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Crl.O.P.Nos.19677 & 20044 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2023

PRONOUNCED ON: 21.08.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.19677 of 2021 & Crl.M.P.Nos.10728 & 10730 of 2021
and
Crl.O.P.No.20044 of 2021 & Crl.M.P.Nos.10899 & 10900 of 2021

S.Chandrasekaran
S/o.G.Subramanian,
Deputy General Manager (Operations),
Raptakos Brett & Co Limited,
No.142, Velachery Main Road,
Chennai- 600 042. ...

Petitioner in both
Crl.O.Ps.

/vs/

The Joint Director,
Industrial Safety and Health- IV
No.47/1, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032. ...

Respondent in both
Crl.O.Ps.

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in C.C.Nos.2699 & 2700 of 2021 for the alleged offence under Section 20(1) of the Payment of Wages Act, 1936 and the Tamil Nadu Payment of Wages Rule 1937 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, filed by the respondent against the petitioner herein and quash the proceedings.



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Crl.O.P.Nos.19677 & 20044 of 2021

For Petitioner in ... Mr.M.Ganesan
both Crl.O.Ps.

For Respondent in ... Mr.L.Baskaran,
both Crl.O.Ps. Government Advocate (Crl.side)

COMMON ORDER

Since the fact of the legal issue and the parties are one and same, common order has been passed in these matters.

2.Challenging C.C.Nos.2699 & 2700 of 2021 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, the present criminal original petitions have been filed.

3.The fact of the prosecution is that the petitioner namely, S.Chandrasekaran is the Deputy General Manager (Operations) of Raptakos Brett & Co Limited. The respondent is the Joint Director, Industrial Safety and Health -IV, No.47/1, Thiru.Vi.Ka. Industrial Estate, Guindy, Chennai-600 032. On 28.05.2020, the Factory was inspected by Mr.M.Jawahar, Joint Director – III, (FAC) Industrial Safety and Health,



Chennai – 600 032. On inspection, he found the following violations;

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**“The payment of Wages Act 1936 and the
Tamil Nadu Payment of Wages Rule 1937:**

In C.C.No.2699 of 2021

1.Section 5 Read with Section 3:

Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him in factories. The wages of every person employed in factory after the last day of the wage – period in respect of which the wages are payable.

In the factory Raptakos Brett & Co Ltd., No.142, Velachery Main Road, Velachery, Chennai – 42 were not paid the wages for the period April 2020 to employees employed in the factory, it was found during the inspection. This is contravention.

In C.C.No.2700 of 2021

1.Rule 5 & 6:

A register of wages with all required particulars was not provided for inspection even on demand. This is contravention.



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CrI.O.P.Nos.19677 & 20044 of 2021

2.Rule 6A:

A notice in form No.VI specifying the rates of wages payable to different classes of workers employed in the factory should be exhibited at or near the main entrance of the factory in English and Tamil as required by rules 6A. This is contravention.

3.Rule 5 B:

The pay slip containing wage particulars has not been given to the workers at least one day before the payment along with the payment or on the day of payment. It was not shown at the time of inspection even on demand. This is contravention.”

Hence, a show cause notice issued to the petitioner and after got sanction, the abovesaid criminal proceedings have been instituted, which is now under challenge before this Court.

4.In furtherance of the show cause notice, a reply was given by the



petitioner to the respondent on 11.06.2020, wherein and whereby, he denied the allegations of the show cause notice and prayed for annulment of show cause notice and also sought for personal hearing and the relevant portion is extracted hereunder;

“1.Section 5 read with Section 3- without prejudice to the aforesaid, kindly note that the “employer” is responsible for payment of all wages required to be paid under the Act. All employees who were present for full period and works during April, 2020 and May, 2020 were paid their wages. The workmen have remained absent on adhoc basis and hence the desired production levels were severely affected. As a matter of fact such, mass absenteeism as a concerted action on a common understanding tantamount to a strike under the Industrial Disputes Act, 1947 which is illegal having resorted to without following the mandatory provisions of the Industrial Disputes Act, 1947 and Industrial Disputes (Tamil Nadu) Rules 1958 the universally accepted norm of “no work, no pay” is clearly applicable to them therefore.



We had issued SCN to workmen to initiate disciplinary proceedings against the workment towards absenteeism but on an assurance from the President of the Union Mr.Kuchelan, that the workment would resume duties from May, 2020 and restore normalcy the management had therefore kept the disciplinary action in abeyance.

As such the non-payment of wages to the workers who voluntarily remained absent/on strike, is not violation of Act or lay but in consonance with the provisions of law. In this connection it would be pertinent to note that we are engaged in the manufacture of our product “Threptin” which boosts immunity and is an immune modulator which is vital in the prevention and spread of Corona. Stopping manufacture of such a crucial product during this period by the workers is nt a condonable act. All/Any wages are required to be paid for work done and targets achieved as per the settlement between the union and the management. If the same is not met no wages are required to be



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CrI.O.P.Nos.19677 & 20044 of 2021

paid.

The workmen have also not raised any Industrial Dispute regarding the alleged non-payment of wages for April, 2020. There is a statutory machinery provided under the Industrial dispute act. 1947 for resolving such disputes. In addition thereto, Section 33(c) provides for recovery of money due from an employer by the workmen. No such application for recovery has been made by the workmen as no wages are due.

Rule 5 and 6 – As regards to your observation that the register with particulars of wages was not provided, the said contention is incorrect the data is maintained and stored in an “electronic mode” at the Corporate office Mumbai. Inspection of such data was offered to be made available at mutually convenient date and time after the lifting of the lockdown in Mumbai.

Rule 6A- With regard to the observation



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CrI.O.P.Nos.19677 & 20044 of 2021

that wage rates have not been displayed near the main entrance or factory kindly note that there is compliance of the Rule. The wages payable to all employees are determined under the terms of settlements under the provisions of the I.D. Act, 1947. The settlements are executed with the registered/recognised union.

Before implementation, the salient features of the settlement are widely circulated to the workers. Copies of the settlement are filed with the authorities prescribed under the I.D. Act including the Regional labour Commissioner (RLC), Assistant Labour Commissioner (ALC), Conciliation Officer etc., and hence the workmen are aware of the wages they are entitled to

Rule 5B- The wages for the month of May 2020 are paid on 10th June 2020. The pay slip is given to the workers as well as such; there is compliance with Rule 5 B. The SCN states “it was shown at the time of inspection even on demand”. That was not possible since the pay slips were still to be issued (by 9th June 2020) for



wages to be paid on 10th June 2020. However, there is no contravention of Rule 5B or any other provisions alleged or otherwise.”

5.The learned counsel for the petitioner further contended that in spite of reply notice, the respondent preferred the complaint without providing any opportunity, which is erroneous and further contended that a right of appeal against the decision of the respondent on the replies of the petitioner provided under Section 21 (2) of the Payment of Wages Act, 1936 is denied. Therefore, the criminal proceedings have to be quashed as unsustainable.

6.The learned Government Advocate (crl.side) appearing for the respondent submitted that since the reply is not satisfied, the competent authority granted sanction for prosecution. After obtaining sanction, the criminal complaints have been filed by the respondent, so, it is in order and pleaded to dismiss the criminal original petitions.



7.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (crl.side) for the respondent.

8.On perusal of records, it is seen that the undisputed fact is, the respondent inspected the factories on 28.05.2020. In the course of inspection, the authority found wages were not paid to the workers by the petitioner and found violation of the Payment of Wages Act, 1936 and the Tamil Nadu Payment of Wages Rule, 1937. In that regard, prosecution was made under Section 21 of the Payment of Wages Act, 1936. Further, it is also not disputed that after receiving a show cause notice, the petitioner issued reply and also sought personal hearing. The relevant portion of the same runs as follows;

“1.Section 5 read with Section 3- without prejudice to the aforesaid, kindly note that the “employer” is responsible for payment of all wages required to be paid under the Act. All employees who were present for full period and works during April, 2020 and May, 2020 were



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CrI.O.P.Nos.19677 & 20044 of 2021

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We had issued SCN to workmen to initiate disciplinary proceedings against the workment towards absenteeism but on an assurance from the President of the Union Mr.Kuchelan, that the workment would resume duties from May, 2020 and restore normalcy the management had therefore kept the disciplinary action in abeyance.

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CrI.O.P.Nos.19677 & 20044 of 2021

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The workmen have also not raised any Industrial Dispute regarding the alleged non-payment of wages for April, 2020. There is a statutory machinery provided under the Industrial dispute act. 1947 for resolving such disputes. In addition thereto, Section 33(c) provides for recovery of money due from an employer by the workmen. No such application for recovery has been made by the workmen as



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CrI.O.P.Nos.19677 & 20044 of 2021

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Rule 6A- With regard to the observation that wage rates have not been displayed near the main entrance or factory kindly note that there is compliance of the Rule. The wages payable to all employees are determined under the terms of settlements under the provisions of the I.D. Act, 1947. The settlements are executed with the registered/recognised union.

Before implementation, the salient features of the settlement are widely circulated to the workers. Copies of the settlement are filed



with the authorities prescribed under the I.D. Act including the Regional labour Commissioner (RLC), Assistant Labour Commissioner (ALC), Conciliation Officer etc., and hence the workmen are aware of the wages they are entitled to

Rule 5B- The wages for the month of May 2020 are paid on 10th June 2020. The pay slip is given to the workers as well as such; there is compliance with Rule 5 B. The SCN states “it was shown at the time of inspection even on demand”. That was not possible since the pay slips were still to be issued (by 9th June 2020) for wages to be paid on 10th June 2020. However, there is no contravention of Rule 5B or any other provisions alleged or otherwise.”

9.Under these circumstances, I have considered the provision of Section 21 of the Payment of Wages Act, 1936 and it runs as follows:

**“21. Procedure in trial of offences.— (1)
No Court shall take cognizance of a complaint against any person for an offence under sub-**



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CrI.O.P.Nos.19677 & 20044 of 2021

section (1) of section 20 unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the



existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

((3A) No Court shall take cognizance of any offence punishable under sub-section (3) or sub-section (4) of Section 20 except on a complaint made by or with the sanction of an Inspector under this Act.)

(4) In imposing any fine for an offence under sub-section (1) of Section 20 the Court shall take into consideration the amount of any



compensation already awarded against the accused in any proceedings taken under section 15.”

10.In view of the above provision, before sanctioning the making of a complaint against any person for an offence under sub section 1 of Section 20, the authority empower under Section 15 shall give such person an opportunity of showing cause against the granting of such sanction and the sanction shall not be granted if such person satisfies the authority. But in this case, opportunity was not given to the petitioner after receiving the reply notice from him. Therefore, the criminal prosecution is launched in denial of such right under violation of natural justice. Therefore, the criminal proceedings against the petitioner is liable to be quashed. Accordingly, the criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No
sms

21.08.2023

To



Crl.O.P.Nos.19677 & 20044 of 2021

1.The Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

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V.SIVAGNANAM ,J.

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Pre-delivery order made in
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