

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

CRM-M-35031-2019(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/60/17 dated 11.04.2017 (Annexure P-1) as well as the order dated 11.04.2017 (Annexure P-2), whereby the petitioner has been summoned to face trial for having committed an offence punishable under Section 10(1)(a) of the Equal Remuneration Act, 1976 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 Equal Remuneration Act, 1976.

3. Pursuant thereto, the aforementioned criminal complaint No.SUMM/60/17 dated 11.04.2017 (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 maintain the register of workers in Form D properly violating Section 8 thereby committing an offence under Section 10(1)(a) of the Equal Remuneration Act, 1976. Based on the aforementioned criminal complaint (Annexure P-1), the summoning order dated 11.04.2017 (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-3) 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, 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, the Madras High Court in the case of Babu Bhardagond Versus The State of Tamil Nadu, 2018(4) MLJ (Criminal) 225 and the Gauhati High Court in the case of Pranab Kumar Mohanty Versus State of Assam Through the Labour Enforcement Officer (Central), Government of India, 2018(5) GauIT 212 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 further contends that the term 'occupier' was not defined under the Equal Remuneration Act, 1976. 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 as per the certificate dated 24.12.2018 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-4 and P-5, respectively.

6. 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 Equal Remuneration Act, 1976 which is to the effect that register D was not maintained properly. The management vide letter dated 06.01.2017, copy of which is annexed as Annexure P-8, submitted its reply and at para-3 of the said reply it was specifically mentioned that the management is maintaining the register D under the Equal Remuneration Act, 1976. The inspection report does not disclose what is the error in maintenance of register D, the violation has not

been pointed out in a specific manner accordingly, the objection as raised was required to be dropped. Thereafter, a fresh show cause notice (Annexure P-9) with respect to the same objections was issued with regard to the inspection carried out in December, 2016 but this time, the concern as raised was only with regard to overtime wages paid to the staff. The issuance of letter Annexure P-9 made the management believe that on the other issues i.e. the alleged violation of the provisions Equal Remuneration Act, 1976 with regard to maintenance of Register D the issue stood settled.

However, it was evident from the perusal of the prosecution sanction order Annexure P-3 that the Deputy Labour Commissioner vide letter dated 31.01.2017, submitted its report to the Additional Labour Commissioner, which is the competent authority for sanctioning the prosecution and the said authority also, without even going through the matter and even noticing that the Company had sought a simple reply as to the details of the aberrations in maintenance of the said register which had not been responded to, accorded sanction for prosecution of the Company. The principles of natural justice were therefore not complied with and the petitioner and the sanction the prosecute the Company was accorded.

7. The offence under which the prosecution has been lodged is as under:-

(1) Register of workers in Form D was not properly maintained (violation u/s 8).

Section 8 of the Act provides as under:-

“Duty of employers to maintain registers- On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed.”

Rule 6 of the Equal Remuneration Rules, 1976 provides that every employer shall maintain upto date a register in relation to the workers employed by him in form D at the place where the workers are employed. And specimen of the form D, as provided in the rules is as under:-

Register to be maintained by the employer under Rule 6 of the Equal Remuneration Rules, 1976.

Name of the Establishment with full address_____.

Total number of works employed _____.

Total number of men workers employed_____.

Total number of women workers employed_____.

Components of remuneration				
Category of workers	Brief description of work	No. of men employed	No. of women employed	Rate of remuneration paid
1	2	3	4	5
Components of remuneration				
Basic wage of salary	Dearness allowance	House rent allowance	Other Allowance	Cash value of concessional supply of essential commodities
6	7	8	9	10

As per Section 10 of the Act, the offence under Section-10(1) (a) command punishment of simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both. Thus, the offence is even otherwise compoundable and the company of the petitioner is always ready and willing to compound the offence.

8. 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.

9. 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.

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

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

12. In the present case, firstly, sanction for prosecution was accorded for the Company as is evident from Annexure P-5. The Gauhati High Court in the case of **Pranab Kumar Mohanty** (supra) has in the context of a prosecution under the Equal Remuneration Act, 1976 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.

13. The contention of the counsel for the petitioner is that the petitioner could not said to be an 'employer' 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 Shri Shyamal Chakraborti as is borne out from Annexures P-4 and P-5. Since, he was neither the employer nor the occupier proceedings qua him could not be sustained.

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 11.04.2017. 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. The proceedings are liable to be quashed on this ground as well.

14. 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.

15. Therefore, the criminal complaint No.SUMM/60/17 dated 11.04.2017 (Annexure P-1), the order dated 11.04.2017 (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