

(255) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31170-2019(O&M)
Date of Decision: 20.09.2022

YOSHINORI ONDA

... Petitioner

Versus

STATE OF HARYANA & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ashwani Talwar, Advocate for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the criminal complaint No.SUMM/195/17 dated 10.08.2017 (Annexure P-1) as well as the order dated 10.08.2017 (Annexure P-2), whereby the petitioner has been summoned to face trial for having committed an offence punishable under Section 22-A of the Minimum Wages Act and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that the Department of Labour, Government of Haryana through its staff administers the labour laws in Haryana. For this purpose the staff appointed makes inspections of different industrial establishments to see as to whether the provisions of the different labour laws/enactments are being complied with by the industrial establishments, or not. It was in furtherance of this object that a joint inspection team comprising of the Deputy Labour Commissioner, Assistant Labour Inspector and Labour Inspector, Gurugram inspected the premises of

M/s Denso Haryana Private Limited, Plot No.3, Sector-3, IMT Manesar, Gurugram on 1/6.12.2016 and found violation of provisions of different labour legislations, including the Minimum Wages Act, 1948.

3. Pursuant thereto, the aforementioned criminal complaint No.SUMM/195/17 dated 10.08.2017 (Annexure P-1) titled State Represented by Labour Inspector Circle-15, Gurgaon Versus Mr. Onda Occupier/Employer of M/s Denso Haryana, Plot No.3, Sector-3, IMT, Manesar, Gurugram came to be filed on the allegations that the 'occupier' failed to produce records of overtime, despite notice for production of the record and the records were required to be maintained under Rule 25(3) of the Punjab Minimum Wages Rules, 1950 and was violative of Rule 26(c) of the Minimum Wages Rules, 1950, thus punishable under Section 22-A of the Minimum Wages Act. Based on the aforementioned criminal complaint (Annexure P-1), the summoning order dated 10.08.2017 (Annexure P-2) came to be passed against the petitioner only.

4. The learned counsel for the petitioner while referring to the grounds raised in the petition contends firstly that the offence, if any had been committed by the Company M/s Denso Haryana Private Limited, which is a juristic person and thus, it was mandatory to implead the Company as an accused before criminal action was sought to be initiated against its employer/occupier. He contends that in fact sanction for prosecution (Annexure P-5) was also accorded for the Company and not with regard to the individual i.e. the present petitioner. He places reliance on the various judgments of the Hon'ble Supreme Court in the case of **C.P. Jain & others Versus Inspector, Building & another, SLP (Crl) No.1517 and 1560 of**

2007, decided on 21.09.2007, Aneeta Hada Versus M/s Godfather Travels & Tours Pvt. Ltd., 2012(2) R.C.R. (Criminal) 854, Dayle De'souza Versus Government of India Through Deputy Chief Labour Commissioner (C) & another, 2021 AIR (Supreme Court) 5626, and this Court in the case of Amar Singh Sidhu Versus State of Punjab, 2012(4) R.C.R (Criminal) 986, Sant Lal Surekha Versus State of Punjab, 2009(4) R.C.R. (Criminal) 981 and Madras High Court in the case of Babu Bhardagond Versus The State of Tamil Nadu, 2018(4) MLJ (Criminal) 225 to contend that where the Company has not been made a party accused, proceedings against the Director/officer of the Company ought to be quashed.

5. He next contends that under Section 2(e) of the Minimum Wages Act an 'employer' is defined. An 'employer' includes the 'Manager' of a factory. So far as the Company M/s Denso Haryana Private Limited is concerned, the provisions of Section 2(e)(i) of the Minimum Wages Act were applicable and thus, it was the 'Manager' of the factory, who was to be construed as the 'employer' in terms of Section 7(1)(f) of the Factories Act. The petitioner was not the Manager of the factory (Company) and at the relevant time such Manager was one Shri Anil Kumar. Section 2(e) of the Minimum Wages Act and Section 7(1)(f) of the Factories Act read as under;

Section 2(e) of the Minimum Wages Act.

“(e) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26-

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under [clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;”

Section 7(1)(f) of the Factories Act, reads as under:-

(1) The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing

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.....

(f) the name of the manager of the factory for the purposes of this Act;

6. He further contends that the term 'occupier' was not defined under the Minimum Wages Act. However, such term was defined as per Section 2(n) of the Factories Act and the same reads as under:-

“(n) “occupier” of a factory means the person who has ultimate control over the affairs of the factory.

[Provided that-

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.”

Since the Company M/s Denso Haryana Private Limited was a Company duly incorporated, anyone of its Director could be deemed to be an 'occupier'. The Company was established in the year 1997 and as per the renewal of the factory licence issued on 19.10.2015 for the period 2014 to 2018, the name of the occupier was one Mr. Shyamal Chakraborti and similarly for the period from 2019 to 2023, the occupier continued to be M/s Mr. Shyamal Chakraborti, who was also a Director of the Company. Thus, the petitioner could not have been stated to be the occupier as set out in the complaint (Annexure P-1) and summoning order (Annexure P-2). The two

certificates as mentioned above issued by the Chief Inspector Factories are annexed with the petition as Annexures P-3 and P-4.

7. It is next contended that as per Section 22B (2)(b) of the Minimum Wages Act, no Court could take cognizance unless the complaint was filed within 06 months of the date on which the offence was alleged to have been committed. In the present case, the inspection of the factory was carried out on 1/6.12.2016 and the complaint having been filed on 10.08.2017 was barred by limitation and thus, was liable to be quashed.

Section 22B(1) (2) of the Minimum Wages Act, reads as under:-

“[22B Cognizance of offences.-(1) No Court shall take cognizance of a complaint against any person for an offence-

(a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint;

(b) under clause (b) of section 22 or under section 22A, except on a complaint made by, or with the sanction of, an Inspector.

(2) No Court shall take cognizance of an offence

(a) under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section;

(b) under section 22A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.]”

8. He contends that even on merits, the complaint was not maintainable. In fact, the petitioner-Company had received a letter dated 07.11.2016 (Annexure P-6) from the Deputy Labour Commissioner,

Gurugram, as per which inspection was to be carried out at the factory premises with regard to the compliance of various labour laws on 01.11.2016. A show cause notice was issued to the Company with regard to the alleged violations committed in respect of the provisions of the Minimum Wages Act. The management responded to the objections raised by the Department with regard to the compliance of the provisions of the Minimum Wages Act. Thereafter, a fresh show cause notice with respect to the same objections was issued. A reply was issued to the show cause notice. The labour Inspector sought certain clarifications to which, a reply was submitted. Once again record was called for and a threat was also made that the Labour Inspector had been declared as an Inspector under the Minimum Wages Act and Payment of Wages Act and the management ought to know the powers of the Inspector. A complaint was made by the management of the Company to the Labour Commissioner in this regard. These communications have been attached with the petition as Annexures P-6 to P-14.

9. It is lastly contended that the alleged offence was only with regard to non-production of records of overtime despite due notice for production of records and the requirement of maintenance of such records under Rule 25(3) of the Minimum Wages Rules of Punjab, 1950 which is violation of Rule 26(c) of the Minimum Wages Rules. The said Rules are reproduced below for ready reference:-

“25. Extra Wages for overtime.-

..(3) A register of overtime shall be maintained by every employer in Form IV in which entries under the columns specified therein shall be made as and when overtime is worked in any establishment. The register shall be kept at the work-spot and maintained up-to-date. Where no overtime

has been worked in any wage period, a 'nil' entry shall be made across the body of the register at the end of the wages period indicating also in precise terms the wage period to which the 'nil' entry relates.

26. Form of registers and records.— (1) A register of wages shall be maintained by every employer at the work-spot and kept in such form as may be notified by the State Government and shall include the following particulars:

.....

(c) the gross wages of each person employed for each wage period;... ”

Section 22-A of the Minimum Wages Act further contemplates only punishment by way of payment of fine and the maximum limit for such fine is Rs.500/-. Thus, the offence was otherwise compoundable and the Company was ready to compound the same.

10. The learned State counsel while referring to the reply dated 12.02.2020 filed by Abhishek Malik, Labour Inspector, Gurugram on behalf of respondent Nos.1 and 2 submits that in fact, the establishments/factory was inspected and one Billu Rambru informed the inspection party that Shri Yoshinori Onda (the present petitioner) was the 'occupier'. Since the Inspection Form was filled in at the spot on the basis of the information supplied by the representative/staff of the establishment/factory, it was assumed that the said person was the 'occupier' as it could never be practicable for the inspection team to carry with it voluminous record relating to the occupier, Manager, nature of works/production of different establishments. Thus, since the name of the occupier was specifically pointed out by said Shri Billu Rambru as Shri Yoshinori Onda (the present petitioner), such information was believed to be true. It is thus contended that the action

of the respondents was bona fide and the complaint had been rightly filed. He has thereafter referred to the factual aspects of the matter regarding the issue of show cause notices, corresponding replies etc.

11. He further contends that the Labour Inspector was under a bona fide belief that impleading of the responsible person of the establishment/factory as an accused amounted to impleading the establishment/factory as an accused. The argument effectively is that once the responsible person was impleaded as an accused, the Company was deemed to be an accused.

12. There is no response to the other grounds raised in the petition.

13. I have heard the learned counsel for the parties at considerable length.

14. In the present case, firstly, sanction for prosecution was accorded for the Company as is evident from Annexure P-5. The Hon'ble Supreme Court in the case of Dayle De'souza (supra) has in the context of a prosecution under the Minimum Wages Act held that where the Company has not been arrayed as an accused proceedings against the Directors/Officers of the Company cannot be sustained. The same position has been enumerated in the judgments referred to by the counsel for the petitioner (supra). Thus, on first principle itself the complaint (Annexure P-1) and the summoning order (Annexure P-2) are liable to be quashed.

15. The contention of the counsel for the petitioner is that the petitioner could not said to be an 'employer' in terms of Section 2(e) of the Minimum Wages Act as at the relevant time, the Manager of the factory (Company) was one Shri Anil Kumar, who in terms of the Factories Act ought

to be treated as the 'employer'. Similarly, the petitioner could not said to be an 'occupier' as the 'occupier' of the premises was one Shir Shyamal Chakraborti as is borne out from Annexures P-3 and P-4.

Interestingly, the reply of respondent Nos.1 and 2 admits the fact that the petitioner was neither the 'employer' nor the 'occupier' but was stated to be the 'occupier' on account of the statement of Billu Rambru, the representative of the establishment at the time of the raid. The explanation for recording the petitioner as the 'occupier' was that voluminous record relating to the 'occupier' and 'Manager' could not be carried at the time of inspecting the premises and therefore what was told at the time of the inspection was what was recorded. This response is fallacious. In fact, the inspection took place on 1/6.12.2016 and the present complaint came to be filed on 10.08.2017. When the complaint was filed, at that point in time the Department ought to have examined its record to establish as to who was the 'employer' and 'occupier'. Therefore, the stands of the respondents does not cut much ice.

16. It may also be relevant to mention here that the complaint would be barred by limitation inasmuch as, the search of the premises took place on 1/6.12.2016 and the present complaint came to be filed on 10.08.2017, which is more than 06 months after the alleged commission of the offence.

17. In view of the aforementioned discussion, I find force in the contention of the learned counsel for the petitioner, moreso when the reply of the State is silent in its response to most grounds raised in the petition.

18. Therefore, the criminal complaint No.SUMM/195/17 dated 10.08.2017 (Annexure P-1), the summoning order dated 10.08.2017 (Annexure P-2) and all proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

20.09.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No