice, dated 23.06.2015, a rejoinder was sent by the 1^{st} respondent on 01.07.2015. On the same day, the petitioners issued show cause notice informing the 1^{st} respondent that the salary for the period from 01.06.2015 to 15.06.2015 credited to his account and the salary for the period from 16.06.2015 to 30.06.2015 not credited due to his unauthorized absence and the petitioners called upon the 1^{st} respondent to attend the work forthwith with proper explanation. The 1st respondent in his second rejoinder, dated 03.07.2015, admitted the receipt of salary without deduction for the relevant period. While this being so, filing the above complaint and proceeding against the petitioners is nothing but abuse of process of law. If the 1st respondent has any grievance on the manner in which he is treated, he has to approach the appropriate forum, since it is a labour dispute. The learned counsel further submitted that the complaint of the 1st respondent has no legal foundation. Initially, the trial Court doubted the complaint of the 1st respondent and directed the 2nd respondent Police to cause enquiry under Section 202 Cr.P.C., the 2nd respondent Police conducted enquiry and found the 1st respondent's complaint is motivated and unfounded and filed a closure report 'Mistake of Fact' on 28.10.2016. After three years, on 30.05.2018, an order was passed by the trial Court in Crl.M.P.No.882 of 2015 recording that the report of the 2nd respondent Police is not supported by any acceptable material and took the complaint on file as C.C.No.6343 of 2018, which is improper. From the 2nd respondent Police enquiry report, it is found that the Income Tax survey was conducted from 10.06.2015 to 15.06.2015 and the 3rd petitioner company was under the control of the Income Tax department. The trial Court failed to look into the same and passed an erroneous order.

7.In support of his submissions, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in the case of "Mehmood UI Rehman Versus Khazir Mohammed Tunda and others reported in 2015 (12) SCC 420", wherein it is held that the veracity of the allegations is a question of evidence. Question is not about veracity of the allegations; but whether the respondents are answerable at all before the criminal Court. Further, he placed reliance on the decision of the Hon'ble Apex Court in the case of "Ashok Chaturvedi and others Versus Shitul H.Chanchani and another reported in AIR 1998 SUPREME COURT 2796" for the principle that the statement of the complainant as well as the witness not lending any support and taking cognizance of the complaint is not proper and liable to be quashed. Further, he placed reliance on the decision in the case of "Mohammad Atullah Versus Ram Saran reported in AIR 1981 SUPREME COURT 1155", wherein it had held after receiving the investigation report there was no additional material before Magistrate than what was when investigation was ordered.

8.The learned counsel for the 1st respondent submitted that the 1st respondent was working in the company for the past 32 years and he served as Deputy Manager in the Accounts Department. The company was promoted by M.A.M.Ramasamy, who is the adoptive father of the 1st petitioner. There was misunderstanding between the 1st petitioner and his adoptive father. Since the 1st respondent happened to be loyalist of the father of the 1st petitioner, he was suspected that at his instance, the Income Tax department conducted raid. It is no doubt that the Income Tax department conducted raid from 10.06.2015 to 15.06.2015. The 1st respondent like other employees registered their attendance in bio-metric during the relevant period. During the relevant period, the manual attendance register was not available in the usual place, despite demanded, he was not provided and he attended the office regularly. Later to his shock and surprise, the 1st respondent found his bio-metric attendance erased. On 16.06.2015, when the 1st respondent went to the 3rd petitioner company, he was not allowed to register his attendance in bio-metric and not allowed to sign in the manual attendance register. Added to it, the security guard had forced him out. This was done to show the 1st respondent was a regular absentee and the petitioners wanted to remove him from the service. The 1st respondent finding foul play, sent a legal notice to the petitioners through his lawyer on 18.06.2015, for which, the petitioners sent a reply on 23.06.2015 giving lame excuses for non registration of the attendance. Thereafter, for the reply notice of the petitioners, dated 23.06.2015, the 1st respondent sent a rejoinder on 01.07.2015 that he was being targeted by the petitioners as though he is a regular absentee and wanted to remove him from the service. After receipt of rejoinder of the 1st respondent, a show cause notice was issued informing the 1st respondent that his salary for the period from 01.06.2015 to 15.06.2015 credited to his account. After 16.06.2015, the 1st respondent not permitted to enter into the company. Having prevented the 1st respondent from entering the company from 16.06.2015 and finding forgery created on his attendance, he filed a complaint before the trial Court, which was forwarded to the 2nd respondent Police. Without conducting proper enquiry, the 2nd respondent Police closed the complaint as 'Mistake of Fact' on 28.10.2016 and filed the closure report before the trial Court. The trial Court after going through the evidence and materials and also closure report, found prima facie grounds and took the complaint on file as C.C.No.6343 of 2018.

9.In support of his submissions, the learned counsel for the 1st respondent relied on the decision of the Hon'ble Apex Court in the case of "Vadilal Panchal Versus Dattatraya Dulaji Gha Digaonkar and another reported in AIR 1960 SC 1113", wherein it had held that the Magistrate is not duty bound to accept the enquiry report of the Police, if sufficient materials are found. The only requirement is that the Magistrate to apply the judicial mind and proceed accordingly. Further, he placed reliance on the decision of the Hon'ble Apex Court in the case of "National Bank of Oman Versus Barakara Abdul Aziz and another reported in (2013) 2 Supreme Court Cases 488", wherein it had held that Section 202 Cr.P.C., is different from investigation contemplated under Section 156 Cr.P.C. It is only for holding the Magistrate to decide whether or not there is sufficient ground to him to proceed further. The scope of enquiry under Section 202 Cr.P.C., is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the Court. (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

10.He further submitted that the petitioners to face the trial and to putforth the case by way of cross examination of witnesses and he prayed for dismissal of this Quash Petition.

11.This Court considered the rival submissions and perused the materials available on record.

12.It is not in dispute that the 1st respondent worked as Deputy Manager in the Accounts Department in the company. It is seen that the 1st petitioner is only a President of the company, he is not an Executive Director or a person, who is incharge of day to day affairs of the company. The 2nd petitioner is the General Manager, having overall incharge of the company.

13.With regard to the attendance of the employees and its particular, it is for HR Manager, who is to be addressed. In this case, the HR Manager is one Mr.Prabhu. The data in respect of bio-metric attendance entries would first collect in the bio-metric entry machine and the data gathered by the machine would then reach the main window server and later, there from the data would reach Linus server and there from it would flow to the display of HRIS server. The HRIS server is under the control of HR Manager. It is not in dispute that from 10.06.2015 to 15.06.2015, there was Income Tax raid in the company. It is known fact that prior to the Income Tax raid, there was some dispute between the 1st petitioner and his adoptive father M.A.M.Ramasamy. It is not the case that on 10.06.2015 to 15.06.2015, the 1st and 2nd petitioners were physically present and prevented the 1st respondent to sign the manual attendance register and not permitted him to attend the office. It is a known fact that during Income Tax raid, the entire office premises would come under the control of Income Tax department and entry and exit of employees and all electronic system regulated by the authorities. The 1st respondent, who was working in Accounts Department, was very much required by the Income Tax officials during the relevant period and he was enquired by them. It is seen that since the entire computer network system of the 3^{rd} petitioner company was under the control of Income Tax department, the bio-metric attendance of the employees could not be registered in HRIS server. After the Income Tax department left the 3^{rd} petitioner company premise, from 19.06.2015 onwards the non-registration of the bio-metric was restored including the attendance of the 1^{st} respondent from 10.06.2015 to 15.06.2015. The 1^{st} respondent taking print out of his attendance during the Income Tax survey period, had blown out of proportion.

14.On perusal of the complaint and legal notices, the apprehension of the 1^{st} respondent is that due to the conflict between the 1^{st} petitioner and his adoptive father, the 1^{st} respondent considered as loyalist of M.A.M.Ramsamy, the founder of the company and hence, he was targeted to remove from the service. Further, the petitioners doubted the 1^{st} respondent for the Income Tax raid. The 1^{st} respondent mentioning all those allegations, sent a legal notice to the petitioners, for which, the petitioners gave proper reply.

15.It is not in dispute that the 1^{st} respondent's bio-metric attendance from 10.06.2015 to 15.06.2015 was restored and the same was acknowledged by the 1^{st} respondent and the salary for that period has also been paid to him. While that being so, the 1^{st} respondent's apprehension is unwarranted. From the closure report of the 2^{nd} respondent Police, dated 28.10.2016, it is seen that Mr.Prabhu, HR Manager of the 3^{rd} petitioner company was examined, he gave details with regard to working of bio-metric device and working of main windows server and Linus server.

16.The other witnesses, who worked along with the 1^{st} respondent viz., Prabhu, R.M.Kasinathan and Sivakumar were all examined and they confirmed the Income Tax raid during the relevant period and the bio-metric attendance not immediately recorded in the server and it restored later. The closure report of the 2^{nd} respondent Police under Section 202 Cr.P.C., was forwarded to the trial Court on 28.10.2016, but the trial Court passed order for taking cognizance of the complaint after three years on 30.05.2018 stating that the Police enquiry report was not clear with regard to non-working of the computer system due to Income Tax raid. Further, there is no reason for delay in considering the report of the Police and passing orders after three years.

17.In this case, the 1^{st} respondent/complainant himself admitted that there was an Income Tax raid from 10.06.2015 to 15.06.2015, during that period his bio-metric attendance not recorded, thereafter, it was restored and he was paid salary for that period. Thus, the admitted facts need not be proved. Thus, the reason of the trial Court in taking cognizance on the complaint of the 1st respondent is not proper and correct.

18.In view of the above, the continuation of proceedings against the petitioners in C.C.No.6343 of 2018, on the file of the XIV Metropolitan Magistrate Court, Egmore, would amount to abuse of process of Court and the same is liable to be quashed and, is quashed against the petitioners. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

19.This Court appreciates Mr.A.Ashwin Kumar, Legal Aid Counsel for the 2nd respondent for making meticulous submission in this case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The XIV Metropolitan Magistrate Court,
   Egmore, Chennai.

2. The Inspector of Police,
   Crimes, F-4 Thousand Lights P.S,
   Chennai.

3. The Chief Metropolitan Magistrate,
   Egmore, Chennai.

4. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.G.Prabhakaran, Advocate, S.R.No.31846

Crl.O.P.No.24063 of 2018

SSI(CO)
CT 02/06/2022