



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.19696 of 2021

and

Crl.M.P. (MD)Nos.11044 and 11045 of 2021

P.Marimuthu Raja

... Petitioner/Accused

Vs.

The State of Tamil Nadu

Rep. by its

The Assistant Director (BOCW),

Labour Protection and Health,

Madurai.

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records bearing in S.T.C.No.1399 of 2021 on the file of the learned Additional Chief Judicial Magistrate, Madurai and quash the same as against the petitioner and devoid of merits.

For Petitioner : Mr.M.Jegadeesh Pandian

For Mr.R.Manickaraj

For Respondent : Mr.E.Antony Sahaya Prabahar,

Addl. Public Prosecutor.

O R D E R

This criminal original petition has been filed to quash the proceedings in S.T.C.No.1399 of 2021 on the file of the Additional Chief Judicial Magistrate, Madurai.

2.The respondent herein has filed the impugned complaint under Section 50 r/w. Section 54 of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996. The case of the complainant is that the National Highways Department of the Government of Tamilnadu is carrying out work of laying road on the southern banks of Vaigai river from Viraganoor to Theppakulam. Whiles, on 16.10.2020 at about 06.00 pm, a lorry engaged in the road works capsized and fell on one Mareeswaran, a construction worker. It is in this regard, the petitioner is sought to be prosecuted.

3.The learned counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings.

4.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that no case for quashing has been made out.



5.I carefully considered the rival contentions and went through the materials on record. There is no dispute that the petitioner is the head of the department. But then, the department did not carryout the road works on their own. They had engaged one R.R. Constructions as the contractor for carrying out the works.

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6.The petitioner can be prosecuted only if he will fall within the definition of the term "employer". Section 2(i) of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996, defines "employer". It is as follows:-

"(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 by no stretch of imagination can be called as owner of the establishment in question. Sub Clause 1 of Section 2 (i) will be attracted against the petitioner if the works in question had been carried out without any contractor. In this case, since a contractor was involved Section 2(i)(i) of the Act cannot be invoked against the petitioner. For the very same reason, Section 2 (i)(ii) of the Act also cannot be invoked. The case on hand falls within Section 2(i)(iii) of the Act. In such a event, it is only the contractor, who can be prosecuted. Therefore, prosecuting the petitioner is without any basis. Continuance of the prosecution will amount to an abuse of legal process. The impugned proceedings stand quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

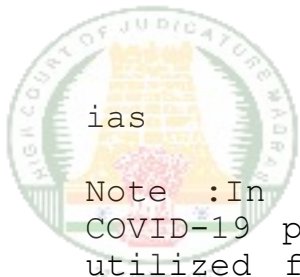
Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)



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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Additional Chief Judicial Magistrate,
Madurai.
- 2.The Assistant Director (BOCW),
Labour Protection and Health,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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NSN (CO)
KB (01.02.2022) 3P 4C