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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.25198 of 2018

and

Cr1.MP.No.14257 of 2018

Bahadur
Senior Manager,
M/s.Capegemini Technology Services
India Ltd.,
Paint 2, C Wing, Godrej & Boyce Compound,
Gate No.2, LBS Marg, Pirojshah Nagar,
Vikroli (West), Mumbai - 400 079.

... Petitioner / Accused

Vs.

State rep. by
Labour Enforcement Officer [Central],
"Shastri Bhavan",
No.26, Haddows Road,
Chennai - 600 006.

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records on the file of the learned II Metropolitan Magistrate, Egmore, Chennai in C.C.No.4961 of 2018 and quash the same.

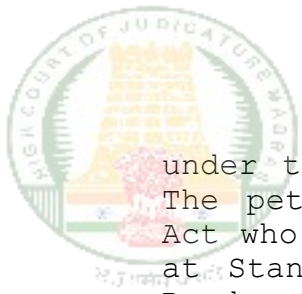
For Petitioner : Mr.K.P.Anantha Krishna

For Respondent : Mr.N.Ramsh
Senior Central Govt. Standing Counsel

ORDER

The petitioner/accused, who is facing trial in C.C.No.4961 of 2018 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai filed this quash petition.

2.The gist of the case is that the complainant is the Labour Enforcement Officer [Central], Chennai, appointed as Inspector



under the Contract Labour [Regulation and Abolition] Act, 1970. The petitioner is a Contractor within the meaning of the said Act who is engaged in the work of providing IT and ITES Service, at Standard Chartered Global Business Private Limited, Haddows Road, Chennai. The Contractor having engaged 20 or more contract labours for the above work is responsible for the compliance of the provisions of the Act. One Mr.Sankara Rao Nalla, Labour Enforcement Officer [Central], Chennai, who is an Inspector under the said Act had jurisdiction over the said establishment, inspected the place on 20.02.2018 at about 12.00 hours found the accused contravening the various provisions of the Act for non-maintenance of Attendance Register and non-submission of annual returns. Hence, a complaint was filed on 17.05.2018 listing witnesses and documents. The Trial Court on perusal of the complaint found prima facie case made against the petitioner and issued summons to the petitioner. On receipt of the same, the present petition is filed.

3.The contention of the petitioner is that the petitioner a permanent employee of Capegemini Technology Service Limited, Mumbai. The petitioner does not fall within the ambit of term 'Contractor' or the person responsible under the Act. It is submitted that the complaint was filed on 17.05.2018, even before filing of the complaint the violations pointed out by the respondent were rectified and the particulars were uploaded in the official website even as early as on 10.04.2018. The respondent sent a notice on 20.02.2018 enlisting certain violations. On receipt of the same, a reply was sent on 05.04.2018 informing the corrective measures taken. Further in the reply, it was clearly mentioned that Form XIV for the year 2017 was uploaded in Shram Suvidha Web Portal, Wage register Form B specified in the Schedule was submitted, likewise the Attendance register Form D which is properly maintained have also been submitted for perusal. Thus, all the shortcomings were rectified. Further, the printout of the annual returns uploaded in the official website was produced. It is further submitted that in this case one Anand Balakrishnan is the authorized person for M/s.Capegemini Technology Services India Ltd. which fact already informed and submitted to the authorities. Further, in this case admittedly the Company not made as an accused, on the other hand, the petitioner/Senior Manager was arrayed as an accused in his individual capacity. On going through the complaint as a whole and for non-inclusion of the Company the complaint is to be quashed.

4.The learned counsel for the petitioner primarily placed his submission on four grounds, namely, that in the absence of Company not made as an accused, the petitioner cannot be proceeded. Further, there is nothing to show that the petitioner herein is incharge and responsible for the conduct



and affairs of the company. Further, on a bare reading of the complaint there is nothing to show as to how the offence is made out. Admittedly, in this case on the show cause notice issued on 20.02.2018 the petitioner sent a reply giving the details and the rectification carried out on 05.04.2018. The complaint filed thereafter but nothing mentioned in the complaint about issuance of show cause notice on 20.02.2018, followed it with detailed inspection report on 07.03.2018, thereafter reply setn to the show cause notice and inspection report on 05.04.2018.

5. In support of his contention, the learned counsel for the petitioner relied upon the following decisions for the point that if there is any violation of provision of the Act and Rules, the juristic person Company has to be necessarily arrayed as an accused, without the Company arrayed as accused, proceeding against the Directors, Authorized Signatories or Employees is not permissible. The decisions are as follows:

1. Sam B.Jijina vs. The Tamil Nadu State, rep. by Inspector of Police, First Circle, Kancheepuram, Sriperumbudur in Crl.O.P.Nos.15588 & 15589 of 2010
2. Sanjay Jain vs. State of Karnataka reported in 2014 Crl.L.J. 395
3. Arvind Mediratta vs. The State of Karnataka in Crl.R.C.No.344 of 2017
4. Uday Kotak and another vs. State rep. by the Labour Enforcement Officer [Central] reported in [2005] 1 MLJ(Crl.) 279
5. Swapn Ganguly vs. Union of India reported in 2006 (2) LLJ 559
6. Andrew Stern vs. Labour Enforcement Officer [Central] reported in [2009] 1 LW(Crl.) 192.

6. The learned Senior Central Government Standing Counsel opposed this petition by filing a counter stating that the petitioner represented M/s.Capegemini Technology Services India Ltd. [Contractor] on the date of inspection and he signed the Inspection Note as the authorized representative of the Contractor. He further submitted that during inspection the documents maintained by the Contractor was found not updated, the Wage register produced during inspection contained entries only upto December 2017 and Registers for January 2018 was not produced for inspection. Since the petitioner affixed his signature in the Inspection note, he must be aware of the irregularities pointed out during the inspection, the Senior Manager is the responsible person to maintain all statutory documents and hence, inspection report was served on the petitioner/Senior Manager. He further submitted that the date of inspection was 20.02.2018, a detailed inspection report was



sent to the Contractor which was received by them on 07.03.2018. As per the Gazette issued by the Government of India, every contractor should file Annual Returns on or before 1st February through online portal whereas the accused Contractor complied with the statutory obligation only on 10.04.2018. Further, as per the Inspection report, compliance report is to be submitted within 15 days from the date of receipt of the report but the petitioner sent the reply only on 19.04.2018 which is time barred. He further submitted that due to pendency of this petition, trial could not be proceeded in C.C.No.4961 of 2018 and the same is pending without any progress. Hence, he prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner on receipt of the show cause notice had given a reply on 05.04.2018 in which the rectifications made was informed. Further, the copies of the documents were sent along with the reply. It is also seen that in the official website, the annual returns got uploaded. These facts, somehow for the reason best known does not find in the complaint. Further, it is seen that in this case the authorized person is Anand Balakrishnan and not the petitioner herein. The petitioner having present during the inspection of the respondent would not automatically make the petitioner as an authorized person. Added to it, in this case the Company not arrayed as accused and in the absence of Company not being arrayed as accused, the petitioner cannot be proceeded with. Hence, the complaint against the petitioner is not sustainable.

8.In view of the same, this Court finds that there is no reason to continue the proceedings against the petitioner which would only amount to abuse of process of law. Hence the proceedings against the petitioner in C.C.No.4961 of 2018 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai is hereby quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The II Metropolitan Magistrate,
Egmore, Chennai.

2. The Labour Enforcement Officer [Central],
"Shastri Bhavan",
No.26, Haddows Road,
Chennai - 600 006.

Crl.O.P.No.25198 of 2018

RK[co]
NSK/13/05/2022