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Crl OP No. 19296 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.19296 of 2021 and
Crl.M.P.No.10597 of 2021

Stanny John Barboza

...Petitioner/A2

Versus

1.State Rep by
The Inspector of Police,
Central Crime Branch,
Team IX,
Vepery, Chennai – 7.

2. Protector of Emigrants
Office of the Protector of Emigrants
TNHB Complex, Ashok Nagar,
Chennai – 83.

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the C.C.No.2037 of 2017 on the file XI Metropolitan Magistrate Court, Saidapet, Chennai, and quash all further proceedings as against the petitioner.



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For Petitioner : Mr.M.S.Soundararajan
For R1 : Mr. A.Damodaran
Additional Public Prosecutor
For R2 : Mr. B.Sudhir Kumar

ORDER

The petition is to quash the final report for the alleged offences under Sections 420 of the Indian Penal Code and 24 and 10 (2) (iv) of the Emigration Act, 1983.

2. It is alleged in the final report that the petitioner/A2 and others were recruiting persons and sending them abroad without valid license from the Central or the State Government.

3. Mr.S.Soundarajan, the learned counsel for the petitioner would submit that the petitioner is only an employee of one “Arafa Travel Service”; that even according to the prosecution, the said travel service is a partnership firm and without arraying as a partnership firm as an accused, the petitioner cannot be prosecuted. The learned counsel for the petitioner relied upon the Judgments of the Honourable



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Supreme Court and this Court in support of his submission that when the offence is committed by a company or a partnership firm, persons in charge of the firm/company cannot be prosecuted without prosecuting the company or the firm. Hence, he prayed for quashing of the final report.

4. Mr. A. Damodaran, the learned counsel for the first respondent and Mr. B. Sudhir Kumar, the learned counsel for the second respondent submitted that it is not a case where the petitioner is sought to be prosecuted on the ground of vicarious liability; that the allegations are that he committed the offences independently and; that the question as to whether the offences have been committed by the partnership firm or by this person independently, is a question of fact and cannot be adjudicated in this quash petition. Hence, they prayed for dismissal of the quash petition.

5. This Court is of the view that the question as to whether the prosecution against the petitioner is in his individual capacity or he is vicariously liable for the offences committed by the partnership firm is factual. Thus, this Court is not inclined to entertain this quash petition on



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such disputed facts. However, the petitioner is at liberty to raise all his contentions before the Trial Court. Hence, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

28.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Metropolitan Magistrate Court,
Saidapet,
Chennai.
2. The Inspector of Police,
Central Crime Branch,
Team IX,
Vepery, Chennai – 7.
3. The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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SUNDER MOHAN, J.

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